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NATIONAL LABOR RELATIONS ACT OF 1949

HEARINGS

BEFORE A

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COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

EIGHTY-FIRST CONGRESS
FIRST SESSION

ON

H. R. 2032

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HEARINGS HELD AT WASHINGTON, D. C.
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NATIONAL LABOR RELATIONS ACT OF 1949

MONDAY, MARCH 7, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., Hon. Augustine B. Kelley (chairman) presiding.

Mr. Kelley. The committee will please be in order.

This is the initial hearing on H. R. 2032, a bill to repeal the Labor-Management Relations Act, 1947, and to reenact the National Labor Relations Act of 1935, and for other purposes.

(The bill referred to is as follows:)

[H. R. 2032, 81st Cong., 1st sess.]

A BILL To repeal the Labor-Management Relations Act, 1947, to reenact the National Labor Relations Act of 1935, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Labor Relations Act of 1949".

TITLE I—REPEAL OF LABOR-MANAGEMENT RELATIONS ACT, 1947, AND REENACTMENT OF NATIONAL LABOR RELATIONS ACT OF 1935

REPEAL OF LABOR-MANAGEMENT RELATIONS ACT, 1947

Sec. 101. The Labor-Management Relations Act, 1947 (Public Law Numbered 101, Eightieth Congress) is hereby repealed.

REENACTMENT OF THE NATIONAL LABOR RELATIONS ACT

Sec. 102. The National Labor Relations Act of 1935 (49 Stat. 449), as it existed prior to the enactment of the Labor-Management Relations Act, 1947, is hereby reenacted.

MEMBERSHIP OF NATIONAL LABOR RELATIONS BOARD

Sec. 103. Subsections (a) and (b) of section 3 of the National Labor Relations Act of 1935 are amended to read as follows:

"Sec. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') is hereby continued as an agency of the United States. The Board shall consist of five members, appointed by the President by and with the advice and consent of the Senate. The terms of office of the members of the board in office on the date of enactment of the National Labor Relations Act of 1949 shall expire as provided by law at the time of their appointment. Members appointed after such date of enactment shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

"(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the

Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed."

SEC. 104. (a) Subsection (a) of section 4 of the National Labor Relations Act of 1935 is amended to read as follows:

"SEC. 4. (a) Each member of the Board shall receive a salary of $17,500 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint such employees as it may from time to time find necessary for the proper performance of its duties. Any arbitrators appointed by the Board under section 9 (d) may be appointed in the manner authorized by section 15 of the Act of August 2, 1946 (5 U. S. C. 55a) at per diem rates to be determined by the Board but not exceeding $100, and shall be entitled to traveling expenses as authorized by section 5 of such Act (5 U. S. C. 73b–2) for persons so employed. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor."

(b) Section 4 of the National Labor Relations Act of 1935 is amended by striking out subsection (b) thereof and by relettering the succeeding subsection "(b)".

BAR TO CERTAIN PROCEEDINGS

SEC. 105. Notwithstanding the provisions of the Act of February 25, 1871 (16 Stat. 432), neither the Board nor any court of the United States shall have jurisdiction to entertain, process, make, impose, or enforce any petition, complaint, order, liability, or punishment under the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, with respect to any act or omission occurring prior to the date of enactment of this Act, unless such petition, complaint, order, liability, or punishment could be entertained, processed, made, imposed, or enforced under the National Labor Relations Act with respect to a like act or omission occurring after the date of enactment of this Act. No complaint shall hereafter be issued by the National Labor Relations Board based upon any unfair labor practice occurring prior to August 22, 1947, unless charges with respect thereto were pending before the Board on January 1, 1949.

UNJUSTIFIABLE SECONDARY BOYCOTTS AND JURISDICTIONAL DISPUTES

SEC. 106. (a) Section 1 of the National Labor Relations Act of 1935 is amended by inserting after the third paragraph thereof the following new paragraph:

"Experience has further demonstrated that certain unjustifiable conflicts between or among labor organizations lead to strikes and other forms of industrial strife which substantially burden or obstruct commerce, and that the failure of employers to maintain a neutral position aggravates and prolongs these conflicts. The public interest requires abatement of such industrial strife through just, peaceable, and final settlement."

(b) Section 2 of the National Labor Relations Act of 1935 is amended by striking out paragraph (11) thereof and by adding two new paragraphs (11) and (12), to read as follows:

"(11) The term 'secondary boycott' means a concerted refusal in the course of employment by employees of one employer to produce, manufacture, transport, distribute, or otherwise work on articles, materials, goods, or commodities because they have been or are to be manufactured, produced, or distributed by another employer.

"(12) The term 'jurisdictional dispute' means a dispute between two or more labor organizations (not established, maintained, or assisted by any employer action defined in this Act as an unfair labor practice) concerning the assignment or prospective assignment of a particular work task by an employer."

(c) Section 8 of the National Labor Relations Act of 1935 is amended by inserting after the figure "8" at the beginning thereof the letter "(a)" and adding at the end thereof a new paragraph (6) to read as follows:

"(6) To refuse to assign a particular work task in accordance with an award under section 9 (d) of this Act."

(d) Section 8 of the National Labor Relations Act of 1935 is amended by adding at the end thereof a new subsection (b) to read as follows:

"(b) It shall be an unfair labor practice for a labor organization—

"(1) to cause or attempt to cause employees to engage in a secondary boycott, or a concerted work stoppage, to compel an employer to bargain with a particular labor organization as the representative of his employees if—

"(a) another labor organization is the certified representative of such employees within the meaning of section 9 of this Act; or

"(b) the employer is required by an order of the Board to bargain with another labor organization; or

"(c) the employer is currently recognizing another labor organization (not established, maintained, or assisted by any employer action defined in this Act as an unfair labor practice) and has executed a collective-bargaining agreement with such other labor organization, and a question concerning representation may not appropriately be raised under section 9 of this Act;

"(2) to cause or attempt to cause employees to engage in a secondary boycott, or a concerted work stoppage, in furtherance of a jurisdictional dispute in such labor organization is seeking to compel an employer to assign a particular work task contrary to an award made under section 9 (d) of this Act."

(e) Section 9 of the National Labor Relations Act of 1935 is amended by inserting between subsections (c) and (d) thereof a new subsection (d) to read as follows:

"(d) Whenever a jurisdictional dispute results in or threatens to result in a concerted work stoppage, or a secondary boycott, affecting commerce, the Board may hear and determine, or appoint an arbitrator to hear and determine, the dispute, and issue an award, first affording the labor organizations involved in the dispute a reasonable opportunity to settle their controversy between or among themselves. In determining the dispute, the Board or the arbitrator, as the case may be, may consider any prior Board certification under which any such labor organization claims the right to represent employees who are or may be hired or assigned to perform the work tasks in dispute, any union charters or interunion agreements purporting to define areas of jurisdiction between or among the contending labor organizations, the decisions of any agency established by unions to consider such disputes, the past work history of the organizations involved in the dispute, and the policies of this Act. If an arbitrator is appointed to hear and determine a dispute, he shall proceed in accordance with such rules and regulations as the Board may prescribe; and his award determining the dispute shall have the same effect as an award of the Board. In any proceeding under this section, the employer whose assignment or prospective assignment of a particular work task is in controversy shall have an opportunity to be heard in any hearing conducted by the Board, or an arbitrator, as the case may be. If at any stage of the proceeding it shall appear to the Board that the dispute is in fact one concerning representation, it shall treat the case as one instituted under section 9 (c) of this Act and proceed accordingly."

(f) Subsection (d) of section 9 of the National Labor Relations Act of 1935 is relettered "(e)" and, as relettered, is amended to read as follows:

"(e) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, or upon an award made in proceedings under subsection (d) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation, or such award and the record of the proceedings under subsection (d) of this section, as the case may be, shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript."

FREEDOM FROM RESTRICTED STATE LAWS

SEC. 107. The proviso of section 8 (a) (3) of the National Labor Relations Act of 1935 is amended to read as follows: "*Provided*, That nothing in this Act, or in any other statute of the United States, or in any State law, shall preclude an employer engaged in commerce, or whose activities affect commerce, from making an agreement with a labor organization (not established, maintained, or assisted by any employer action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, or from paying to such labor organization, pursuant to a collective-bargaining agreement, membership obligations or sums equivalent thereto by deduction from wages or salaries, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made."

NOTICE OF TERMINATION OR MODIFICATION OF COLLECTIVE BARGAINING CONTRACTS

SEC. 108. Section 8 of the National Labor Relations Act of 1935 is amended by adding at the end thereof the following:

"(c) It shall be an unfair labor practice for an employer or a labor organization to terminate or modify a collective-bargaining contract covering employees in an industry affecting commerce, unless the party desiring such termination or modification notifies the United States Conciliation Service of the proposed termination or modification at least thirty days prior to the expiration date of the contract, or thirty days prior to the time it is proposed to make such termination or modification, whichever is earlier."

TITLE II—MEDIATION AND ARBITRATION

THE UNITED STATES CONCILIATION SERVICE

SEC. 201. (a) The United States Conciliation Service is hereby reestablished in the Department of Labor; and the functions transferred to the Federal Mediation and Conciliation Service by section 202 (d) of the Labor-Management Relations Act, 1947, are hereby restored to the Secretary of Labor. The Service shall be under the direction of a Director of Conciliation (hereinafter called the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of $15,000 per annum.

(b) The personnel, records, property, and unobligated balances of appropriations, allocations, or other funds of the Federal Mediation and Conciliation Service are hereby transferred to the Department of Labor. Such transfer shall not affect any proceedings pending before the Federal Mediation and Conciliation Service or any rule or regulation heretofore made by it or by the Federal Mediation and Conciliation Director.

(c) The United States Conciliation Service shall be administered under the general direction and supervision of the Secretary of Labor. General policies and standards for the operation of the Service shall be formulated and promulgated by the Director of Conciliation, with the approval of the Secretary of Labor.

(d) The Secretary is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the funtions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators, mediators and arbitrators as may be necessary to carry out the functions of the Service.

FUNCTIONS OF THE SERVICE

SEC. 202. (a) The United States Conciliation Service (hereinafter called the "Service") shall assist labor and management in settling disputes through the processes of free collective bargaining. The Director shall have authority to proffer the facilities of the Service in any labor dispute in any industry affecting commerce either upon his own motion or upon the request of one or more of the parties to the dispute whenever, in his judgment, the facilities of the Service will assist the parties in settling the dispute.

(b) Upon request of the parties to the dispute, the Service shall cooperate in formulating an agreement for the arbitration of the dispute, in selecting an arbitrator or arbitrators, and in making such other arrangements and in taking such other action as may be necessary.

(c) The Service shall furnish to employer, employees, and other public and private agencies, information concerning the practicabiilty and desirability of establishing suitable agencies and methods to aid in the settlement of labor disputes by mediation, conciliation, arbitration, and other peaceful means, and to promote and encourage the uses and procedures of sound collective bargaining. The Director is authorized to establish suitable procedures for cooperation with State and local mediation agencies and to enter into agreements with such State and local mediation agencies relating to the mediation of labor disputes whose effects are predominantly local in character.

(d) Through conferences and such other methods as it deems appropriate, the Service shall seek to improve relations between employers and the representatives of their employees for the purpose of avoiding labor disputes and preventing such disputes as might occur from developing into stoppages of operations which might affect commerce or develop consequences injurious to the general welfare.

CONDUCT OF CONCILIATION OFFICERS

SEC. 203. The Director and the Service shall be impartial. They shall respect the confidence of the parties to any dispute. Commissioners of Conciliation shall not engage in arbitration while serving as Commissioners and they shall not participate in cases in which they have a pecuniary or personal interest.

DUTIES OF EMPLOYERS AND EMPLOYEES

SEC. 204. In order to prevent or minimize labor disputes affecting the free flow of commerce or threatening consequences injurious to the general welfare, it shall be the duty of employers and employees, and their representatives to—

(a) exert every reasonable effort to make and maintain collective-bargaining agreements for definite periods of time, concerning (1) rates of pay, hours, and terms and conditions of work; (2) adequate notice of desire to terminate or change such agreements; (3) absention from strikes, lockouts, or other acts of economic coercion in violation of such agreements; and (4) procedures for the peaceful settlement of disputes involving the interpretation or application of such agreements;

(b) participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of any dispute to which they are parties.

INTERPRETATION OF EXISTING AGREEMENTS

SEC. 205. It is the public policy of the United States that any collective-bargaining agreement in an industry affecting commerce shall provide procedures by which either party to such agreement may refer disputes growing out of the interpretation or application of the agreement to final and binding arbitration. The Service is authorized and directed to assist employers and labor organizations in—

(a) developing such procedures;

(b) applying such procedures to individual cases, including assistance in framing the issues in dispute and the terms and conditions under which the arbitration proceedings shall be conducted, including methods for the selection of the arbitrator or arbitrators; and

(c) selecting an arbitrator or arbitrators, including making available to the parties a roster of names from which the parties may choose one or more arbitrators and, if the parties so desire, designating one or more arbitrators.

LABOR-MANAGEMENT ADVISORY COMMITTEES

SEC. 206. (a) The Secretary of Labor shall appoint such labor-management advisory committees as he deems necessary or appropriate in the administration of this title. The membership of each such committee shall consist of equal numbers of labor and management representatives, and one or more public members. The Secretary shall designate a public member as chairman. Members of such advisory committees shall serve without compensation, but shall receive transportation, and per diem in lieu of subsistence at a rate of $25 a day, as authorized by section 5 of the Act of August 2, 1946 (5 U. S. C. 73b–2), for persons so serving. Such committees shall have authority to adopt, amend, or rescind such rules and regulations as may be necessary to the performance of their functions.

(b) Such advisory committees shall advise the Secretary on questions of policy and administration affecting the work of the Service and shall perform such other functions to help in achieving the purposes of this title as the Secretary may request.

TITLE III—NATIONAL EMERGENCIES

DECLARATION OF NATIONAL EMERGENCY

SEC. 301. Whenever the President finds that a national emergency is threatened or exists because a stoppage of work has resulted or threatens to result from a labor dispute (including the expiration of a collective-bargaining agreement) in a vital industry which affects the public interest, he shall issue a proclamation to that effect and call upon the parties to the dispute to refrain from a stoppage of work, or if such stoppage has occurred, to resume work and operations in the public interest.

EMERGENCY BOARDS

SEC. 302. (a) After issuing such a proclamation, the President shall promptly appoint a board to be known as an "emergency board".

(b) Any emergency board appointed under this section shall promptly investigate the dispute, shall seek to induce the parties to reach a settlement of the dispute, and in any event shall, within a period of time to be determined by the President but not more than twenty-five days after the issuance of the proclamation, make a report to the President, unless the time is extended by agreement of the parties, with the approval of the board. Such report shall include the findings and recommendations of the board and shall be transmitted to the parties and be made public. The Secretary of Labor shall provide for the board such stenographic, clerical, and other assistance and such facilities and services as may be necessary for the discharge of its functions.

(c) After a Presidential proclamation has been issued under section 301, and until five days have elapsed after the report has been made by the board appointed under this section, the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute unless a change therein is agreed to by the parties.

POWERS OF EMERGENCY BOARDS

SEC. 303. (a) A separate emergency board shall be appointed pursuant to section 302 for each dispute and shall be composed of such number of persons as the President may deem appropriate, none of whom shall be pecuniarily or otherwise interested in any organizations of employees or in any employer involved in the dispute. The provisions of section 11 of the National Labor Relations Act, as amended by this Act (relating to the investigatory powers of the National Labor Relations Board) shall be applicable with respect to any board appointed under this section, and its members and agents, and with respect to the exercise of their functions, in the same manner that such provisions are applicable with respect to the National Labor Relations Board. Any board appointed under this section may prescribe or adopt such rules and regulations as it deems necessary to govern its functions. Members of emergency boards shall receive compensation, at rates determined by the President, when actually employed, and travel expenses as authorized by section 5 of the Act of August 2, 1946 (5 U. S. C. 73b–2), for persons so employed. When a board appointed under this section has been dissolved, its records shall be transferred to the Secretary of Labor.

TITLE IV—MISCELLANEOUS PROVISIONS

APPLICATION OF ANTI-INJUNCTION STATUTES

SEC. 401. The Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (Norris-LaGuardia Act), approved March 24, 1932 (U. S. C., title 29, secs. 101–115), and sections 6 and 20 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (Clayton Act) approved October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), are continued in full force and effect in accordance with the provisions of such Act; except that the provisions of such Act and such sections shall not be construed to be applicable with respect to section 10 of the National Labor Relations Act.

POLITICAL CONTRIBUTIONS

SEC. 402. Section 610 of title 18 of the United States Code (Public Law 772, Eightieth Congress, second session), is amended to read as follows:

"SEC. 610. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, or for any corporation whatever to make a contribution in connection with any election to any political office, or for any corporation whatever to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation who consents to any contribution by the corporation in violation of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both."

DEFINITIONS

SEC. 403. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The terms "commerce", "affecting commerce", "labor dispute", "employer", "employee", "labor organization", and "person" shall have the same meaning as when used in the National Labor Relations Act as reenacted by title I of this Act.

SAVING PROVISION

SEC. 404. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 405. The provisions of titles II and III of this Act shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended.

SEPARABILITY

SEC. 406. If any provision of this Act, or the application thereof to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

Mr. BAILEY. Mr. Chairman, I move you call the roll to ascertain if there is a quorum present.

Mr. POWELL. I second the motion.

Mr. KELLEY. The clerk will call the roll.

(The roll call was taken by the clerk.)

Mr. KELLEY. Ten members are present, which is a quorum.

I wish to call the attention of the members to the fact that those rules of procedure which we adopted several days ago are going to be carried out explicitly, and I hope that the members will cooperate with the chairman. I do not want to be placed in the embarassing position of having to call your attention to a violation of the rules.

The first witness this morning is the Hon. Peter W. Rodino, Jr.

Mr. Rodino, you represent the Tenth New Jersey District?

Mr. RODINO. Yes, sir; I come from the Tenth New Jersey District, the district which was formerly represtented by Fred A. Hartley, Jr.

Mr. KELLEY. By Mr. Hartley?

Mr. RODINO. That is right, sir, the person who was the co-author of the Taft-Hartley law.

TESTIMONY OF HON. PETER W. RODINO, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. RODINO. Mr. Chairman, I would like to say at the outset that I have a committee meeting to attend in about 45 minutes, and if the Chairman will take that into cognizance, I would like to be excused after I am through with my questioning.

Mr. KELLEY. I think that we should be able to expedite our hearings in sufficient time. I think 45 minutes is plenty of time.

Mr. RODINO. Mr. Chairman, my purpose in appearing here this morning is that I would like to make known to the members of this committee how the people of my district feel about the Taft-Hartley law. I am not a constitutional lawyer nor an expert in labor law, but I believe that as a representative of the people of the Tenth District of New Jersey, I am qualified to speak for them.

I urge the members of this committee to act with all possible speed to report favorably H. R. 2032, which was introduced by the chairman of this committee, providing for the repeal of the Taft-Hartley Act and the reenactment of the Wagner Act, with certain necessary amendments.

Probably the most important contribution that I can make to your deliberations is to say emphatically that the people of my district want to see this act repealed. I believe that the reason why Mr. Hartley did not choose to run is that he could not have won on the issue of the Taft-Hartley Act. I may say that because, as a Representative of the Tenth District of New Jersey, I know the pulse and the sentiments of those people.

I would like to go back to a period of time, 1946, when there were strikes and there were labor disputes. These strikes took place after the war when the workers' take-home pay dropped because of overtime and premium pay stopping. And on top of that, prices of those things that the workers and their families had to have to live on were going up while the take-home pay was going down. I do not believe that they could have done anything else. The people tried to negotiate and in some cases—and I refer back to the General Motors strike, the union offered to arbitrate—reduced their demands to whatever the General Motors Corp. could pay without either increasing prices or reducing profits below a very generous yield on net worth.

The union went into hearings of a fact-finding board which was set up by the President, but the corporation walked out and refused to cooperate. Then when the fact-finding board made its recommendations, the union accepted, but the corporation refused, and the strike went on all through the winter of 1946.

I can attest to that. I know how it struck home, because my father was one of those persons who was employed by the Hyatt Roller Bearing Co. of General Motors.

In that case, I would like to ask, Who was being cooperative and who was being uncooperative? Who was considering the public welfare, not to speak of the welfare of the wage-earners and their families? Who was telling the public welfare to be damned for the sake of profits in an attempt to try to beat the General Motors workers to their knees? I say, thank God the General Motors workers held out and got a settlement for the amount that had been recommended by the fact-finding board. It was a good strike and a necessary strike because of the attitude of this great corporation that was trying to set a pattern for postwar America; a pattern of behavior in which the American wage-earners, who had turned out the greatest production in the history of the world, were going to be put through the economic wringer and have their unions weakened and maybe broken by vast corporate power.

After that, there was the steel strike. And I feel that that was necessary because of the attitude of the United States Steel Corp. I remember it became a matter of public record at that time that those big gilt-edged corporations held a secret meeting in the Waldorf-Astoria Hotel in the winter of 1946 in which they discussed the matter of a labor policy. It is all a matter of record in the hearings before the Senate Labor Committee, I believe, and any member of this committee can look it up. C. E. Wilson, of General Electric, told about it on the stand, and later, another C. E. Wilson, of General Motors, testifying in a National Labor Relations Board hearing in Detroit on an unfair-labor charge filed against the corporation, explained that he had met there with the representatives of the other corporations because "we were all looking down the barrel of the same gun." He went on to tell the examiner, who, by the way, was the same Gerard Reilly, then a member of the National Labor Relations Board, who is now on the General Motors pay roll at $3,000 a month, as a Washington lobbyist, I believe, that it was a pity that those men—meaning the management representatives meeting secretly in the Waldorf-Astoria Hotel—could not "make the decisions for the country."

That, of course, was the prevailing atmosphere in 1946. And later in the year, price control was weakened and finally killed, and the National Association of Manufacturers and the Chamber of Commerce stampeded the American people with full-page ads into voting for candidates who promised to take off price control altogether on the understanding that we would have such a flood of goods that prices would come down. You know whether they did or not. I do not have to tell you.

Then in 1947, instead of blaming the profiteers who were cashing in millions of profits on the people's need for goods, the Eightieth Congress, adopted the Taft-Hartley bill. I, of course, was not here at that time when the bill was being considered. Probably some of you gentlemen on the committee were here and know a good deal more about what went on than I do. But I read some of the statements concerning the meetings, and I recall that Representative Klein of New York, who was then a member of the House Labor Committee, speaking in the House on February 15, 1947, had this to say:

> The bill was * * * actually written with the help of * * * the National Association of Manufacturers and the United States Chamber of Commerce. Some of the most valuable assistance came from William Ingles, who * * * represents Allis-Chambers Co., Fruehauf Trailer Co. J. I. Case Co., the Falk Corp., and Inland Steel Co. * * * Patrioteer Theodore R. Isserman put aside his rich Chrysler law practice for 2 full weeks to help out the House Labor Committee.

Then on the following day, Representative Karsten of Missouri filled in the broad intent by making this statement:

> The authors of this bill are clearly not interested in pushing the American economy steadily uphill to higher living standards. They are bent upon estab-

lishing monopoly control over the roller coaster and taking the American people for a dangerous ride.

Then later on, when the bill got over into the Senate, Senator George D. Aiken said during the debate on May 12, 1947:

> Mr. President, the leaders of industry who gave the committee members all kinds of advice were for the most part vindictive, and it was clear to me, at least, from their attitude that their principal desire was to destroy labor organizations completely. * * * We have been subjected to the most intensive, expensive, and vicious propaganda campaign that any Congress has ever been subjected to.

Then, later on, on June 5, 1947, Senator Morse of Oregon had this to say:

> I supported the Senate committee bill, which was a fair, reasonable, constructive, and enforceable bill, and I opposed the amendments that were made on the floor of the Senate because they seemed to me to strike serious blows at the rights of labor and to impair the efficient administration of the law. The amendments which have been made in conference not only infinitely aggravate and multiply every serious vice of the Senate amendments, but they add such restrictive and administratively unfeasible provisions of their own that even if I believed the bill we passed was sound and helpful, I would be compelled to vote against the conference bill, because of the inevitably disastrous effects I am sure it will have on industrial peace in this country. I say with every emphasis at my command that this bill will be causative, not preventive, of labor difficulties.

That was Senator Morse speaking on June 5, 1947.

Then, gentlemen of the committee, on December 18, 1948, Business Week, a publication of repute among businessmen, stated that—

> Few [businessmen] are wasting time deploring the imminent doom of the Taft-Hartley Act.

It stated further:

> What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate from one which could destroy.
>
> Given a few million unemployed in America, given an administration in Washington which was not prounion—and the Taft-Hartley Act conceivably could wreck labor movements.
>
> These are the provisions that could do it: First, picketing can be restrained by injunction; second, employers can petition for a collective-bargaining election; third, strikers can be held ineligible to vote—while the strike replacements cast the only ballots; and, fourth, if the outcome of this is a "no-union" vote, the Government must certify and enforce it.
>
> Any time there is a surplus labor pool from which an employer can hire at least token strike replacements, these four provisions, linked together, presumably can destroy a union.

I can go further and say that people who are considered to be manufacturers, in the Daily Labor Report of Business and National Affairs reported that the general counsel of the Illinois Manufacturers Association told an audience of employers that the employers would suffer no great loss but would gain in some respects from a repeal of at least seven provisions of the Taft-Hartley Act. These are: First, union security; second, suability; third, multiplicity of elections; fourth, 60-days' notice; fifth, injunctions; sixth, financial statements and, seventh, anti-Communist affidavits.

In June 1947 Senator Morse had warned his party, the Republican Party, in these words:

> If you pass a piece of labor legislation as unfair as the Taft-Hartley bill you will hear about it at the ballot boxes, because millions of independent voters—yes, and Republican voters—will not in 1948 support a party which passes such a bill.

And on March 1, the same Senator Morse, speaking in the Senate, cited his earlier warnings and remarked that the voters in 1948 did not support a party which passed such a bill. He said:

> In 1948 we lost not only millions of independent voters, but we lost several million Republican voters, because of the serious mistake the Congress made in passing the Taft-Hartley bill. * * *
>
> In my opinion, there were men sitting in the United States Senate in 1947 and men sitting in the House of Representatives in 1947 on the Republican side, who still would be in the Congress had we not passed the Taft-Hartley bill. The leaders in my party can rationalize that election all they please, but I think it is perfectly obvious that we lost a large number of seats in the Senate and in the House because of the passage of the Taft-Hartley law.

I believe that Senator Morse in all of these statements has indicated what the effect of the Taft-Hartley law has been, and I think he makes good sense, and the Senator from Oregon has been proved a good prophet.

I might interject a remark here. Although the man whom I succeeded—Fred Hartley—did not choose to run, the person who was my opponent during the election of 1948 stated emphatically in his polite form that he was going to take up where Hartley left off. And, gentlemen, I leave it for you to judge. That man is not here now. The people of my district returned me and one of the principal issues of my campaign was repeal of the Taft-Hartley law.

Considering all that Senator Morse has said and what the general counsel for the Illinois Manufacturers has stated and what happened during the elections of 1948 to some of the former Members of Congress, I think at the risk of a smaller majority in 1950, I urge upon this committee and the House that counsel given by Senator Morse, of Oregon, and I express the hope that there may be bipartisan support of H. R. 2032, repealing the act sponsored by my predecessor and reenacting the Wagner Act, with amendments.

In New Jersey, our feeling is that the act was, as Senator Aiken indicated during debate on the Hill, conceived, written, and passed in an atmosphere of vindictiveness and unfairness to the organized wage earners of this country. Labor, which was already one of the principal victims of run-away inflation, was being put in a strait jacket and kicked around under the Taft-Hartley Act. Employers who wanted to continue peaceful industrial relations were also put in a strait-jacket. However, that backfired because this, to my mind, is still a free country, and because the American people just cannot support a law that creates division, bad feeling, and controversy.

That has been the effect of the Taft-Hartley Act. The people of my district and the people of New Jersey and the people of the United States do not like this law and would like to see it repealed.

I feel that the district which I represent has a fair cross section of America within it. After having gone up and down that district during two campaigns I believe I can attest to certain facts. In 1946, when I ran against Fred A. Hartley before he coauthored the act, he did beat me. But after the law had been enacted I won on the merits of working against the Taft-Hartley Act. I would like to state that this act has had a serious impact right in New Jersey, and I would like to cite certain of the cases that I know of first-hand.

To my mind, it has been over a year and a half now since that law has been enacted, and the experience which I seem to have found has been that the trade-unions have been unable to bargain collectively, and as a result they have been hard hit. In short, I feel that the Taft-Hartley law has inspired employers who are still not willing to accept collective bargaining as a permanent fixture in our economic system to invoke Government aid in furthering opposition to the legitimate functions of trade-unions. It has encouraged employer resistance to the justifiable union activities and it has provided antiunion employers with a weapon possessing the potential destructive power to legislate the trade-union movement into obscurity and oblivion.

I would like to cite how the Taft-Hartley law has completely destroyed one union in New Jersey. The collective-bargaining agent for 2,100 employees of the New Jersey Bell Telephone Co. in its accounting and general departments had been the Communications Workers of America, Accounting Division No. 64. This local participated in the national telephone strike in 1947, and had engaged the company in arbitration proceedings under the New Jersey State compulsory arbitration law.

During the summer of 1948, the company challenged the majority status of the union. On September 17, 1948, arrangements were completed between the company and the union for a consent election under the auspices of the New Jersey State Mediation Board. Three days later, however, the company announced it was granting additional wage increases of $4 a week.

This was done without consultation with the union and on a completely unilateral basis.

On September 22, 1948, the union filed charges of unfair labor practices against the company, charging violations of section 7, section 8 (a) (1), and section 8 (a) (5). The union asked the board to proceed under section 10 of the act asking for an injunction to restrain the company from giving wage increases until an election could be held in an atmosphere free from interference from the company's bald attempt to influence the employees in the exercise of their rights to self-organization, and manipulating a no-union vote in the election.

The papers presented to Robert N. Denham, general counsel of the Taft-Hartley National Labor Relations Board, charged that the company was attempting to circumvent the New Jersey statute calling for compulsory arbitration of labor disputes affecting public utilities; that the company had saved almost $100,000 in retroactive payments alone, and was also endeavoring to get away from its obligation to mediate and arbitrate some 23 issues which the union had presented to the State mediation board for several months previous.

In spite of the company's flagrant violation of the law, the general counsel refused to act, stating that he did not believe the law had been violated, and that he only proceeded by injunction in cases that had serious implications and involved large numbers of people.

The National Labor Relations Board has ruled in a large number of cases that attempts by employers to impose unilateral increases while representative elections were pending were violation of the law.

The general counsel himself had instituted injunctive proceedings against unions where only 10 or 15 people were involved. Yet, here were 2,100 New Jersey Bell Telephone employees directly concerned, and 20,000 additional New Jersey and 500,000 other employees of the A. T. & T. indirectly affected. and the injunction proceedings were not used.

The refusal of the general counsel to prevent a violation of the law in this instance, compared with the haste and speed with which he had acted against trade-unions in other cases, seems to be first-hand evidence of the fact that the Taft-Hartley law is being administered in such a fashion as to bring about the destruction of the trade-union movement or to impede union organization. And the attorney for the union in this instance summed up all in a letter to the general counsel by saying:

> In the circumstances, I have been instructed by my client to withdraw the charges of unfair labor practice. It would be an idle ceremony to process the charge, wait a year or two for its disposition and wind up with a slap on the company's wrist in the form of a cease-and-desist order.

In another case, the case of the CIO United Automobile Workers representing the 20 employees of the Harnishfeger Corp., in Newark. we might also see the impact of the Taft-Hartley law. In a flagrant display of what I think are dictatorial tactics, the company informed the local union that it would not bargain unless the union's president had been replaced. This attempt to dictate not only wages and conditions for the workers, but also to hand-pick suitable union representatives was a typical maneuver of the company. The action becomes even more odious when it is realized that the company's objection to the president of the local was predicated solely upon the fact that he was a Negro.

The union president offered to resign in his desire to avoid a disastrous strike. However, the local's members stood shoulder to shoulder in a masterful display of union solidarity and insisted that the democratically elected officers of the union be permitted to carry out the functions for which they were chosen.

On the basis of the company's refusal to bargain with the Negro president, the union was forced to call a strike. The company, intent upon breaking the union, invoked the Taft-Hartley law, and succeeded in securing an injunction restraining the union from picketing. The intention of the injunction soon became obvious. An advertisement was placed in a newspaper from a nearby town offering employment to veterans at attractive rates of pay, but specifically ignoring all mention of the labor dispute.

The company picked up the veterans at a central point, herded them into cars, drove them to the plant and then attempted to spirit them past the token picket line. It is obvious to my mind that the company employed the injunction restricting picketing to facilitate the transportation of strikebreakers into the plant.

I would like to add here, however, with a justifiable feeling of pride. that when the veterans came upon the scene, and realized that they had been unwittingly drawn into a strike situation as prospective strikebreakers, they refused to take any part in the proceedings and returned to their homes.

Today the plant is closed and the 200 workers have been forced to seek employment elsewhere. The case is just another example where the Taft-Hartley law has served to thwart the processes of collective bargaining and has resulted in a demise of the local union.

I might cite other cases that have occurred in New Jersey. I know that particularly one of the unions in the Eastern Tool Co., where there are 800 employees, has indicated their desire to join the United Steelworkers. However, because of fear of reprisals of the Taft-Hartley law and because the employers refused to bargain, the men of the Eastern Tool Co. just cannot get together into a union organization.

I cite these cases because I have seen them first-hand; I have received letters from many of these people of my district who have cited many of these instances to me. I have investigated some of them personally, and I have had various discussions with the people affected. In all of these instances, gentlemen of the committee, I have been able to find that the voice of the people of the Tenth District of New Jersey lends itself to the repeal of the Taft-Hartley Act.

Mr. KELLEY. Mr. Powell, have you any questions?

Mr. POWELL. I just want to get this very clear. Our colleague from New Jersey ran on the platform advocating, if elected, the repeal of the Taft-Hartley law?

Mr. RODINO. That is right.

Mr. POWELL. And he ran in Mr. Hartley's former district?

Mr. RODINO. That is right. And I might add, Mr. Powell, that the town of Kearny, which had been Republican for 80 years, which, incidentally, is Fred Hartley's old home town, went Democratic for the first time when I ran in 1948, and I campaigned vigorously there, and one of the general principal issues was the Taft-Hartley Act.

Mr. POWELL. Do you know what Mr. Hartley's present occupation is?

Mr. RODINO. I read a statement in the newspaper, and I know that he is now presently the president of the National Tool Owners Union. If I recollect in reading the hearings, I believe that the National Tool Owners Union was an organization that appeared during the hearings on the Taft-Hartley bill, urging stronger control of unions while restricting their rights.

Mr. POWELL. That is right.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Congressman Rodino, I have observed in your testimony that you say you represent the Tenth District of New Jersey.

Mr. RODINO. That is right, Mr. Bailey.

Mr. BAILEY. You have also testified that that is the district formerly represented by Congressman Hartley?

Mr. RODINO. That is right, sir.

Mr. BAILEY. One of the authors of the Taft-Hartley labor legislation?

Mr. RODINO. Yes, sir. I have his book here from which I would like to read something.

Mr. BAILEY. You have also just testified that Mr. Hartley is now connected in an official capacity with the Tool Owners Union?

Mr. RODINO. Yes, sir. I have a newspaper clipping from the Kearny Observer, from his very town, which cites that.

Mr. BAILEY. Mr. Chairman, I have before me a certified copy of the decision of the New York Board of Standards and Appeals of the New York Department of Labor, made by this board on the application of the Tool Owners Union for certification in the State of New York. This decision is certified by Francis J. Wazeler, counsel of the board.

I would like to read into the record at this point, Mr. Chairman, if I have permission to do so, some excerpts from the finding of the board.

Mr. SMITH. Mr. Chairman, is Fred Hartley on trial here this morning?

Mr. KELLEY. It is the Tool Owners Union. It is perfectly in order.

Mr. BAILEY. The Tool Owners Union.

Mr. KELLEY. They appeared before the committee on behalf of the Taft-Hartley bill 2 years ago.

Mr. BAILEY (reading):

> State of New York, department of labor, board of standards and appeals, Albany, N. Y.; in the matter of application for approval of certificate of authority of Tool Owners Union; case No. CI-37-46.

Reading from the decision:

> On February 26, 1946, the secretary of the State of Delaware received for filing the certificate of incorporation of the Tool Owners Union. As of that date, Tool Owners Union became a Delaware corporation, authorized by said certificate to have "officers or places where the activities of this corporation may be carried on in all States of the United States, the District of Columbia, or in Territories or in colonies of the United States."

I read further from the decision, Mr. Chairman:

> In keeping with the board's duty, a very careful study has been made to determine whether or not the purposes of this foreign corporation are in all respects consistent with public policy and the labor law of the State of New York.

I read from page 4 of the board's decision a reference to the membership of this Tool Owners Union. It consists of life members, who make one contribution of $1,000; subscribing members, who contribute annually $100; sustaining members, who contribute annually $50; supporting members, who contribute annually $10; contributing members, who contribute annually $5; and regular members, who contribute annually the sum of $1.

It is repeated in the bylaws that

> None of the above six classes of members, life members, subscribing members, sustaining members, supporting members, contributing members, and regular members, shall have the right to vote on any question or issue of whatsoever kind, nature, and description affecting the organization or its activities and affairs nor have they the right to manage or control the union or its board of founders in any manner or to any extent whatsoever.

Quoting again, Mr. Chairman, from page 8 in the decision of the Board:

> This organization is a pressure group.
>
> The Tool Owners Union at different times during crucial strikes in 1946, advertised in both local and nationally read papers in the United States * * * It is natural to assume that the reader would react favorably to these advertisements. Tool Owners Union in preparing these advertisements certainly expected to obtain a favorable reaction. Readers were urged to join. Prominently displayed in these advertisements were seven classes of membership. * * * But the joiner or subscriber does not learn from these announcements that he is giving financial aid and moral support to an organization in which he will have no share in the determination of its policies or the means by which those policies would be effected. * * *
>
> The use of the expression "Regular members" would make the joiner feel that he would have the right that regular members of organizations to which he has belonged, enjoy. * * *
>
> "The first board of founders, to quote the bylaws: "shall be elected at the first meeting of the incorporators." * * * Now, who are the incorporators? Allen W. Rucker and Elsie M. Rucker, his wife, and Fred H. Nickels, Mr. Rucker's partner in the advertising business.

Again I quote:

> Whatever the reasons Mr. Rucker made certain that the destinies of this corporation and 50,000,000 people whom he hoped to attract to the same would be controlled by himself. The incorporators were he, his wife, and his partner. He was safe here because his wife could be expected to side with him as against his partner, if his partner did not agree.

Quoting from page 12 of the findings of this board:

> No more fascistic organization with all the potentiality for undemocratic action and danger to our way of life has yet come before the official attention of this board. * * *
>
> We do not want this to happen in America. It might happen here. It might be that Mr. Rucker and his associates have only the most laudable, unselfish and chartiable devotion to the welfare of all Americans and the principles of democracy. We do not intend any word in this decision to be construed otherwise but because of what took place in Germany and Japan and what is appearing today in Russia and Poland and other dictator-dominated countries might take place here we must be ever on our guard.

The board in its final decision has the following to say:

> To guard the public and generally the union worker against this confusion, section 9–a of the general corporation law and section 11, subdivision 1–a, of the membership corporation law were enacted and later amended. Organized labor and the workingman who looks to his union for leadership have the right to protect their use of the word "union."
>
> The board therefore regards it to be its duty on this additional and independent ground to refuse its approval to the certificate of authority of this foreign corporation.

Mr. KELLEY. The gentleman has one minute left.

Mr. BAILEY. (Continuing reading):

> Wherefore, considering the certificate of authority, the certificate of incorporation, its bylaws and all the evidence offered for and against this Delaware corporation, the board concludes that approval of the certificate of authority of Tool Owners Union is contrary to public policy and adopts the following resolution:
>
> "Be it resolved, That the certificate of authority of Tool Owners Union, a Delaware corporation, acknowledged by the subscribers on February 20, 1946, and filed with the board on September 9, 1946, be and hereby is disapproved. * * *"

It is signed by William H. Roberts, chairman; Raymond M. Fisher, a member; and H. Myron Lewis, a member, dated New York, February 27, 1947.

Mr. KELLEY. Mr. Irving.

Mr. IRVING. Congressman, are you familiar with the strike or lock-out that is going on in New York, or has been going on in the baking industry?

Mr. RODINO. No, sir, I am not familiar with that.

Mr. IRVING. I understand that there is one baking company which is having a labor dispute there and that 5 or 6 of the other large baking companies shut down their plants, which, of course, is a lock-out. I just wonder if this is not some kind of reverse boycott proposition and if it is entirely in the public interest and welfare of this country to shut down 6 or 7 of the major bakeries supplying New York City without regard to where the people are going to get their daily bread.

Would you care to comment on such a situation?

Mr. RODINO. No. I said that I am not familiar presently with that; so I will not comment. I do not know all the implications of it.

Mr. IRVING. Thank you very much. That is all I have to say at this time.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. No questions

Mr. KELLEY. Mr. Burke?

Mr. BURKE. No questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. I listened very carefully to the outline given by Congressman Bailey, but I failed to catch, if you will yield, Mr. Bailey, as to who is eligible for membership in this Tool Owners Union. Who is eligible to membership?

Mr. BAILEY. Any citizen of the United States or any of its possessions.

Mr. WIER. That is all.

Mr. KELLEY. Mr. Howell?

Mr. HOWELL. I had a couple of questions, but I know the Congressman has to get to a committee meeting; so I will defer.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. Mr. Chairman, I am not going to ask any questions of the witness, but I have been rather amazed at the turn of events so far of these hearings. I thought we were to consider the provisions of the Taft-Hartley law and consider what changes should be made and where they have caused trouble, and so on. So far, it seems the hearings have been devoted to Mr. Fred Hartley and the Tool Owners Union. I know nothing about the Tool Owners Union. They testified here last year, and many other people and organizations have testified for and against the Taft-Hartley law.

If our committee is going to spend its time investigating the character and type of every witness and every organization that testified for or against the Taft-Hartley law, we will be here for a few months. I do not know what we are seeking to prove, but I think it would be more helpful if in the future we devoted ourselves to provisions pro and con of the Taft-Hartley law.

As to Mr. Hartley's not choosing to run again, Mr. Hartley himself told me right at the beginning of the Eightieth Congress that he had stated publicly in his district that he was not going to run. As far as I know, his failure to run denoted a sticking to his original intention of not planning to run for another term.

Mr. BAILEY. Will the gentleman yield?

Mr. MCCONNELL. No. I do not yield. That is all.

Mr. KELLEY. Mr. Smith?

Mr. SMITH. Mr. Irving asked you about a lock-out of the bakers, and you said you did not know anything about them.

Mr. RODINO. I do not know all the implications of it. I am not conversant with it.

Mr. SMITH. Do you know anything about the implications of the cemetery strike in New York at the moment?

Mr. RODINO. I have read of the cemetery strike in the newspapers, yes.

Mr. SMITH. You said in your statement with respect to the General Motors strike, "It was a good strike." Do you think the cemetery strike in New York is a good strike?

Mr. RODINO. I am not qualified to say without delving into all the implications of it. These cases that I mentioned, I am familiar with, and I investigated them personally. I know of them because they struck home. Where I am not qualified, I will not speak.

Mr. Smith. You would not say that the cemetery strike did not strike home, would you, to the people that have bodies waiting to be buried?

Mr. Rodino. I would not say one way or the other at this time. If you are asking me the question, I still do not know all the implications of it.

Mr. Smith. In the first part of your statement, you devoted a great deal of your time to quoting Senator Morse, and you said that he was a very fine prophet.

Mr. Rodino. I believe he is.

Mr. Smith. What do you think about his prophecy that the Taft-Hartley Act would not be repealed?

Mr. Rodino. I am merely a spokesman of the people of my district, and I would like to say here that I feel that in taking up the time of the committee, it has been solely to inform the committee of the thoughts of the people of my district. And I merely want to bring to them at least the thoughts of those people whom I feel I know rather well, and their thoughts, it would seem to me, would be that the Taft-Hartley law should be repealed. Whether it is done or not, I do not know. That is for you gentlemen and the Members of Congress to decide.

Mr. Smith. You say the Taft-Hartley Act is a most terrible law, restrictive on unions, and unions cannot operate. How do you account for the fact that union membership has increased during the Taft-Hartley law?

Mr. Rodino. I believe I have something here which is entirely to the contrary. I believe that Senator Morse, again, who I feel is qualified to speak on this—although I do not say that the gentleman himself is not—says that a great fallacy is being muttered in America today about the effect of the Taft-Hartley law on unions. Statistics are advanced to show that there has been no increase in union membership. The union election provision is chiefly responsible for that. It boomeranged against the proponent of the bill. The real test is what has happened to the creation of new locals. That is a test as to whether or not unionization in America is really advancing. The sad fact is that the Taft-Hartley law has been a great impediment to organizational drives in this country.

So it would seem to me that that is rather inconsistent with the gentleman's statement.

Mr. Smith. You have also quoted Senator Morse as saying that this would bring about industrial unrest. Now, what are your statistics as to whether or not there have been more strikes since the passage of the Taft-Hartley Act or in the period of 18 months previously?

Mr. Rodino. Sir, I do not have the statistics, but I can say this, speaking as one who has milled around the people who are directly involved, that there is unrest amongst them. They feel that there has been an impediment to collective bargaining, and they feel that unless this act is repealed so that they may be able to sit across the table and bargain as they should in the fair American custom, there will continue to be a labor unrest.

Mr. Kelley. Mr. Velde?

Mr. Velde. No questions.

Mr. Kelley. Mr. Morton?

Mr. Morton. No questions.

Mr. Kelley. Thank you very much, Mr. Rodino.

I wish to say this, and I want all the members to hear it. The Chair thinks it is perfectly in order to question the validity of the testimony of any witnesses or those who are actively in support or against the Taft-Hartley law. But I wish to call the attention of the members to this fact, that with respect to all witnesses, all questioning must be confined to H. R. 2032, and any questions outside of that will be considered out of order.

The Chair wishes to say that Congressman Rich, who was here, had to leave for another meeting, and he wishes to request that his statement be submitted in the record.

Without objection, it will be so ordered.

(The statement is as follows:)

Statement of Hon. Robert F. Rich, a Representative in Congress From the State of Pennsylvania

Gentlemen, I appear before you today for the purpose of making a statement relative to the proposed changes in the Taft-Hartley law. In so doing I am most interested that any changes in the law should be in the best interest of this country and its people.

Telegrams and letters have been sent me from practically all the labor unions in my congressional district, especially the CIO and United Mine Workers of America locals, urging the repeal of the Taft-Hartley law. Some called it "infamous" and others an "un-American piece of legislation." I replied to each, asking that they analyze the law section by section and point out to me their objections. To date I have not received one reply to my request.

Some days ago a representative of the United Electrical, Radio and Machine Workers of America delivered to my office petitions signed by residents of my congressional district, petitioning the repeal of the Taft Hartley "antiunion act." I put forth the same above question to this representative and asked that the local unions send me an analysis of their objections, which has not been forthcoming.

In addition I have received from residents of my district many questionnaires, listing 18 and 19 questions, respectively, all of which have been answered substantially as the attached, which I wish to make a part of the record, as it reflects the results of these two polls.

"HOW WOULD YOU REVISE OUR LABOR LAWS?

"1. Do you believe that labor laws should, in general, preserve the employee's right to strike? Yes.

"2. Do you believe labor laws should give the President of the United States the right to seek, through courts of law, to delay a strike that would cause a national emergency endangering the health and safety of the entire country? Yes.

"3. When two or more unions are fighting each other over who shall do a job or who shall represent the employees, and a strike is called to compel an employer to give to the members of one union the work or recognition being given to the other unions—that is a jurisdictional strike. Should labor laws prohibit such strikes? Yes.

"4. Should labor laws prohibit secondary boycotts—that is, prevent an employer and his employees, where there is no labor dispute, from being damaged by a union seeking to coerce another employer having a labor dispute? Yes.

"5. Should labor laws provide that an employer cannot deduct union dues or assessments from wages unless the employee gives his personal O. K.? Yes.

"6. Do you believe labor laws should see to it that both employers and unions be required to bargain in good faith? Yes.

"7. Should labor laws give to both employees and employers the freedom to express their own points of view on employee relations problems—provided such views, or arguments, or opinions do not promise bribes or threaten reprisals? Yes.

"8. Should labor laws protect the employee against unfair practices by unions and management? Yes.

"9. Do you believe that labor laws should require both union officials and company officials to swear they are not Communists or Fascists or members of any party or organization which plans to overthrow the Government of the United States by force and violence? Yes.

"10. Do you believe labor laws should require unions to make appropriate reports to members and government as to handling of funds—just as companies are required to make appropriate reports to owners and government? Yes.

"11. Should labor laws make it clear that a collective-bargaining contract must be honored by both parties? And that each has an equal right to sue the other for breaking the contract? Yes.

"12. Do you believe labor laws should make it unlawful for a union to compel an employer to engage in feather bedding; that is, to pay money for work which hasn't been done or won't be done? Yes.

"13. Should labor laws permit the forcing of an employer to hire only workers who belong to a given union? No.

"14. Do you believe it should be unlawful for an employee to be prevented from working by the use of violence, force, or intimidation? Yes.

"15. Do you believe foremen and other supervisors could properly perform their management duties of serving the balanced best interests of employees, customers and owners alike, if bargaining for supervisors by unions should be included in the labor laws? No.

"16. Do you believe labor laws should protect individual workers in the right to join or not to join a union—to remain or not to remain members—just as they individually wish? Yes.

"17. Should labor laws make clear that both unions and employers can now so affect the public for good or ill that the labor-management relations of both should be regulated equally by law? Yes.

"18. Should labor laws provide that a striker who has been replaced in the course of an economic strike—not involving any unfair labor practice—be permitted to vote in an election to choose a bargaining agent at the conclusion of the strike? No."

I submit also two letters for the record. One is from the Bovaird & Seyfang Manufacturing Co., of Bradford, Pa., expressing the sentiment of those engaged in business and employing labor, toward any changes in the present law. The same applies to the second letter, from the Kendall Refining Co., of Bradford, Pa., and signed by J. B. Fisher, president, which states one man's views on revising the Taft-Hartley law.

BOVAIRD & SEYFANG MANUFACTURING CO.,
Bradford, Pa., March 4, 1949.

Hon. ROBERT F. RICH,
United States House of Representatives, Washington, D. C.:

MY DEAR REPRESENTATIVE: We at Bovaird & Seyfang Manufacturing Co. believe that the hearings before the Senate Committee on Labor and Public Welfare, dealing with contemplated changes in existing labor legislation, and subsequent action which will be taken by the Congress are so important, particularly as they may lead to legislation which will affect all segments of our economic society, that we feel it our duty to present to you our views regarding such labor legislation.

We think it will be of interest to you to know that our collective-bargaining experience under the Labor-Management Relations Act has been definitely improved over that of previous years. In our opinion, this improvement has been beneficial to the union, the employees, the company, and the public.

On the strength of our first-hand experience and on the firm conviction that collective bargaining cannot be conducted without harmful and lasting injury to all interested parties unless there are well-defined rules of fair play, we respectfully request your full consideration of our viewpoint that any new labor legislation should be based upon four fundamental considerations, which are as follows:

1. Individual employees should be provided with adequate protection;
2. The public interest should be protected;
3. A reasonable equality of position between labor and management; and
4. Administration of the law should be fair and impartial.

The law should provide employees with adequate protection as follows:

1. Individuals should be protected in their rights to refrain from, as well as engage in, collective activities.
2. The individual should be protected from coercion from all sources, employer and union.

3. The individual should be protected against discrimination by employer and union.
4. Closed shops should be outlawed.
5. The individual should not be deprived of his job except for nonpayment of reasonable financial obligations when a union shop exists.
6. Individual employees authorization for a check-off of dues should be required.
7. Employees should be permitted to request decertifications of unions.
8. Employees should be protected from Communist-dominated unions.

In order to keep a fair and impartial administration of the law, it should contain:

1. A requirement that the Board apply the same rules to independent unions as applied to national unions.
2. A requirement that run-off elections be between the two top choices.
3. A statute of limitations of filing unfair labor practices.
4. The separation of the functions of the general counsel from those of the Board.

In the interest of providing equality in the relationship between labor and management, the proposed bill should provide:

1. An equal responsibility of union and management for their contractual obligations.
2. An equal obligation of union and management to bargain in good faith.
3. An equal responsibility upon the union and management for the acts of their agents.
4. Freedom of speech for both employer and the union.
5. A prohibition against featherbedding practices.
6. The exclusion of supervisors from the law.

In consideration of the rights of the public, the proposed bill should contain:

1. The prohibition against strikes by Government employees.
2. Protection of State laws regulating union security.
3. Adequate provisions to prevent national emergency strikes.
4. An independent Mediation and Conciliation Service.

Very truly yours,

Bovaird & Seyfang Manufacturing Co.,
B. V. Edridge, *Controller.*

Kendall Refining Co.,
Bradford, Pa., March 3, 1949.

Hon. Robert F. Rich,
Member of Congress, Washington, D. C.

Dear Mr. Rich: I attach herewith a résumé of my views in regard to the way our labor laws should be revised.

I believe that the degree of prosperity which this country will enjoy in 1949 is closely linked with the wisdom with which our labor laws are revised. I am writing my views not because of any pressure from any organization, but simply out of a sense of duty to let you know the considered opinion of one of your constituents. My views may be unorthodox in some respects, but they are thoroughly sincere and honestly arrived at.

Yours is a great responsibility, and I know that you will devote a great deal of time and thought in an attempt to arrive at the best solution of this important problem. I sincerely hope that the revision, as finally voted, will prove to have been in the best interests of our country.

Very truly yours,

J. B. Fisher, *President.*

"ONE MAN'S OPINIONS ON REVISING OUR LABOR LAWS

"(1) The union shop should be permitted without the necessity of the members of the union holding a special election granting authority to their leaders to negotiate a union contract.

"(2) The new labor laws should not outlaw the closed shop. I am against a closed shop, but I believe that this is a matter for collective bargaining between labor and management.

"(3) Employees should have the right to strike, except Government employees who should not have the right to strike.

"(4) Foremen and other supervisors, who are a part of management, should not be permitted to bargain collectively with management.

"(5) The Communist affidavit should be signed by the employer as well as union officials.

"(6) The Conciliation Service should be maintained as an independent agency and not returned to the Labor Department.

"(7) The President of the United States should have the authority, through injunction, to delay strikes affecting public safety and health.

"(8) The employer should continue to have the right of free speech in expressing his point of view to his employees, provided the employer does so without coercion or promises.

"(9) Union coercion through mass picketing and physical violence should not be permitted.

"(10) Unions should be made responsible before the courts in the event of breach of contract.

"(11) Jurisdictional disputes and secondary boycotts should be prohibited."

This brief résumé reflects the consensus of opinion of the people of the Fifteenth Congressional District of Pennsylvania relative to labor and management. I suggest to the committee that it not be hasty in changing any labor law so as not to be in the position of favoring one segment of our population to the detriment of the greater number of our people. May you in your judgment be wise and judicious, charitable and understanding, and may you act for the best interest of our country after due and careful deliberation.

Mr. Kelley. Congressman Madden.

TESTIMONY OF HON. RAY J. MADDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. Madden. Mr. Chairman and members of the committee, I represent the First District of Indiana.

The Eighty-first Congress should move rapidly ahead to carry out the mandate which the American people decreed on November 2, 1948.

The repeal of the Taft-Hartley Act will maintain the stability of our national economy, and strengthen America's hand in our quest for peace in the world.

The Wagner Act for the first time struck a sound, fair balance between the economic power of labor and management. It permitted labor and management to meet on equal footing and tackle their problems with the friendly assistance of government. It secured for labor the right of collective bargaining, which is the cornerstone of union organization. Thus working people were able to obtain, in a short time, the highest standard of living in history.

H. R. 2032 seeks to restore this atmosphere to the field of labor-management relations.

In returning to the philosophy of the Wagner Act in our national labor policy, it will be necessary, of course, to repeal the Taft-Hartley Act. This act was produced in 1947 and it sought to destroy the bargaining power of labor and to deprive working people of their full economic rights. It interjected the Government into the field of labor relations and bound negotiations in a maze of red tape and unnecessary litigation. The Taft-Hartley law was not conceived with the view of equalizing and stabilizing the conditions under which labor and management meet. Rather it was a punitive measure, and a restrictive measure.

What are some of the unfair and unwholesome effects of this law which we are committed to remove under H. R. 2032?

The closed shop was one major victim of the Taft-Hartley law. Closed-shop agreements had provided a satisfactory method for hiring of workers throughout the history of the American labor movement. Outlawing it was a futile action, since the Taft-Hartley law provided that the union shop, on the other hand, was legal. Workers chose the union shop in 97 percent of elections held under the law. If the architects of the Taft-Hartley law believed that a ban on the closed shop was desired by the workers, they were proved to be sadly mistaken.

The attitude of the publishing industry concerning the closed shop was summed up by Mr. John O'Keefe, secretary of the Chicago Newspaper Publishers' Association, testifying on December 22, 1947, before a subcommittee of the Committee on Education and Labor of the House of Representatives inquiring into the causes of the Chicago newspaper strike as follows:

> Congressman KERSTEN. Up until now and for a great many years past you had a closed-shop agreement, didn't you?
>
> Mr. O'KEEFE. Yes, we did.
>
> Mr. KERSTEN. How did that feature work out in your previous contracts, so far as your closed-shop provision of the contract was concerned?
>
> Mr. O'KEEFE. We never even discussed it. It had been there for years and it has remained there.
>
> Mr. KERSTEN. Did you have any real difficulty with it, so far as your union [the ITU] is concerned?
>
> Mr. O'KEEFE. We did not. * * * As a matter of fact most of the Chicago publishers, or all of the Chicago publishers, I would say, would prefer to continue a closed shop if it were legal.
>
> Mr. KERSTEN. The reason for that is that this particular union has been a long-term institution that has a certain amount of tradition behind it, a considerable amount and it is a responsible union, and under those conditions a closed shop has worked out so far as the Chicago publishers are concerned, is that right?
>
> Mr. O'KEEFE. Yes, it has.

As another example, the National Labor Relations Board was forced to seek injunctions against unions to prevent secondary boycotts, even those for legitimate objectives, such as the protection of labor standards. Yet there was no rule requiring the NLRB to ask for injunctions against employers who were guilty of unfair labor practices.

Removal of the United States Conciliation Service from the Department of Labor and the creation of a new, independent agency, was completely unjustified. For 34 years before enactment of the Taft-Hartley law, the Conciliation Service of the Department of Labor has settled at least 100,000 cases in which there were serious disputes. Immediately before this transfer of functions, the Conciliation Service was settling, without work stoppages, more than 90 percent of cases in which no work stoppage had occurred at the time a conciliator was named.

One of the significant features of this new labor bill is that the conciliation service will be restored to the Department—where it belongs.

The Taft-Hartley law's establishment of the general counsel as independent from the National Labor Relations Board itself was contrary to sound administrative policy. As President Truman predicted in his veto message, this caused conflict between the Board and its general counsel. Under the Taft-Hartley law the counsel, not the Board, was allowed to decide which charges were to be heard by the NLRB and which orders of the Board were to be referred to the courts. Under the new bill, the NLRB will no longer be the only agency of the Government with this unworkable separation of functions.

Procedure for the numerous elections required by the Taft-Hartley law was apparently designed to keep unsettled the relations between employers and unions. Denial of voting rights to strikers in representation elections, while granting such a vote to strike-breakers, is a discrimination which would permit the employer to hire nonunion replacements—enough of them to eject the union from the plant.

Under the Taft-Hartley law, by the simple expedient of petitioning for a choice of bargaining representatives—even when not faced with conflicting claims for recognition—the employer can win a year's freedom from union organization.

Welfare funds for protecting the health and well-being of employees were made the subject of stringent regulations—and despite the terms of the Norris-LaGuardia Act, injunctions for violations may be sought.

The prohibition of political activity by unions was an undemocratic provision of the Taft-Hartley law. Labor organizations, alone among voluntary associations, are forbidden to participate in political affairs, under that act.

The Federal courts have become burdened with damage suits allowed by the Taft-Hartley Act. Administrative agencies more properly should determine the complicated questions arising from the evils of unjustifiable secondary boycotts and jurisdictional disputes—since Federal court dockets are already overcrowded.

All secondary boycotts, whether justifiable or not, are outlawed by the Taft-Hartley Act. Many such types of boycotts have been long held reasonable by the courts where the existence of the union itself, or the gains made in genuine collective bargaining were at stake.

The bill under consideration contemplates removal of all these objectionable features from our basic national labor policy through repeal of the Taft-Hartley Act.

The proposed law strengthens the provisions of the Wagner Act with the following amendments:

The three-men National Labor Relations Board of the original act will consist of five members, and this can be divided into three-member panels to expedite work.

Certain types of jurisdictional disputes and secondary boycotts will be termed unfair labor practices, if engaged in by a union. Those prohibited are defined specifically in the new bill; the Taft-Hartley Act failed in this definition. Failure to file 30 days' notice of proposed contract changes or termination is made an unfair practice on the part of either labor or management.

Employers and unions in interstate commerce may make agreements for the closed shop or other forms of union security, even though State laws are in conflict. Uniform rules on these phases of collective bargaining are thus made applicable.

The bill further provides for settlement of grievance disputes without resort to economic force—and with a minimum of Government intervention. This would be accomplished through the Conciliation Service, which is authorized to assist the parties in formulating arbitration agreements and in selecting arbitrators. Employers and unions are thus encouraged to develop effective arbitration procedures on their own, and the evils of compulsory arbitration are avoided.

Under the terms of the new act, the President is authorized to proclaim a national emergency when he finds that one exists, and to appoint an emergency board to investigate, seek to induce a settlement, and make a report of its recommendations.

Twenty-five days following the President's proclamation is the deadline for this report. During this period and for 5 days after the report is issued, the parties shall continue to operate under conditions of the disputed agreement.

It is anticipated that such disputes can be settled during the waiting period through the affirmative assistance of the emergency board and the operation of public opinion.

This procedure is a simple one—and it is established on the theory that free collective bargaining is to be encouraged, not forced through the use of Government injunction.

Senator Taft has already made known his opposition to this method for dealing with the few cases which involve a serious emergency.

However, the New York Herald-Tribune concedes that the new bill offers an improvement over the Taft-Hartley provision for similar cases.

The bill for readjustment of the Nation's labor policy should receive a high priority in the program of the Eighty-first Congress.

In the first place, there was an articulate mandate for repeal of the Taft-Hartley law—a mandate that should be carried out at once.

Opposition spokesmen have resorted to all kinds of mathematical juggling to prove there really wasn't any mandate.

One hundred and three Representatives and 17 Senators are missing from the Eighty-first Congress because they voted for the Taft-Hartley Act. They can testify, from bitter experience, what the people think about the Taft-Hartley Act.

A second reason for the importance attached to the administration labor bill is this: Labor-management peace is essential to a stable, productive economy in the days ahead.

Due to this fact, it is imperative that H. R. 2032 gain immediate passage in this Congress.

Thank you, members of the committee.

Mr. KELLEY. Thank you, Mr. Madden. That was a fine statement.

Mr. Powell?

Mr. POWELL. No questions.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. No questions, but I want to compliment the gentleman on his excellent presentation.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. No questions.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. No questions.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. No questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. No questions.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. Mr. Madden, I listened to your discussion with interest, and you covered quite a few things in the Taft-Hartley law to which you objected.

I did not hear anything about the non-Communist affidavits. What is your position regarding that?

Mr. MADDEN. If you remember, 2 years ago when this was up before the committee, I thought that if they were going to put in the non-

Communist affidavits they should have them in there for management as well as the employees, but I think that under the present set-up of the non-Communist affidavits it is unfair, and it is class legislation, and furthermore I do think that in a great number of instances it is pointing the finger at a great number of labor leaders and labor officials who are as much anti-Communist as you and I.

Mr. McConnell. Suppose we made it applicable to both management and labor?

Mr. Madden. That would be eliminating the classifications and I do not see where it means a thing. We have an FBI and we have a Department of Justice that is doing a great job as far as the Communists are concerned. In fact, Mr. Clark, the Attorney General, is deserving of special commendation on what he did in New York last Saturday.

Mr. McConnell. In other words, you would be opposed to the non-Communist affidavits for both management and labor?

Mr. Madden. I do not see the necessity of it. Unions have done a good job, eliminating the Communists.

Mr. McConnell. My only thought is this: They are a production team, and in case of any trouble in the United States we want to be sure that that team is composed of loyal men, do we not?

Mr. Madden. You will find, I think, Congressman McConnell, that when employment gets just a little worse than it is now that an obstinate employer will use the non-Communist affidavit in digging up some union official out in California, or any other State, who failed to sign, and then use it as a technical excuse to tie up a union in his own plant. To my mind, it could be used by an obstinate employer to take advantage by this trick provision, and there are plenty of tricks and loopholes in the Taft-Hartley Act.

Mr. McConnell. Do you think the entire act is bad?

Mr. Madden. I think, and I would have to clarify this statement—I think the entire act is bad. Speaker Rayburn was one Member of Congress who made the speech on the floor of the House after all the debates just before we voted on it 2 years ago, and he said:

> There is a lot in this law I do not know anything about, and the majority of the Members of Congress do not know what is in the law.

And if you remember, I asked our friend, Congressman Gwinn, who was and still is a member of this committee, when he was talking on the floor of the House, why it was that, after 5 weeks of public hearings held by this committee 2 years ago, and the majority of the members of this committee went into secret session, six or seven of us were not invited behind the iron curtain. After 10 days we were called into session on a Thursday, and the Taft-Hartley Act was laid before us, and then Chairman Hartley asked us to vote that afternoon on the sections of the Taft-Hartley Act, and I moved that the members who did not sit in on the sessions be given an opportunity to read the Taft-Hartley Act before we were called on to vote.

And the next morning the Taft-Hartley Act was rammed down our throats, and we did not even know what was in the act. We only had the bill about 4 hours.

I asked Congressman Gwinn, on the floor of the House, if it was not a fact that Theodore Isserman, attorney for Chrysler Corp., did not sit in on these closed sessions, and Congressman Gwinn said, "Yes, we consulted with Mr. Isserman, and he did sit in with us."

Now, when corporation attorneys like that draw up a bill, I think a lot of Members of Congress do not know what is in the bill.

Mr. McConnell. Mr. Madden, you are touching on a subject which has a very recent history, but I do not care to go into that. We could have had the same experience regarding the Fair Labor Standards Act. Secret sessions were held by the majority group to consider the provisions, and we were not invited, either; so I guess that is rather general.

Mr. Madden. I just wanted to find out what was going on, and I did not have the opportunity.

Mr. McConnell. Do you think the Taft-Hartley Act, then, is entirely bad?

Mr. Madden. I would say that it is 95 percent bad. I do not know, but I think when you study the hidden booby-traps and many technicalities, I would say it is all bad. Of course, it is an easy matter, like Mr. Wilson, of the General Electric said, it is easy to pick out certain lines and send it out and say, "Are you for this?" It is just like the case of the man who is asked if he has stopped beating his wife, and if he says "Yes," he is in bad; and if he says, "No," he is in bad.

These questions of the General Electric which are being sent out are dishonest, because it is not giving the man who signs these blanks a fair opportunity to study each paragraph.

Mr. McConnell. Would you be in favor of repeal of the Taft-Hartley Act, and reenactment of the Wagner Act?

Mr. Madden. Yes: I would; and then follow out President Truman's request of 2 years ago. Appoint a Commission from the Congress and from labor and from management to make a study of labor-management relations, and see if they can find some legislation that would improve the act.

Mr. McConnell. You think the Wagner Act should be changed somewhat, do you not?

Mr. Madden. I think the Congress should appoint some kind of a committee like the President recommended 2 years ago.

Mr. McConnell. Are you in favor of H. R. 2032?

Mr. Madden. Yes; I am in favor of it.

Mr. McConnell. Yet, that changes the Wagner Act.

Mr. Madden. I am in favor of those changes, yes.

Mr. McConnell. Then you are not in favor of repealing the Taft-Hartley Act?

Mr. Madden. I say the Wagner Act could be improved upon.

Mr. McConnell. That is all.

Mr. Kelley. Mr. Smith?

Mr. Smith. In reference to the questionnaire the General Electric sent out—have you seen them?

Mr. Madden. Yes.

Mr. Smith. How many of those would you put in the bill?

Mr. Madden. I think practically all of them are trick questions. Congressman Jacobs answered Mr. Wilson in a 17-page letter, and as I understand it, Mr. Wilson has yet to answer Congressman Jacobs on those same questions he sent out.

Have you read Congressman Jacobs' letter?

Mr. Smith. No, I have not.

Mr. Madden. You should read it. It is 17 pages, and is a magnificent work, in which he asks Mr. Wilson to state his opinion on what really is in those paragraphs that Mr. Wilson's attorney picked out of the different paragraphs, in order to confuse the people who are called upon to sign them.

Mr. KELLEY. Mr. Smith, will you yield?

Mr. SMITH. Yes.

Mr. KELLEY. Mr. Wilson has been requested to appear before this committee.

Mr. MADDEN. I think that is a good move.

Mr. JACOBS. I insist upon his appearing before this committee.

Mr. SMITH. Do you believe the union should file financial statements?

Mr. MADDEN. Most of the unions in my district do, and have been for years, and I believe I have talked to a number of employees in my district—I mean union members—in my district, and they never seem to have any difficulty. I think they should let the members know what they are going to do with the finances, just the same as employers or corporations.

Mr. SMITH. And you would be in favor of having a financial statement?

Mr. MADDEN. I would be in favor of letting the unions run their own business.

Mr. SMITH. You do not think Congress should legislate on that?

Mr. MADDEN. I do not think so.

Mr. SMITH. If you were writing a bill by yourself, you would not put in the requirement of a financial statement?

Mr. MADDEN. I think the unions are able to handle their own organization, just the same as corporations.

Mr. SMITH. You believe that corporations should be required to file financial statements?

Mr. MADDEN. They do it.

Mr. SMITH. They have to file them, by law.

Mr. MADDEN. Yes.

Mr. SMITH. Do you believe that Congress should legislate on the matter of secondary boycott?

Mr. MADDEN. When you talk of secondary boycott, no doubt there are some cases of secondary boycott that are unfair, but if I remember, one of the reasons the Taft-Hartley legislated on secondary boycott, the witnesses who were brought in before the committee, in the main, would always pick out some isolated case that was bad, and in most of those cases there were provisions that could handle those secondary boycotts through collective bargaining and what not.

If I remember right, 2 years ago, 98 percent of the employers who testified before the committee never made any honest effort to abide by the Wagner Act; they never cooperated with the Wagner Act. We brought it out on cross-examination with a number of the employers who testified 2 years ago.

I come from one of the biggest industrial areas in the country, and we did not have a single one from our area come in and ask for the Taft-Hartley Act.

You talk about certain isolated cases; why, certainly, we have bad situations among union relations and employee relations with management, and I think you could go ahead if you wanted to, and elaborate on the other side, with what were the situations that existed during the war. Let us put the shoe on the other foot. When the boys were over fighting to win the war there were certain ones who did not wish to abide by the provisions of the law, but all management should not be condemned because of certain actions during the war. There should not be a law regulating all management on that score.

Mr. SMITH. I take it from your statement you do not think they should legislate on secondary boycott?

Mr. MADDEN. No.

Mr. SMITH. Neither on jurisdiction?

Mr. MADDEN. I believe the Congress should select from the labor-management, and follow out President Truman's recommendation of 2 years ago, which the Eightieth Congress failed to comply with, and if that is done, and there is some legislation that should be enacted as to secondary boycott, I will go along with it.

Mr. KELLEY. Will you yield, Mr. Smith?

Mr. SMITH. Yes.

Mr. KELLEY. That sort of a bill is before this committee now.

Mr. SMITH. You have the same feeling about jurisdictional strikes?

Mr. MADDEN. I think that could be handled in the same way, yes. The jurisdictional strikes under the Taft-Hartley Act was a secret weapon to destroy unions.

Mr. SMITH. Do you think, then, we should pay any attention to isolated cases?

Mr. MADDEN. You are going to have isolated cases no matter what kind of law you pass.

Mr. SMITH. In the First World War you heard the expression "All quiet on the western front," but if you were in the trenches and somebody was shooting at you, you did not think much of the statement?

Mr. MADDEN. That is true, but there were a lot of facts on both sides which get into that picture.

Mr. KELLEY. Mr. Werdel?

Mr. WERDEL. Mr. Madden, you made the remark you were in favor of the repeal of the Taft-Hartley Act. I take it that you believe that is true because of the various statements made during the campaign by President Truman; is that correct?

Mr. MADDEN. Not only true by reason of his statements, but it is also true by reason of the millions of voters who went to the polls and voted to have it repealed.

Mr. WERDEL. And do you still believe that we should place a lot of confidence in that vote, even in the face of your remark that in your opinion the Members of the Congress in the Eightieth Congress did not even know what the Taft-Hartley Act provided for?

Mr. MADDEN. I said that Speaker Rayburn, just before the vote was taken, said there was a lot of things in the law he did not know about, and he said he thought a lot of Members of Congress were in the same fix.

Mr. WERDEL. Do you think the majority of the people who voted for President Truman did not know what was in the bill?

Mr. MADDEN. Congressman Halleck, who was majority leader of the Eightieth Congress, made a speech in June, and he challenged President Truman and the Democratic Party to make the Taft-Hartley Act an issue. I know President Truman, in every speech I heard him make—not every speech, but it was his theme-song, so to speak—to repeal the Taft-Hartley Act, and he is our President today.

Mr. Werdel. But my question to you is, if you believe that Speaker Rayburn is right in saying that he did not understand all the provisions of the bill, and he did not think the Congressmen did, whether or not you think the people did have a mandate we can place confidence in?

Mr. Madden. The people knew it was not working right. I agree with you, the great mass of the people do not know what is in the Taft-Hartley Act. Somebody else mentioned here a while ago, has the union membership increased since the Taft-Hartley Act was enacted? I remember back in 1933, out in my district in 1934 and 1935, we had the greatest attendance in the unions they have ever had, and that was before the Wagner Act; and one of the reasons for union membership increasing is the fact that most of the big employers stampeded immediately before the Taft-Hartley Act went into law and signed contracts. Under those new contracts they signed, when the Taft-Hartley Act went into effect, naturally they were not going to find much union trouble for the first year and a half, or 2 years.

Mr. Werdel. Do you believe on November 2 the American people understood the provisions of the Taft-Hartley Act?

Mr. Madden. They knew it was a bad law, and it was going to ruin organized labor.

Mr. Werdel. You think they knew it even though Speaker Rayburn did not?

Mr. Madden. You are getting kind of supertechnical, now. They have learned a lot about it in the last 18 months.

Mr. Werdel. Since when?

Mr. Madden. Speaker Rayburn made his statement right when the law was up for vote. The membership of unions and the wage earners in America have learned a lot about the Taft-Hartley Act since it was enacted in the summer of 1947.

Mr. Werdel. This minority vote that you claim to be a mandate, I think we will agree, will we not, that a lot of veterans participated in that? Do you think the veterans who were not members of unions, and were returning home to work, gave us a mandate to provide a closed shop for all employment?

Mr. Madden. I am talking about the veterans in my district; they saw and knew and learned from the experience of their fathers 25 years ago, when they were working 12 hours a day, and sometimes 14 hours a day, 7 days a week, and they are for the repeal of the Taft-Hartley Act, 95 percent of them.

Mr. Werdel. How do you know that?

Mr. Madden. Because I have talked to hundreds of them.

Mr. Werdel. The veterans in my district are not.

Mr. Madden. Do they work for a living?

Mr. Werdel. Yes. They want to work for a living.

Speaking about campaigns and mandates, have you read the article in the present issue of the Saturday Evening Post of the Political Action Committee, on how they functioned in the November 2 election?

Mr. Madden. I have not read that article, but I have read how the National Association of Manufacturers functioned, and how they spent barrels of money not only in this election, but in 1946. You remember that very distinctly, and I might go back a little further in connection with what the Congressman from West Virginia, Mr. Bailey, said, and I was interested in his remarks about the tool owners' union. I remember the ads in 1946; they were published all over the country, and in this committee 2 years ago I asked Chairman Hartley to subpena—or to have the Tool Owners' Union investigated, but Chairman Hartley failed to carry out my recommendation.

Mr. WERDEL. Getting back to the Political Action Committee campaign: They set a goal, did they not, of 1,000,000 block workers?

Mr. MADDEN. They were active in the campaign, yes.

Mr. WERDEL. And they claimed they were successful in 250,000 block workers in some of their populated areas; is that not correct?

Mr. MADDEN. I do not know about that.

Mr. WERDEL. Do you know whether or not the block workers undertook to advise the people of the United States of the individual rights of the Taft-Hartley Act?

Mr. MADDEN. I hope they did. They tried to tell the people in my district what the legislation would do to them if it was not repealed.

Mr. WERDEL. Do you believe they fully informed the people of their rights?

Mr. MADDEN. I would not say fully, but they did a good job.

Mr. WERDEL. You are aware, are you not, that there are certain unions that we call captive unions in the United States?

Mr. MADDEN. I do not know.

Mr. WERDEL. Where memberships do not elect their officers?

Mr. MADDEN. I have heard lots of charges back and forth over the air, but in checking into some of the charges I find that they were merely carrying out the thoughts of their sponsors, or some secret sponsors, and so I do not believe all I hear on the air or read in the newspapers.

Mr. WERDEL. I do not, either, and I do not believe you or I should agree that people who are misinformed 3,000 miles away should be giving the final word on legislation, should people who are 3,000 miles away from those who hear the arguments control the vote?

Mr. MADDEN. Distance does not make very much difference nowadays.

Mr. KELLY. You have on minute left.

Mr. WERDEL. Are you going to hold me to that rule?

Mr. KELLEY. Yes; you and everyone else.

Mr. WERDEL. Do you think the people gave a mandate in the last election that it was proper politics to accuse the minority in government of listening only to the merchants' associations and manufacturers' associations, and then confine the hearings to 10 days, and to only that type of person in this Congress to testify on behalf of business, and confine the time to such length of time that people cannot get here from our part of the country who are affected by the act; do you think we have a mandate for that?

Mr. MADDEN. I think everybody should be heard on the legislation. If there is any Member who wants to be heard, I think he should be heard. I have volumes of our hearings of the past 2 years up in my office, and I do not know how many Members of Congress went over them, but I think anybody who wants to be heard should be heard.

Mr. WERDEL. Thank you.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. I have no questions.

Mr. KELLEY. Thank you very much, Mr. Madden.

TESTIMONY OF HON. DANIEL J. FLOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Flood. I have been requested by my distinguished colleague, the gentleman from New York, Mr. John Rooney, who is now sitting as chairman of one of the subcommittees of the Appropriations Committee, to ask the indulgence of the chairman to insert a statement in opposition of the Taft-Hartley Act in the record.

Mr. Kelley. Without objection, it is so ordered.

(The statement is as follows:)

Statement of Hon. John J. Rooney, a Representative in Congress from the State of New York, Urging Repeal of the Taft-Hartley Act

Mr. Chairman, and members of the Subcommittee on Labor and Management Relations, I am grateful for this opportunity to express to you my views concerning the infamous Taft-Hartley law.

Inasmuch as I represent a heavily populated working class district in the city of New York, I feel that I am qualified to speak on the problems which have arisen as the result of enactment of this vicious antilabor legislation. I have opposed the bill since it was first introduced, and the day that it became a law, over the President's veto, I committed myself to the repeal of it.

The measure was conceived in a spirit of antagonism toward labor and clause by clause written by attorneys for the labor-hating National Association of Manufacturers. While there may have been some doubts as to its harmful effect on labor-management relations on the part of some of our citizens at the time of the enactment of this legislation, I am sure we all know now that it was deliberately designed by big business to shackle and destroy the American labor movement. The law has been a complete failure and has neither increased industrial productivity nor brought harmony or stability to industrial relations. It has created resentment and bitterness on the part of labor and has become a symbol of oppression and tyranny to working men and women throughout our Nation. The effect that it has had on relations between employers and the International Typographical Union is merely one instance where this hastily conceived law has disrupted employer-employee relations which had been amiable over a period of many years.

A large portion of our businessmen now agree that the Taft-Hartley law defeated itself and is contrary to the best interests of all concerned. In that connection, I will quote from the conservative McGraw-Hill publication, Business Week, issue of December 18, 1948:

"For the Taft-Hartley Act did fail—on one of the most important grounds by which a law must be judged in a democratic society. That ground is consent. Only the police state can enforce a law which is believed to be unjust by the people it affects.

"What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate, from one which could destroy. Given a few million unemployed in America, given an administration in Washington which was not prounion—and the Taft-Hartley Act conceivably could wreck the labor movement."

I trust that this committee will promptly accede to the will of the working people of America by repealing this obnoxious law. I strongly feel that such repeal is a prerequisite to cementing better understanding in labor-management relations.

Mr. Flood. And for myself, I appreciate this opportunity of being permitted to appear before the subcommittee of the Labor Committee, and to express my opposition to the Taft-Hartley Act, and to express the hope that this subcommittee recommend its immediate repeal.

It is my opinion that the Taft-Hartley Act had as its intent and its purpose, if not the destruction, certainly the acute and extreme limitation of the theory of collective bargaining and of the activities of organized labor.

At the moment the Taft-Hartley Act passed the demarcating line of being corrective legislation, then it became destructive legislation, and it is my conclusion that not only did the Taft-Hartley Act so pass that line, but that it was the intent and the purpose of the act at its inception. I think the act initially had that purpose.

I may say that I am not at all satisfied that legislation is necessary at this point to deal with the entire broad field of labor-management relations. I would say, although it is not before the committee, and I do not like to be presumptuous or impertinent, but I prefer the kind of legislation under the circumstances that there has to be legislation suggested by my distinguished colleague, Mr. Kelley; but that is not before us, but if there is going to be legislation, then I favor the bill that is now before this committee. I am of the impression, and it is my opinion, that the Taft-Hartley Act was created, and if it was not the deliberate intent, at least the result and the effect was to establish in this country a second-class citizenship—organized labor. There was to be a definite class distinction, and I cannot imagine any more antagonistic purposes of why we are all sitting here as Members of the House.

I am opposed to any attempt made by law which would use the weapon of injunction for the purpose of preventing picketing, and I think the act would do that, and its administration certainly executed that purpose. There is certainly that indication in the attempts to extend the law by amendments for the purpose of strengthening it as an antilabor weapon.

I believe further that insofar as the provision of this act having to do with demanding non-Communist affidavits is concerned, is one provision to which I certainly would object. There is certainly nobody in this Congress who can be identified as being more opposed to everything that communism represents than I am. I would introduce legislation, if necessary, outlawing the Communist Party. I had some doubt in my mind as to such law, and that was one of the things on which Mr. Dewey and I agreed, that should be done, that the Communist Party should not be regulated out of existence, and he gave reasons upon which I had strong reasons to agree; but I have now changed my opinion, and I would vote to outlaw the Communist Party, now that they have shown their colors and have indicated their purpose is to overthrow the Government by force and arms.

So by making my position clear as to communism I can say that I certainly would sign no affidavit declaring whether I am or am not a Communist, and I do not think any Member of the House should be requested to sign such an affidavit, and I do not see why any working man should have to do that. I think that deliberately is an unconstitutional effort on the part of the legislature to impose a burden upon a class of citizenship. I would object to any provision, and I would object to making any arrangement whereby the same condition should be asked of management. I do not think that section of the statute should exist in any law. If you are going to abolish the Communist Party, let us abolish them, period.

I am not sure, Mr. Chairman, as to the extent of my time.

Mr. Kelley. Go ahead.

Mr. Flood. I might say further that I take issue with a premise about which a great deal was made and is being made, that the Taft-Hartley Act is opposed only by labor leaders, labor racketeers—big shots—and that, in the language of his enemies, "the poor laboring man"—the poor, down-trodden, dim-witted, stupid American laboring man—has not the faintest idea what this law, or its purpose, or intent, is about. Certainly the working people of America, and the average citizen does not know this statute from cover to cover. I cast no asperson upon the integrity, the hard-working ability and understanding of statutes by the Members of this House, but certainly we have reasonable cause to assume at times that even we are not conversant with the punctuation of our statutes, upon which we act. I may say that I can speak only in a limited way for my own district. I have the privilege of representing the Eleventh District of Pennsylvania, which is the very heart and center of the hard-coal industry, the anthracite coal mines. I do not believe there is any union in which the members are more conversant with their rights and privileges and duties as American citizens than the membership of our union. The members with whom I have spoken, from time to time, on the subject, are just as conversant with it as I am. I have no hesitation in making that statement. Not all of them, certainly; but a sufficient number to indicate their awareness of the intent of the act, and its bad provisions and to the same extent as I believe the average Member of this Congress is aware.

And so, Mr. Chairman and gentlemen, may I inquire if I can revise and extend my remarks, or am I excluded from doing that? I request to revise and extend my remarks with reference to the same subject.

Mr. Kelley. You will have that opportunity.

Mr. Powell?

Mr. Powell. I have no questions.

Mr. Kelley. Mr. Bailey?

Mr. Bailey. I believe, Mr. Chairman, the gentleman in his testimony referred to the injunction procedure of the Taft-Hartley Act. I am sure the gentleman is conversant with our constitutional guaranties contained in the first 10 amendments to the Constitution, and I am speaking of the right to free speech, free press, and free assembly, and particularly to the right to a trial by jury. In view of the procedures carried out under this injunction provision, the fact a number of people quite often have in the past been deprived of their right to a trial by jury, I would like to ask the gentleman if he does not feel that this injunction procedure in the Taft-Hartley legislation contravenes the average citizen's guaranty?

Mr. Flood. That is very interesting. I have never been of the opinion that the court of equity, keeping in mind how it was borne, is without moral violation of the constitutional provisions.

Let me say it this way: The repeal of this act, an act born in the heat of discord, an act born in a period of tension, was probably conceived, or the accouchement was brought about, may I say, in an ill-advised atmosphere.

The Norris-LaGuardia Act, on the contrary, was passed by this Congress at a prior session in a kind of an atmosphere that I believe was conducive to sound legislation.

Let us repeal the Taft-Hartley Act and return to the status quo, and then in that atmosphere of the status quo determine if this Congress, with ample opportunity for everybody to be heard, should take any further action.

I say that when the Congress in passing an act such as the Norris-LaGuardia Act——

Mr. Kelley. Will you yield, Mr. Bailey?

Mr. Bailey. Yes.

Mr. McConnell. Did you say the Norris-LaGuardia Act was passed in the last session of Congress?

Mr. Flood. Oh, no; I said it was passed in an atmosphere that was more conducive in this kind of law.

Mr. McConnell. The Norris-LaGuardia Act was passed some years ago.

Mr. Flood. Yes.

Certainly to use the injunction as a weapon, as is the intent of the act, is contrary to the purpose and the reason for the very existence of the whole broad field of equity within the English common law. The injunction process under our system of jurisprudence was never meant to be appealed to, if and when there was adequate limits of the law. When that arises, there is no problem; it is academic.

Mr. Kelley. Mr. Perkins?

Mr. Perkins. I believe you stated you were opposed to the Communist-affidavits provision?

Mr. Flood. Yes, sir.

Mr. Perkins. I wonder if you agree with me that as we think of a Communist we think of a person who opposes our democratic form of Government?

Mr. Flood. Not only do I think that, sir, but I think the chief purpose and sole aim of communism is the destruction of Christianity, and I cannot think of anything more un-American.

Mr. Perkins. Would you also consider the affidavit requirement, that labor and management both be required to sign affidavits before they could require the services of the NLRB, unconstitutional?

Mr. Flood. Yes; I do. I would say that that provision in the act is unconstitutional, and any act which contains such a provision.

Mr. Perkins. I believe under our form of government, and especially any person who is charged with any crime, is presumed to be innocent until he is proven guilty?

Mr. Flood. I so believe.

Mr. Perkins. And do you not believe this affidavit requirement puts an undue burden upon any American citizen when he is required to sign this affidavit? Do you not think that that casts some reflection upon his loyalty to his country, by putting that into law?

Mr. Flood. You state my position much more effectively than I do.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. Mr. Flood, you are familiar, as a lawyer of course, with the Constitution as to amendments against bills of attainder?

Mr. Flood. I am.

Mr. Jacobs. Do you feel it might infringe upon that provision?

Mr. Flood. Yes.

Mr. Jacobs. Can you state to us whether or not a traitor, a convicted traitor to his country, has a legal right to bring a tort against a person who has done an injury to his body?

Mr. Flood. If there has been a conviction the rights have been deprived. If he has lost his right of suffrage, his rights have been deprived.

Mr. Jacobs. I mean, suppose he walks across the street and a man recklessly runs him down with an automobile?

Mr. FLOOD. Oh, no; as a matter of fact, there is ample law to cover that.

Mr. JACOBS. In other words, any man can be convicted of any crime in the curriculae of our statutes and he can bring an action for redress, but in the case of a union which has an officer who cannot sign an affidavit, then the union is powerless to bring unfair labor charges against the employer?

Mr. FLOOD. Absolutely.

Mr. JACOBS. Then, a Communist hanging around in the union may be pretty handy for the employer, might he not?

Mr. FLOOD. The history of labor-management relations—the relations between labor and management—down through some of the unsavory periods in the early days gave birth to many unsavory characters, and we had the stool pigeon and the labor spy; and the Communist, in my judgment, has no sense of morals whatsoever, and would lend himself to either side if he can produce chaos, which is his chief goal. Any Communist stool pigeon would willingly be a scab or labor spy for the purpose of creating any kind of disorder within this country, and I certainly do not think management as a whole would participate, or any longer thinks of participating, and I think that era has gone by the board, but there still remains some stray groups who would cooperate. A dictatorship of the right or a dictatorship of the left is equally bad and equally un-American, and if you extend the arms of dictatorship out long enough, you will finally get them together. All these green shirts and brown shirts and red shirts we went through for the last 15 years are just dirty shirts, so far as I am concerned.

Mr. JACOBS. If I understand the summary of what you said, it amounts to this: If we are going to proceed against the Communist, let us do it directly, and particularly where it, incidentally, deprives people of their normal legal rights, and even more incidentally immunizes someone in the violation of the law?

Mr. FLOOD. As I said, sir, I was undecided, and went through quite a struggle for the last year about what to do on that kind of a bill, and what I would do if somebody introduced a bill to outlaw the Communist Party, because I was afraid we might drive them underground, but Communists are underground anyway in actively trying to undermine the Government of the United States. But now, if I had any doubt in my mind, it has been erased as the result of this patent conspiracy and adherence to orders of these agents of a foreign power who are Communists. I think communism and Americanism now are a contradiction in terms.

Mr. JACOBS. But you would do it directly rather than by circumvention?

Mr. FLOOD. Yes, sir.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. No questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. I have no questions.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. It is a pleasure to listen to my colleague from Pennsylvania.

Mr. FLOOD. Mr. McConnell.

Mr. McConnell. As I gather from listening to your discussion of the Communist-affidavit problem, it is this, that you approve of the purpose sought, but you do not like the method employed; is that not correct?

Mr. Flood. That is well said, Mr. McConnell.

Mr. McConnell. I also get the impression that you would desire to have the Government less active in the affairs of labor and management?

Mr. Flood. May I say it this way: I would like to have the Government assume a more neutral position than it must assume if it properly executes the Taft-Hartley Act. May I go a step further?

Mr. McConnell. Yes.

Mr. Flood. I am not at all satisfied that it is the province of Government to inject itself into the relationship between management and labor. I would prefer—maybe it is a panacea, I do not know—I would prefer to see management and labor, as I believe they want to be, or should be in the United States, handle their relationships between themselves. I am still a firm believer that that can be done in this year of our Lord 1949. I can see where at one time regulation against management might be necessary because of the historical developments of the Nation. I can see where perhaps legislation affecting labor, or if the pendulum swings, might be necessary for exactly the same reason; but I think labor is now mature and intelligent, and I think our great public-school system, and I think our great method of disseminating knowledge through the press and radio, and the manner in which Congress deals with the problems, has the American public conversant.

Mr. McConnell. I would generally approve of your philosophy of not too much interference of Government. It would seem to me the problem is where to stop. You do need a certain amount of law and legislation in connection with labor-management relationship, but the problem is how far to go in that matter. The Eightieth Congress did not bring the Government into labor-management relationship; it was in before the passage of the Taft-Hartley law. Whether it was in too far is a matter of argument and discussion. Whether the Taft-Hartley Act went too far is what we are trying to find out here, but somewhere there is a happy medium for the Government in labor-management relationships, and if we can work out a bill, bearing in mind the correct position, I would say——

Mr. Flood. May I interpose this, Mr. McConnell?

Mr. McConnell. Yes.

Mr. Flood. I would like to see that done, but in fairness to all parties concerned, and to get from under the cloud of being on the defensive, I beileve the Taft-Hartley Act should be repealed, period, and then we will do what you suggest: sit down and talk about it.

Mr. McConnell. What do we start with, or do we start with the Wagner Act, where the Government is in the relationships more on one side than the other?

Mr. Flood. You return to that act, and then you discuss it as to those points, and we remove this atmosphere of the Taft-Hartley Act one way or the other, and then, if and when that situation arises, and if and when the Government and labor and management and Congress feel something should be done, in the words of Mr. Justice Holmes, "When that situation arises we shall endeavor to deal with it."

Mr. McConnell. Of course, if you go back just to the Wagner Act you are bringing Government into labor relations, but mainly on one side, and there are even various labor groups who feel that way, or at least their leaders feel that way, in private conversation. I have talked to some of them before we acted on the Taft-Hartley Act, and they made some suggestions and provisions that are now in the Taft-Hartley Act itself.

Mr. Flood. I would be glad to discuss that when that situation arises.

Mr. McConnell. Getting back to this Communist matter again: is it not a fact that before any effort was made to get after Communists in labor organizations, we had examples of the existence of a great deal of communism among various labor organizations?

Mr. Flood. I could not accept the phrase, sir, "a great deal." There was evidence, but no more evidence than in other strata of society.

Mr. McConnell. Certain unions were classified that way, were they not?

Mr. Flood. "Certain unions" as opposed to many, many men and women in organized labor, and I cannot imagine any group in American society who did more to aid in the fight against communism in France and Italy in the underground, and certainly I would say that I confer upon organized labor the accolade of approval for its action against communism, rather than to censure them because of the isolated cases.

Mr. McConnell. In certain unions the union has been split virtually in two on the Communist problem?

Mr. Flood. That is right.

Mr. McConnell. And that was not a small amount?

Mr. Flood. I think they are entirely capable of handling it, and the very unions of which you speak, I understand, have met that problem head-on, and are fighting to its death against that cancer in its heart.

Mr. McConnell. That is true, but much of the aggressive action occurred after the inclusion of the non-Communist affidavit in the Taft-Hartley Act.

Mr. McConnell. Yes.

Mr. Burke. I quite disagree with the statement, that it was only after the Taft-Hartley Act that that movement that has been under discussion here started. I know for a fact that it had been underway for a period of 12 years prior to that.

Mr. McConnell. They must have been losing that battle, then, up to near that time, because the Communist membership in unions were increasing, and they became quite a problem. They were split right through the middle. It may have been a coincidence that it worked out at the same time, or near the same time as the passage of the Taft-Hartley Act, but it did become more aggressive at that time.

Mr. Burke. It became more public, but not more aggressive.

Mr. Flood. That is what I was going to point out. This matter may have become more vocal, but certainly within the core of the bona fide union membership there is just as much antagonism, as I vehemently express here, and I do not propose to be a mouthpiece for anybody.

Mr. Kelley. Mr. Smith?

Mr. Smith. Mr. Flood, I have been a member of this committee for the last 2 years, and have listened to about 9 weeks of testimony in the last Congress, and I am probably going to listen to a lot more, and I want to compliment you on your analytical reasoning on this matter, and I think I agree with you. You have analyzed it down to the province of the Government, but you should go a little bit further, and say, "Let us abolish the Wagner Act if we are going to abolish the Taft-Hartley Act," and see just how little we can get the Government into the matter of field legislation. I think you were excellent and fine in the analysis of communism, and the repealing of the Taft-Hartley Act, because there is too much Government now, but let us go to the whole way and be consistent, and say, "Let us abolish the Wagner Act, too."

Mr. Flood. I am sure this committee is very fortunate to have the distinguished Member from Kansas, but may I point out to my friend that the ability of labor to be in the position where it is recognized as an equal is only the result of the Wagner Act, and to repeal the Wagner Act would send us back to the Middle Ages in relation to labor and management, and then the advantage again would be with management.

I hold no brief for the Wagner Act today, and if there is anything wrong with that act—as Members have indicated there might be—then certainly that act, from cover to cover, is no more sanctimonious than is the Taft-Hartley Act from cover to cover, but it is—if I may plagiarize a phrase—for the purpose of permitting organized labor in America to sit down with a mental attitude of equality, if nothing else, and the Wagner Act is their Magna Carta: That is what organized labor thinks, and I am sure, if it is mature, as I hope and pray it is, that when you sit down and there are violations of the Bill of Rights, or of anything else in that Magna Carta, then certainly King John would be just as willing to minimize that great charter of rights as would management, and I think the barons of old would demand their rights and rest on it down through the years. So I say, sir, it may place me in the position of being illogical unless I point out that organized labor would not feel a sense of equality in discussion if you took from it its reason for sitting at the table, which is the Wagner Act, right or wrong. That is what they think; and you seem to be a very fair gentleman and would not remove from them that feeling, that hope, that confidence. You certainly would have the ability when that atmosphere exists, and that is the atmosphere, gentlemen, you must have, until labor and management feel a sense of equality. They had reached the point of saturation and something had to be done, and it was the Wagner Act, so, let us sit down with the act, and I am sure both sides in this country can do this properly.

I believe I am right when I say the union in New York City contributed to the Communist unions in both France and Italy. But that does not prove the rule. That is one rotten apple that is not going to spoil this barrel.

Mr. Kelley. Mr. Werdel?

Mr. Werdel. Your district is Ohio?

Mr. Flood. Pennsylvania, sir; the anthracite-coal fields.

Mr. Werdel. And Mr. Lewis, of the miners' union, believes the Wagner Act should be repealed, as well as the Taft-Hartley Act?

Mr. Flood. John L. Lewis?

Mr. Werdel. Yes.

Mr. Flood. That I do not know.

Mr. WERDEL. In your comments about communism I am not too clear that I have your reason why the affidavit should not be required in the organizations which have the power that a labor union has.

Mr. FLOOD. I do not like to sound like a 100 percent Yankee, sir, but is that not my question?

Mr. WERDEL. What do you mean?

Mr. FLOOD. Why should it be there? What right does the Congress of the United States, acting within its rights, have to put a burden on an inherent right to work? You are or are not a Communist, so why must there be a burden of proof by legislation imposed upon an inherent right? The Congress of the United States cannot place a condition upon an inherent right: Life, liberty, and the pursuit of happiness. It is a sacred, inherent right in a human being to work, to earn a living, and the Congress has no constitutional right to impose a condition precedent.

Mr. WERDEL. Why do you think an individual of a labor organization would object to signing a Communist affidavit?

Mr. FLOOD. My dear sir, we are in a clearing path; why should he be required to? I do not like to be impertinent, but you see it is impossible to go beyond my question.

Mr. WERDEL. You are too clever to be impertinent, Mr. Flood; you are just evasive.

Mr. FLOOD. Let me say this: I certainly have tried—let me apologize—I have tried to be very blunt and to be very clear about my position. I am very serious. I am not being cute. I say this: A leader of a union represents by a process that we recognize as a democratic process—to represent that union; now, if he has not been elected properly, and if there is some question about the democratic process within his union, that is a matter for his union. If he is a faker or a fraud, let the union clean him out and get rid of him.

Mr. WERDEL. Under the same token, would you favor modifying the court laws so we would not protect the stockholders in voting to protect their rights?

Mr. FLOOD. Are you using that as an analogy?

Mr. WERDEL. The only reason a Christian man—as I take it both you and I are—would have for not making an affidavit would be because somebody thought he might be a Communist?

Mr. FLOOD. We are now at diametric and irreconcilable opposites. I am a Roman Catholic.

Mr. WERDEL. So am I.

Mr. FLOOD. Perhaps it is not good manners to say so, and ordinarily it is not in the discussions in Congress, but I work at the trade, and I am sure you do, too; but to have somebody say to me, "Mr. Flood, before you can drive a truck, or before you can go to work, you will have to sign this affidavit that you are not a Communist"; I will starve first.

Mr. WERDEL. And why?

Mr. FLOOD. Because nobody has a right to cast an aspersion upon my Christianity; not in this country.

Mr. WERDEL. You say we have no constitutional right to do that. We have a form of government which, I believe it is generally conceded everywhere, could not possibly exist unless it were for the Christian teachings.

Mr. FLOOD. Yes.

Mr. Werdel. The basis of our form of enforcement of law and order is that we put a person on the witness stand, and even though he is a Catholic priest, or some other clergyman, we ask him to raise his right hand and swear he will tell the truth, the whole truth and nothing but the truth.

Mr. Flood. That is only partly true, sir.

Mr. Werdel. Let me finish please. What is the difference between that aspersion and the one that asks a man to swear he is not a member of an organization which both you and I condemn?

Mr. Flood. Your premise is only partly right. A witness goes on the stand, and he is handed the Bible and he is asked to raise his right hand and swear, and every once in a while a witness stands up and says, "I am an atheist, and I do not believe in God; take your Bible away. I am an American citizen, but I am an atheist," and the court says, "Very well, do you affirm?" And that is all. He does not believe in God, but he is an American citizen; that is his right. As a Christian I do not like to introduce Voltaire, but you know his premise.

Mr. Werdel. Mr. Flood, that is very fine, but as a matter of fact, when we require an affidavit our general laws also provide, as you know, as a lawyer, that if a person is not a Christian he can supply the fundamentals of the affidavit by affirming.

Mr. Flood. But the purpose under the English law is not the same purpose you are indicating here.

Mr. Werdel. I realize that, but the point is your non-Christian man can satisfy the requirements of your non-Communist affidavit. You have made some enlightening remarks, but you have not set forth a distinction.

Mr. Flood. It is a distinction without a difference.

Mr. Werdel. Getting back to our use of the word "injunction": You will agree, will you not, that the injunction has its place in our law of equity?

Mr. Flood. It is one of the keystones on which the law of equity was founded .

Mr. Werdel. And it was applied to labor disputes prior to the Wagner Act, in which it was prohibited?

Mr. Flood. Yes, sir.

Mr. Werdel. The Wagner Act removed the restrictions so the injunction would apply when the conditions necessary for its application were found by the court to be present; is that not correct?

Mr. Flood. Yes, sir. I regret, sir, that your time is limited.

Mr. Werdel. So do I, Mr. Flood; I am enjoying this.

Mr. Kelley. The Honorable Frances Bolton, Member of Congress from Ohio.

TESTIMONY OF HON. FRANCES P. BOLTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mrs. Bolton. Mr. Chairman and members of the committee: The notice from the committee clerk that Monday, March 7, has been allocated by this honorable committee "to hear such Members of the House of Representatives as wish to appear as witnesses before the Subcommittee on Labor-Management Relations" received on March

3 gave so little time for adequate detailed preparation that only a general statement is possible at this time.

Therefore, gentlemen, I would lay before you certain viewpoints on several fundamentals of what for lack of a better term, is now called labor-management relations. As preface I would remind you that never in all history has any country faced such opportunity not only to build the welfare of its own people beyond even our dreams, but also in so doing to raise the standard of living throughout the world.

The actual need of the world is so great that with wisdom, with judgment, with understanding, and with courage from our leadership, idleness and unemployment would be impossible for a period of at least 10 years.

Instead of this, we have soup kitchens right here in Washington and no day passes that we do not have news that plants are shutting down all over the country. The people of this country have a right to look to Washington for action that will bring capital out of hiding and that will create a climate in which management and labor can and will sit down together with sincerity and friendliness not only to work out their differences but to set up ways that will be for permanent benefit to all.

Concerned as you are with the relations of labor and management you are well aware that if labor continues to demand more and more pay for shorter and shorter hours of work, there will come a moment when the country will rise up. You are also aware that if this Government permits one group to become all powerful, freedom will cease to be. These things are within the bounds of possibility unless those who are responsible for labor policy today accept the restraints that sanity and freedom demand.

When capital misued the power it had developed during the years in which strong methods built this Nation, the Government put restraints upon capital. When labor leaders had so far built up their power as to have become a menace to the economical and physical welfare of the Nation as well as to have restricted the freedom of union members, what was more understandable than that this same Government should again pass legislation which restrained those who misused their power?

So much misrepresentation has been thrown out about the nature of these restraints that it is not surprising that a cloud of confusion obscured the clear sun of understanding.

As the administration made a definite part of its campaign upon a repeal of the so-called Taft-Hartley law, it is understandable that a great deal of noise must be made over the matter. But if even a small amount of wisdom becomes a part of administration deliberations the content of that much-abused act will be continued. Indeed, if the administration has any honest desire to make the lot of the manual workers of this country continuingly better it will retain the restraints which protect the worker not only from his own weakness in the hands of many power-seeking leaders, but will also keep these from running amuck and pulling the whole house down around their ears.

Mr. Chairman, no individual and no group of individuals can build constructively without restraints. Indeed, members of the committee, the strength of a nation depends upon the restraint of the people that make it up.

It is my earnest hope that this committee will consider the whole broad problem of labor-management relations with new vision. I sincerely trust that there are enough among you who will consider the matters before you from a far broader view than any so far used; the intrinsic, fundamental needs of these United States. I sincerely hope that you will remember that labor, just as much as the other groups, owes its first allegiance to the Nation, that its members are first of all citizens, with responsibility for the general welfare.

I believe so deeply in organization for those who work with their hands that I find it impossible not to protest when power-seeking leaders try to remove the first protection the workers have had against unfair domination. I sincerely hope that there are enough among you who see that discipline is not only good but necessary for those who refuse to discipline themselves. I earnestly trust that you will become aware, if you are not so already, that without restraint labor may run amuck and I suggest that these restraints are a necessary dam against the floods.

Again I say that there need be no idleness here now or for years to come. But I say also that there will be idleness and suffering unless the administration finds the courage to sit down together with labor, capital, and management and insist that each recognize first of all the need of the Nation and its citizens. So long as capital holds back, and management fails to remember that workers are just people, just human beings with the same needs and hopes and fears as themselves, and so long as labor makes ever-increasing demands without recognizing its fundamental responsibility to produce to the utmost for the world that perishes for the very things it can produce, so long—just so long, will the situation here and everywhere go from bad to worse.

But I would remind you, gentlemen, that if we are to solve the so-called labor-management problems it will be because this subcommittee is setting out in all faith and honesty to find a real solution, one which will bring about a wholly new setting in which to work out the differences that now exist, one which will have as its goal not the betterment of any one group, but which will make these United States a better place for all its citizens to live in.

In closing may I say that we live on a planet which is part of a little solar system sustaining its position through complete obedience to the restraints of the laws that govern its existence. These laws are universal and inescapable. It is when we attempt to throw restraint aside that trouble begins.

It is my earnest hope that the major part of the content of the Labor-Management Act of 1947 will be the foundation stone upon which you will write the legislation you will bring to the House for action.

Mr. Kelley. Mrs. Bolton, I was interested in your statement that this committee should review the whole labor-management thoroughly; was that correct?

Mrs. Bolton. Yes, sir.

Mr. Kelley. The problem here is that the Congress does not have the time to do just that, and what would you think about continuing the Joint Committee of the House and the Senate, and join in with management in making a thorough and complete study, even down to the grass roots, where they could go out and investigate some of the charges that have been made at the home base, against management and labor? That will take time. What do you think about that?

Mrs. BOLTON. Mr. Chairman, I came to Washington in 1928 when my husband was elected to the Congress, and it seemed to me from the start that one of the most important things this Congress could do would be really and truly and honestly and sincerely to study this whole problem—not as a problem, but as a very real necessity to the welfare of all the citizens of this country. I can see no reason to change my viewpoint. I have had no contact with the joint committee, but I would like to insist or suggest, rather strongly, that if such a study were made, it be made without anything cluttering up the way.

Mr. KELLEY. I thoroughly agree with you in that; but it seems to me a joint committee could at least be charged in a legislation to do just that.

Mrs. BOLTON. That might well be.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Do you not represent the Twenty-Second Ohio District?

Mrs. BOLTON. Yes, sir.

Mr. BAILEY. I believe you also represented this district in the Eightieth Congress?

Mrs. BOLTON. I have represented it for 9 years.

Mr. BAILEY. And I believe the record discloses you voted for the Taft-Hartley law of 1947?

Mrs. BOLTON. Yes, sir.

Mr. BAILEY. I would like to ask you, in view of the experience over the last 20 months in the enforcement of this act, if you still have the same opinion you had when you voted for it, as to the adoption of the act?

Mrs. BOLTON. I understand the experience has shown we have had fewer strikes. I have had a large correspondence with labor men who are deeply grateful for the protection that the Taft-Hartley law has given them. I have had no reason to change my opinion, Mr. Congressman.

Mr. BAILEY. Would you say depriving them of their constitutional rights of a trial by jury is a protection?

Mrs. BOLTON. I do not know what you refer to in the act.

Mr. BAILEY. The injunction provision in the act denies a number of persons the right of trial by jury.

Mrs. BOLTON. I do not think any act should have anything in it which does destroy that right.

Mr. BAILEY. Do you think it is fair under that ex parte proceeding that somebody can go in before a court on the basis of an affidavit and get an injunction; do you not think both parties to the case should have a hearing before the injunction issues?

Mrs. BOLTON. Yes, I do.

Mr. BAILEY. That is not true in the case.

Mrs. BOLTON. May I remind the committee of something that so far as I know has been brushed aside? The very unusual part of the Taft-Hartley law, as I have understood it, is that there was created a committee to watch everything as it went along, with the understanding they were responsible for the bill and that it would be revamped every so often, and those things which had not proven advantageous to the citizenship of this country would be brought before the Congress, and such changes made as were necessary.

Mr. BAILEY. That is the committee that Chairman Kelley referred to:

Mrs. BOLTON. And I would prefer to have the injunction proceedings brought before that committee.

Mr. BAILEY. One other question: I would like to ask the Congresswoman if she believes, in the event the Taft-Hartley Act is repealed, if she believes the right necessary in the safeguard be in the Wagner Act, so it will be workable and satisfactory to both management and labor?

Mrs. BOLTON. I am not versed enough as to the Wagner Act to answer the question.

Mr. BAILEY. That is all, Mr. Chairman. I yield the rest of my time to Congressman Jacobs, if I am allowed to do so.

Mr. IRVING. I would like to say I thoroughly believe in laws to harmonize the interests of the employee and the employer, but I do not believe in laws that create dissension, confusion, and antagonism because I do not think they are good for the general welfare of the country.

You mentioned unemployment right at the start. I would like to comment on the fact that we had a tremendous amount of unemployment in this country before either the Wagner Act or the Taft-Hartley law, so-called, were enacted. I think we had some 12,000,000 unemployed, or possibly more than that. Of course, there is a bit of wonderment on my part about the small unemployment reported now as compared to the terrific amount we had previous to the enactment of this labor legislation. I also notice you say that capital is hiding. Would it not be better if no one went into hiding in this country, and we all faced the responsibilities together?

Mrs. BOLTON. Is the gentleman asking me a question?

Mr. IRVING. Yes, that is a question.

Mrs. BOLTON. The term that I used is used so frequently when there are discussions of this kind that I used it. What I mean by it is, any group with capital has a responsibility to this country just as any other group has.

Mr. IRVING. Apparently there was some anxiety and some hiding on the part of capital at the start of the war. There were many months before plants were converted to wartime production. During that time there was a great amount of bargaining at that critical time between the capitalists and financial interests as to how they were going to participate in the urgently needed production of war goods. I think I am as eager as you are that we preserve our system here, and raise our standard of living, as we have in the past, but I would like to see——

Mrs. BOLTON. Will the gentleman permit me to say I would not have said what I have said if I had not felt the committee was here for that purpose.

Mr. IRVING. I believe that sincerely. I raise that question because we want to consider all sides of it. I truly think there is a great amount of feeling that labor has been responsible for too many of these things. I would like to have all sides of it considered, and I intend to attempt to do that while I act on this committee.

Mrs. BOLTON. I agree with you.

Mr. IRVING. I thank you.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. If I understood your conclusion, in your statement, you stated you suggested to this subcommittee that they approach the study of labor-management relations by amending the Taft-Hartley Act; is that correct?

Mrs. BOLTON. No, sir; not quite. I suggested that I hope that the basis of the legislation which you eventually bring out will contain those parts of the Taft-Hartley law which I consider very valuable, which is the major point of the law.

Mr. PERKINS. I believe it is a fact you have very little labor in your district?

Mrs. BOLTON. No, I have a great deal of labor in my district.

Mr. PERKINS. You represent one of the wealthy districts in Ohio, I believe?

Mrs. BOLTON. I represent one of the largest in the country, and I have perhaps as many of the poorest in the country as anyone else.

Mr. PERKINS. You have not had any experience with the Taft-Hartley law insofar as labor-management relations are concerned?

Mrs. BOLTON. No, not in the matter of a strike, or anything like that. I have had a very large correspondence, however.

Mr. PERKINS. Nothing of that kind has ever been called to your attention in your district?

Mrs. BOLTON. Oh, yes, it has, Mr. Chairman.

Mr. PERKINS. That is all.

Mr. JACOBS. I want to say to you at the outset, in regard to your general statements, I agree with you in regard to the specific manner in which we accomplish it. We may have some disagreements, but I want to get your views upon two matters:

You referred to certain restraints in the Taft-Hartley law which you think should be retained in the new law.

I wonder if you would particularize in regard to them?

Mrs. BOLTON. I do not have a list before me, and I am afraid my memory could not do that. As I told you in the beginning, I have not had the time to go into detail on this.

If anyone has a list of the Taft-Hartley bill I would be very glad to discuss that.

Mr. JACOBS. I might ask you in reference to specific matters which I have in mind, if you feel you would be sufficiently familiar to answer when I call it to your attention.

Mrs. BOLTON. If I am not, I will say so.

Mr. JACOBS. Take, for example, the mandatory injunction provided in the law.

Mrs. BOLTON. I have already expressed myself on that subject. That was one of the things which I would prefer to have changed.

Mr. JACOBS. Would you change it by eliminating the injunction or only by eliminating the mandatory feature of it?

Mrs. BOLTON. That I do not know, because I have not studied it.

. Mr. JACOBS. Let us take, for example, the provision in regard to struck work, or secondary boycott; what is your opinion on that?

Mrs. BOLTON. I am definitely against a secondary boycott.

Mr. JACOBS. Do you think it is true secondary boycott where workers refuse to work on struck work?

Mrs. BOLTON. I do not know enough about it, because I have not gone into it, as I have told you.

Mr. JACOBS. Do you know what I mean by struck work?

Mrs. BOLTON. I think so.

Mr. JACOBS. You say you understand what I mean by struck work?

Mrs. BOLTON. I think I do.

Mr. JACOBS. Do you think it is a fair provision in which it says where two groups of workers are working, and one is working for A, and one is working for B, and the one working for A is on strike, the workers working for B may do their work?

Mrs. BOLTON. If the gentlemen will permit me, those are the things which you are going to study, and which you are going to bring to us in the Congress; is that not so, and I have said that I felt these things all needed very real study. I do not like the mandatory features of anything.

Mr. JACOBS. Of course that is what I am trying to do, is to get your view, because I may try to exert my influence in the framing of the law so we will get your vote when we get over there.

Mrs. BOLTON. I should love to have a bill come over for which I could vote.

Mr. JACOBS. What do you think in regard to the injunction provision, in regard to the emergency clause? Do you think they should be obtained?

Mrs. BOLTON. I think only if it involves the welfare of the United States, but absolutely as a last procedure.

Mr. JACOBS. In other words, you feel it should be a pretty critical situation before it is invoked?

Mrs. BOLTON. Completely critical.

Mr. JACOBS. In regard to the Wagner Act, did I understand you to say you were or were not familiar with it?

Mrs. BOLTON. I am not familiar with the Wagner Act.

Mr. JACOBS. You are not familiar with the provisions of the Wagner Act?

Mrs. BOLTON. Not to a degree that I would care to discuss it with you.

Mr. JACOBS. I want to be fair with you.

Mrs. BOLTON. I am sure you do.

Mr. JACOBS. If you are not familiar with it, I will not even ask you about it.

Mrs. BOLTON. Thank you.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. I have just two or three questions, and I would like to say I want to address them to general over-all principles and reasons that were given for the enactment of the Taft-Hartley Act, and begin by the opposition to repeal the Taft-Hartley Act; and I believe that you made some reference to these things in your original statement.

In the first place, you said that you believed that more and more pay for shorter hours of work was an evil thing——

Mrs. BOLTON. I did not use that word, sir.

Mr. BURKE. That it was the wrong thing?

Mrs. BOLTON. What I said was that if it continues and pyramids there will come a moment when the country will rise up against it.

Mr. BURKE. Has it not continued and pyramided for 150 years in the country's existence?

Mrs. Bolton. Even so, there is always a point beyond which there is no safety, and beyond which there must be something else. That is in the evolution of man.

Mr. Burke. Has not, for hard practical purposes, this drive or instinct for more and more pay for shorter hours of work, been accelerated by better production?

Mrs. Bolton. Yes, and let me make myself clear: I do not suppose there is anyone who cares more about securing a right amount of work time, and a right amount of production, than I. I have spent a great many years of my life, which is not a short one, doing what any one individual can do in that direction, so I do not want to be misunderstood when I say that there is a stopping point for these things.

Mr. Burke. Certainly, we have not reached that stopping point yet, because we have not reached the stopping point of the improvement of our mass production methods; is that not true?

Mrs. Bolton. You know more about that than I. I would say we are nowhere near the end.

Mr. Burke. You say you have been advised by workers that they feel they need protection against their leaders, the leaders in labor; that does not seem to quite square up with facts all the way around. There are several sitting in Congress here who formerly were labor leaders, and certainly our people felt——

Mrs. Bolton. I am glad to have the opportunity to explain if I have been misunderstood. I have had a great many letters from workers expressing their great relief since the Taft-Hartley bill was put in, and it has amazed me, because I have supposed that labor, as a whole, was definitely against the Taft-Hartley measure. In spite of what some of you gentlemen think, I do have some very good friends among the labor leaders, and also among the labor men, and I have found that they, as well as some of the rest of us, resent some of the actions of some of the unions. I am just broadly covering labor leaders, but I do not mean to say they are impossible people—far from it, because they have secured for the working man a condition of work, and leisure time, which could unquestionably not have been done without them, and I have great respect for you gentlemen.

Mr. Burke. That is the point I wanted to make. What you are saying is that some of the workers may dislike some of the labor leaders?

Mrs. Bolton. Surely.

Mr. Burke. In fact, all of the workers may dislike some of the labor leaders?

Mrs. Bolton. I agree with you, and I am glad you clarified the situation.

Mr. Burke. You do not mean to infer it was solely because of labor relations that capital has gone into hiding, if it has?

Mrs. Bolton. Not at all. What I said before is that capital must appreciate its responsibility to the country, just as much as anyone else in the country.

Does that explain my view?

Mr. Burke. Yes. I am just wondering if the lack of risk capital is not pretty much a habit that has developed over the war-year period, when the money that was ordinarily furnished by risk capital for such things as developing a new plant and equipment, and the ordinary things that we consider furnished by risk capital has not become a habit, and we have not gotten out of the habit yet?

Mrs. Bolton. It might be that, but I think some of the sources of the risk capital have been done away with, too.

Mr. Burke. That is all.

Mr. Kelley. Mr. Wier?

Mr. Wier. Let me make one or two observations of your presentation.

In summing it up I gathered or interpreted your analysis that perhaps there can be some room for changes in the present Taft-Hartley Act; that is correct, is it not? You made some suggestions of changes?

Mrs. Bolton. Yes, sir.

Mr. Wier. In the very beginning of your presentation you made mention of the fact, and the gentleman here just touched on it. Apparently, I gather that you meant that this reversal of labor legislation from prolabor to proemployer was a result of a very continuing demand or request of workers for more and more money? I think you used that phrase "more and more money," and you said that at some place it had to be stopped?

Mrs. Bolton. Not exactly. I would refer the gentleman to my actual words.

Mr. Wier. I gather that was one of the prime purposes for which legislation became necessary in the way of the Taft-Hartley Act?

Mrs. Bolton. I did not mean that at all, and did not say that.

Mr. Wier. I was just going to ask you if that was your position. As of today, labor is still lagging far behind the increased cost of living.

Further down in your presentation you made some reference—and you must have looked at my remarks because you stole my stuff but I am going to repeat it, because it was not exactly as I have it here—you made comment there about the fact that the Eightieth Congress, of which you were a Member, got considerable pressure from the workers of this country for freedom of action and activity from unfair labor domination.

Mrs. Bolton. Oh, I beg your pardon.

Mr. Wier. I think you used that word.

Mrs. Bolton. I would like to look and see, because that is taken out of context.

Mr. Wier. Anyway, that was one of the prime battle cries in the Eightieth Congress, that the workers of this Nation wanted freedom from labor bosses; I will put it very frankly.

Mrs. Bolton. I do not think I ever cried very loud about that.

Mr. Wier. You made some comment about unfair domination. I want to ask you, as a result of your experience, and your support of the legislation in the Eightieth Congress, do you not feel that the result of our National Labor Relations Board, under the Taft-Hartley Act, demonstrated how thoroughly wrong Congress was in using that propaganda in the framing of the Taft-Hartley Act that the workers wanted to be free; are you convinced of that today, that that was a misnomer?

Mrs. Bolton. Not entirely.

Mr. Wier. Are you familiar with the results of all the elections, thousands and thousands of them in the 20 months in which the

Taft-Hartley requires that before the workers can have a union shop that they must hold an election certified by the Labor Board, and at that election they must have 51 percent of the qualified workers of the plant vote for the union shop; is that correct?

Mrs. BOLTON. Mr. Congressman, I will have to go back to what I said in the beginning, that I have not been able to go into detail on the thing, and I am sorry to come before you not having the details. I came here to bring a very definite hope to you, and that is that you, in your consideration of this thing, will look at it from the country's standpoint rather than from the bickering standpoint first of, will the workers want this, and will somebody else want that. My whole hope is that in the bill which you bring us, you will bring the kind of legislation which will make it possible for us all to sit down together.

When it comes to union shops and nonunion shops, and all that, your life has been in that, and my life has been in bringing up a family, and I am very proud of my family. I have had to put a lot of restraint on them at different stages of their development, and they are all men-children. When you bring a bill to the floor, I shall know all about it, because I do not vote until I am certain. I am sorry that I cannot answer your question in detail at this moment.

Mr. WIER. Mrs. Bolton, I cannot imagine you, as a Member of Congress, not being cognizant of one of the most important arguments in connection with the Taft-Hartley Act, which has been a bone of contention, and which it is admitted most of them are not backing it.

Mrs. BOLTON. Then, may I say to you that, if that is your thought, I have not understood your question.

Mr. WIER. Do you still believe the workers want to be freed from union domination?

Mrs. BOLTON. I do not believe your question is a fair question, sir.

Mr. WIER. That is the answer you have given us?

Mrs. BOLTON. In your analysis of what I have said I do not think that question is a fair question. When you asked me about the union-shop matter, on that I am in agreement with the committee.

Mr. WIER. Closed shop?

Mrs. BOLTON. I am in agreement with the understanding that the joint committee is working on that.

Mr. WIER. Then, let me ask you one more question: I thought you were familiar with the law that you helped to pass.

Mrs. BOLTON. I am familiar with a great deal of it, but when you put the questions like that, you are disturbing to my point of view or my understanding of it.

Mr. WIER. I imagine that is possible.

Do you still believe now in the war cry of the Eightieth Congress that trade-unions should be prohibited by law from participation in the election of candidates?

Mrs. BOLTON. I think they should be prohibited on the same basis that capital and management is prohibited from too much domination in its field.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. I have no questions, but I want to thank my colleague, Mrs. Bolton, for taking the time to come before the committee, and to tell her I think she has made a very pleasing presentation.

Mrs. BOLTON. Mr. Chairman, may I say this in closing: I want to thank the members, and particularly the gentleman down there at the end of your committee. It has been a very illuminating experience to me, and it has given me a new sense of the responsibility that rests upon the shoulders of your committee. I sincerely hope you will give it the time and study and action that will bring about not an aggressive spirit of trying to find trouble, but in a spirit which will create a climate where we can sit down together.

I do not have any difficulty when I sit down with my labor people at home; I do not have any difficulty in being understood, and in understanding them. They know I have worked all my life to do everything I can. I am sorry I do not know the details in ways to give quick answers to some of the questions that have been asked; but I am very deeply involved in every moment of my living with the problem of making life and the living of it not only more endurable but more constructive for those people who have not had the opportunity that I have had. Perhaps I feel the responsibility far more than those who have not had the opportunity, because to me opportunity is a stewardship, and it is something that gives one a very deep need for service, which is the only reason I am here in this Congress. So I am grateful to the gentleman for the questions asked, and for the very patient consideration that has been given my viewpoint.

Mr. KELLEY. Mrs. Bolton, I think your objective is just the same as the members of the committee. I think they realize the responsibility in this matter very keenly, and I am sure they are anxious to do the job just as you have outlined.

Mrs. BOLTON. If I had not been certain of that I would not have come this morning.

TESTIMONY OF HON. BARRATT O'HARA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. O'HARA. I am Barratt O'Hara, a lawyer and Representative in Congress from the Second District of Illinois.

The district that I represent includes the University of Chicago, and runs as far as the steel mills, but does not include them. It is not what you would call a laboring district; yet in that district I campaigned on the issue of the immediate repeal of the Taft-Hartley Act and the return to the Wagner Act. It is a district that is normally a Republican district. In that district, and on that issue, I was elected by a substantial majority. I would feel derelict in my duty if, having been elected to this Congress, with the obligation of living by my pledges made during the campaign, if I did not appear here today to say to my distinguished colleagues on this subcommittee that in a district that is not a laboring district, and in the city of Chicago, is a sentiment that the Taft-Hartley Act should be immediately repealed, if for no other reason than because it is regarded by the rank and file of the working people, as a slave law. Decent people generally do not like the idea of a law which denies to the men and women who work for a living the right of self-government in their own organizations. That certainly is not the American idea.

Today, briefly, my colleagues, I desire to address myself to the matter of the closed shop. May I go back now and say that when I was quite a young man I was elected lieutenant-governor of the State of Illinois and as lieutenant-governor I was the presiding officer of the State senate, and there was created at that time a committee to investigate the matter of wages paid the workingwomen in the State of Illinois. In Chicago we found that the women, because they were unorganized in our large department stores, were being paid a dollar and a half, two dollars, and two dollars and a half, when the employers knew at that time, and they knew from their knowledge based upon their own investigation, that no woman could support herself on less than $8 a week.

From that time, many years ago, I have been very much interested in the struggle of the workingman, as well as the workingwoman, to attain some measure of contentment and economic security in our America.

During those years, I was associated with three of the great labor leaders of America, all now gone, John Fitzpatrick, Victor Olander, and Ed Nockels, dynamic personalities in the labor movement of those years in the city of Chicago.

Early in my campaign for Congress I appeared in a great meeting of members of the Chicago Typographical Union. Duffy O'Brien and Hugh Brady had been head of that organization and they had been my close friends. They were from the most conservative union in the city of Chicago. That union is, and was at the time of the campaign last fall, on strike in protest over what seemed to them—and seemed to me—the vicious provisions of the Taft-Hartley Act.

I told those men at that meeting, who I think represent the sentiment of the working people of Chicago, that after retirement from public life for a decade, I was returning that I might have the opportunity in this Congress of voting for the repeal of that act.

I return now and address myself exclusively to the subject of the closed shop. The closed shop, I think, because of organs of publicized respectability, which too often are our newspapers, and through other media of propaganda, has been represented to the American people as being something which it is not. The closed shop is merely the instrumentality through which to management comes an efficiency in labor and to the workers comes the recognition of equality. Now, that is all the closed shop is.

How does that work? This is the way the closed shop operates when management is sincere with those that toil. When one is given employment, his recognition comes from labor organization. The responsibility, therefore, is the responsibility of the labor organizations to train and to select so that those that are recommended by the labor organization are qualified to do the work required of them to be done. Then to management is given this. If the one recommended be not qualified, or if he be, from an industrial viewpoint, objectionable, then management can make its objection to that worker to the labor organization, and if the objection be based upon right, that worker is discharged.

I know of no other way for management and labor to work together as a team. I might say, Mr. Chairman, that for some 4 years, beginning with that black day when the banks were closed, every night I was on the radio talking of the viewpoints of labor from the radio station WCFL, owned by the Chicago Federation of Labor. And when the Wagner Act was enacted, I think from the many, many, many messages that came to me—not from labor leaders, but from the rank and file of the workers—that they saw in that a new era, and they became filled with a new spirit; they had been taken into partnership, with this concept of the Wagner Labor Act that at the conference table management and labor could sit down as partners and work out their common problems.

Then came the Taft-Hartley Act, and hope departed.

As an attorney, I have represented labor unions, and I have never known a labor union the leaders and the rank and file of which were not willing to sit down at the conference table and deal with management over the top of the table. This has not always been true on the other side.

So, with this Taft-Hartley Act, labor fears that there are too many hidden jokers in it. A joker is something to me that is put into a law that you do not know quite what it means until you bring it to a test. I am a lawyer; I have read the Taft-Hartley Act, and I have been confused. I have never talked with a lawyer who with a certainty could say what would be, as judicially determined, the full sweep of provisions obviously inserted for a purpose.

Mr. Chairman, it seems to me just common sense, whether the Taft-Hartley Act be bad, as labor believes it to be, or whether it be good, as its advocates allege they believe it to be, to view it with suspicion because it was enacted by a Congress not friendly to organized labor, at a time when the public mind was inflamed, and it seemed the opportune time to enact legislation hostile to the best interests of labor.

Now, whatever the truth might be, labor has that feeling. And since we depend so much upon labor, is it not the sensible thing—because to labor, it seems to be a bit of legislation conceived in a spirit of hatred—to repeal it and to return to the law that labor regards almost as sacred script, and, then, if there be changes needed, to discuss those changes, with management and labor getting together? And I think in that spirit, what changes may be needed could be agreed upon.

Mr. Chairman, I had no thought of talking as long as I have. I do appreciate the courtesy of this subcommittee in inviting me here, and I feel just a little bit better and a little truer to the men and women who sent me to this Congress, a little truer to the years that I have been in public places fighting for the under dog, a little clearer in conscience that I accepted this invitation, and being here, have urged upon my colleagues, so much more experienced than I, the immediate repeal of Taft-Hartley and the return of the Wagner Act.

Thank you so much.

Mr. BAILEY (presiding). May I interrupt there a minute, Congressman O'Hara. There will probably be some questions that the members will want to ask.

Mr. O'HARA. Yes, sir.

Mr. BAILEY. I notice you made reference in your comments to the closed shop. The Congressman well knows that the Taft-Hartley bill outlaws the closed shop and tries to set up the so-called union shop. A recent decision of the National Labor Relations Board held that people working in a plant that was struck are denied the right to vote in a National Labor Relations Board decision, but the decision gave the right to vote to the men who are brought in to take their place.

I would like to ask the Congressman if he does not think that is a pretty powerful weapon in the hands of the employer to destroy labor unions.

Mr. O'HARA. There could be no doubt about that, Mr. Chairman.

Mr. BAILEY. Do you have any comments or questions, Mr. Powell?

Mr. Powell. No questions.

Mr. Bailey. Mr. Irving?

Mr. Irving. No questions.

Mr. Bailey. Mr. Perkins?

Mr. Perkins. No questions.

Mr. Bailey. Mr. Jacobs?

Mr. Jacobs. Just in connection with the witness' own statement, Mr. Chairman, in connection with the closed shop, I want to ask this:

You are familiar with the recent decision of the Supreme Court which held State laws banning the closed shop are not to be unconstitutional? You are familiar with that, are you not?

Mr. O'Hara. I am not here, Mr. Congressman, to discuss the opinions of the Supreme Court on State legislation.

Mr. Jacobs. I have simply this that I want to bring into the record at this time, Mr. Chairman, as part of the propaganda blitz that is being used, a statement from David Lawrence's column as follows:

> The President also has decided to ignore the latest decision of the Supreme Court of the United States which said in effect that compulsory unionization is unconstitutional.

As a lawyer, I know, and I believe most lawyers know, that that is not a correct statement of the Supreme Court decision at all. I wanted that in the record only as an example of another item in the blitz.

Mr. O'Hara. I did not wish to be discourteous when I said that I was not here to discuss the opinions of the Supreme Court. I merely had this in mind. Sometimes I disagree with the courts. And sometimes I agree with them. I was here largely today in the one matter that I am so much interested in, because I think it is so reflective upon the welfare of the people, and that is the immediate repeal of Taft-Hartley and the reenactment of the Wagner Labor Act.

Mr. Bailey. Mr. Burke?

Mr. Burke. I want to compliment the Congressman on his statement, particularly as it applies to the closed shop, and also to the union shop. I would like to ask this question. Is it not true that when the Taft-Hartley Act was going through Congress, when committee hearings were being held, and so on, that all throughout the country we were bombarded with a barrage of statements to the effect that workers generally wanted to be emancipated, as it were, from the tyranny that was supposed to exist in the unions? And is it not true that since the enactment of the Taft-Hartley Act, since the National Labor Relations Board has been holding elections on union security, that 98 percent of those voting—actual workers, not labor leaders, but actual workers in plants—have voted for security of their unions?

Mr. O'Hara. I do not know that I am familiar with present conditions, Congressman. I have been out of labor activities for some time. I do not wish to comment on anything of which I have not a personal knowledge.

Mr. Burke. If that were true, would you not say that it certainly should be pretty good evidence that someone was wrong 2 years ago.

Mr. O'Hara. That someone was wrong 2 years ago?

Mr. Burke. Yes.

Mr. O'Hara. I think the American people gave that answer very much more strongly than I can. And, Mr. Congressman, I would not be here unless my district—my Republican district, mind you—thought that the people here 2 years ago made a very bad mistake in the enactment of the Taft-Hartley law.

Mr. BURKE. Thank you, sir.

Mr. BAILEY. Mr. Wier?

Mr. WIER. No questions, Mr. Chairman.

Mr. BAILEY. Mr. Perkins?

Mr. PERKINS. I do have a question, Mr. O'Hara.

You referred in your testimony to the Taft-Hartley Act as being full of jokers. Do you not think that this provision in the act that permits the States to ban closed shops is just one of those jokers that shows the oppressiveness of this act?

Mr. O'HARA. I think there are so many jokers, as I would call them, in the act that it would be a waste of time to discuss any one of them specifically.

Mr. PERKINS. Inasmuch as we were talking about the closed shop, that was what the Supreme Court held. They decided upon that provision the States had the right to outlaw the closed shop, under four or five sentences that were hidden away in that Taft-Hartley law. That is the reason I wanted to make that observation, and not that the closed shop itself is unconstitutional.

Mr. KELLEY (presiding). Is that all, Mr. Perkins?

Mr. PERKINS. That is all.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. No questions.

Mr. KELLEY. Thank you very much, Mr. O'Hara.

Mr. O'HARA. Thank you, sir.

Mr. KELLEY. I am glad you came today.

Mr. Blatnik, a Member of Congress from Minnesota.

TESTIMONY OF HON. JOHN A. BLATNIK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. BLATNIK. Mr. Chairman and members of the House Committee on Education and Labor, I appreciate having this opportunity to appear before your committee, and to state my position on the proposed repeal of the Taft-Hartley law. I might say that this is the opportunity for which I have waited ever since the antilabor Taft-Hartley law was enacted—it is a real pleasure to give you my honest opinion of this law, and to urge its immediate repeal.

I will speak frankly and to the point. I want the Taft-Hartley law repealed in the shortest possible time. I maintain that it is a vicious and un-American measure which was written by labor-hating corporation attorneys who were in the pay of the National Association of Manufacturers. It was adopted by the equally reactionary and now-repudiated Eightieth Congress during a period of passion and "lynch-labor" hysteria. Its one and only purpose was to shackle and eventually destroy the American labor movement.

I also want the original Wagner Act reinstated in letter and principle. This law, which was destroyed by the Taft-Hartley law, was truly the Magna Charta of labor. It was based on the obvious truth that the public welfare requires the existence of strong and free trade unions who are able to bargain on equal terms with management. It provided for a workable procedure of collective bargaining, and resulted in higher standards of living for our people. By outlawing company unions it guaranteed that labor unions should be truly free. It created the conditions for democratic control of unions, and gave status to these labor organizations in our democratic society.

I know that there are those in the Congress who take the position that although the Taft-Hartley law should be repealed, some of its features should be retained in the new labor law. I am not referring to those legislative artists who are now using every stalling device and underhanded technique to defeat repeal. I have learned from experience that it is not possible to reason with the supporters of the Taft-Hartley law. I well remember their unconcealed hatred of labor, and their steam roller methods during the 1947 debates on the Taft-Hartley measure.

Instead, I am speaking of those who say that there are some parts of the Taft-Hartley law that are good, and that such parts should be retained as amendments to the Wagner Act.

To these advocates of compromise, I say that the Taft-Hartley law is a vicious and evil measure and that there is no ground for compromise. How can one compromise with Taft-Hartleyism when the whole purpose of the law, as admitted by its sponsors during the House debate, is to cripple and handcuff labor organizations? How can one compromise when all this talk of compromise is a spurious and diversionary tactic now being used by the enemies of labor?

Those who would retain parts of the Taft-Hartley law as amendments to the Wagner Act remind me of the lunatic who drops arsenic into a glass of milk and honey—the milk and honey may be good, but the effect of the mixture is most harmful to the consumer. They remind me of the saboteur who drops a monkey wrench wrench into a smooth-working machine. Let us not poison the humanitarian Wagner Act with the arsenic of the Taft-Hartley law. Let us not drop the proverbial monkey wrench into the smooth-working labor-management relations of the Wagner Act.

The Taft-Hartley law epitomizes the era of brute force, the use of machine guns and strikebreakers in an industrial jungle. It is symbolic of the use of the court injunction as a strikebreaking technique and the utilization of Government as an agency of labor-hating employers. It must be completely wiped from the statute books.

I am not against any constructive and honest proposals to improve the Wagner Act in the interests of better labor-management relations, and any recommendations offered in good faith should be considered by the committee. Perhaps some amendments will have to be considered at some later date when the Wagner Act is again operating as the law of the land. Such deliberations will require statesmanship of the highest order, and it is my feeling that now is not the time. To inject proposals for major changes in the Wagner Act will only confuse the issue, and hamper our efforts to achieve our No. 1 task, which is to repeal the Taft-Hartley law.

During the last campaign I promised the working people of my district that I would fight for complete repeal of the Taft-Hartley law, and for a return to the original Wagner Act. I know that the workers voted for me on this basis. Today all the major organizations—the American Federation of Labor, the Congress of Industrial Organizations, and the Railroad Brotherhoods—are on record in support of complete repeal, and I stand with them on this issue.

I urge the committee to report favorably on the recommendation of your subcommittee's proposal for the "two package" approach and the outright repeal of the Taft-Hartley law. You may be assured of my full support of such a proposal when it reaches the floor of the House.

At the end of my testimony I wish to include in the record a statement prepared by Mr. E. L. Slaughter, secretary of the Central Labor Political Committee of the Duluth AFL Federated Trades and Labor Assembly. This statement represents the official views of all A. F. of L. unions, and it contains concrete evidence as to the nature of the Taft-Hartley law as it has actually operated in practice.

Mr. KELLEY. Without objection, it is so ordered.

Mr. Blatnik, your statement of the complete repeal of the Taft-Hartley Act and the reenactment of the Wagner Act of 1935 and then to proceed with any amendments which might be desirable for the Wagner Act is a two-package approach. Now, unfortunately this committee did vote out the two-package approach, but the full Labor Committee refused to accept it. So now we are forced to consider H. R. 2032, which is the so-called one-package approach, the repeal of the Taft-Hartley Act and the reenactment of the Wagner Act of 1935, and for other purposes. Well, the "for other purposes" means that we have to bring in the proposed amendments which are in H. R. 2032.

I agree with you that the 2-package approach is the proper way to do this.

Mr. BLATNIK. And I commend you and the committee for favorably acting on that 2-package approach.

Mr. KELLEY. But we were denied that by the full committee. So we are compelled now to work on the so-called 1-package approach, which is the bill in front of us.

Mr. Powell, do you have any questions?

Mr. POWELL. Yes.

Mr. Blatnik, there has been some attempt here today to refute the arguments that the elections of November 2 were a mandate from a majority of the people to abolish the Taft-Hartley Act. A colleague, Mr. Madden, from Indiana, said that the overwhelming number of people in his district voted to give him a mandate.

Now, in your district, for instance, just for the sake of the record, you campaigned on the basis of the abolition of the Taft-Hartley Act, did you not?

Mr. BLATNIK. Absolutely. I made that one of my strongest points in my campaign.

Mr. POWELL. And your vote was a pretty good vote, was it not?

Mr. BLATNIK. The vote was the highest vote received by a candidate. I must put in a qualifying statement. I do not mean to bring this out from the personal point.

Mr. POWELL. I want to get it in the record.

Mr. BLATNIK. But since the gentleman from New York has brought it out, the vote was the highest any candidate ever received for that office in my district, the largest plurality and the highest percentage of the total vote cast received by any candidate for either national or State office in the State of Minnesota.

Mr. POWELL. Certainly.

Mr. Blatnik. Now, a further qualifying point. It is not a district that is overwhelmingly one-sided. It is a district that is very independent. It is a district we do not have what may be called labor bosses in control of labor voters or party-machine control over the voters. It is a district which voted overwhelmingly for that great humanitarian, Franklin D. Roosevelt, and at the same time was sending down here Republican Congressmen who had a pretty good labor backing. So it is a very independent and forthright district.

The members of organized labor alone are rather large, I would say easily 35,000 out of a population of 310,000. And when they went down to the polls, the larger number of labor people in the community gave me their vote largely because of my stand for the complete and outright repeal of the Taft-Hartley bill.

Now, these voters went to the polls, men and women, according to the dictates of their conscience, and you cannot say that they are under the control of any labor bosses, or that they are going to be free from labor racketeers and labor boses. They were fighting for their very livelihood, and they knew that the Taft-Hartley law was a serious threat to their livelihood.

Mr. Powell. Apropos of that, I think it ought to be in the record that 103 Members of the Eightieth Congress who voted for the Taft-Hartley Act were defeated in the election last fall—103 were defeated—and I think that your testimony and that of others shows that this is a mandate from the people to abolish the Taft-Hartley Act.

That is all, Mr. Chairman.

Mr. Kelley. Mr. Bailey?

Mr. Bailey. Mr. Chairman, I believe the gentleman has testified that the Taft-Hartley law passed by the Eightieth Congress was written by a group of top-level attorneys.

Mr. Blatnik. That is right.

Mr. Bailey. I think the gentleman will agree with me that they were representing some organized groups who felt proud to call themselves rugged individualists. They are always squawking about free enterprise; yet they are perfectly willing, and showed they were willing in the Taft-Hartley bill, to interfere in the affairs of a lot of other Americans who happened to be members of organized labor. Yet they say they want the Government to keep their hands off business, but it is all right for the Government to put its hands on labor and regulate labor, but not to regulate business. Is that true?

Mr. Blatnik. That is true; yes, sir. I agree with you.

Mr. Kelley. Is that all, Mr. Bailey?

Mr. Bailey. That is all.

Mr. Kelley. Mr. Irving?

Mr. Irving. I pass.

Mr. Kelley. Mr. Perkins?

Mr. Perkins. Nothing.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. No questions.

Mr. Kelley. Mr. Burke?

Mr. Burke. No questions. I think he has done all right.

Mr. Kelley. Mr. Wier?

Mr. Wier. No questions.

Mr. KELLEY. Thank you very much, Mr. Blatnik. We are glad you came here this morning.

Mr. BLATNIK. Mr. Chairman, I thank you and the members of your subcommittee for the very fine reception and your consideration and attention. I do regret there were not more members of the opposition party from the other side of the aisle, the members of this committee who were absent. I would have enjoyed very much to have the opportunity to answer their questions.

I thank you very kindly.

Mr. KELLEY. Thank you.

(The statement of Mr. Slaughter referred to by Mr. Blatnik, is as follows:)

STATEMENT BY E. L. SLAUGHTER, SECRETARY, CENTRAL LABOR POLITICAL COMMITTEE OF FEDERATED TRADES AND LABOR ASSEMBLY, DULUTH, MINN., RELATIVE TO SOME OF THE OBJECTIONABLE FEATURES OF THE TAFT-HARTLEY ACT

The purpose of this statement is to call attention to some of the specific cases where the Taft-Hartley Act has been unfair or ineffective in its operations at Duluth, Minn. No attempt is made to state all objections of American Federation of Labor unions in Duluth to this law. In general our objections are the same as those of other labor organizations throughout the State of Minnesota.

1. *The Taft-Hartley law has denied certain types of employee organizations the right to organize and have protection under the act.*—In Duluth there is a union of licensed tugmen who have been organized since 1900. This union has had collective-bargaining agreements with employers since 1900. The Taft-Hartley Act has denied them protection and interfered with this established collective-bargaining relationship because all the employees that this union has represented have been classified as supervisory employees by the National Board. As a result, masters, mates, and pilots who are employed on Great Lakes steamships have been denied the right to become organized and have protection under the law. The union recognizes that possibly the master or captain of a ship should be classified as a supervisor, but first, second, and third mates, and pilots were denied the right of organizing even after they excluded the master from their bargaining units. The Board ruled that all licensed officers aboard lake vessels were classified as foremen irrespective of their titles or rank. As indicated above, before the passage of the Taft-Hartley Act there was no restriction on the right of this type of employee to have the protection of the Labor Act. The result is that the only way these employees can protect their economic position is to strike in order to maintain rights which they have had for nearly 50 years.

2. *The Communist affidavits are ineffective.*—The officers in most AFL unions in this area have signed the affidavits. There is, however, one specific case where an officer of a union refused to sign the affidavit. He was not a candidate for reelection to the office, but the executive board of the union hired him as business agent with full powers to represent the union. He was not classified as an officer in the bylaws or constitution, but as an employee he had full power to represent the union and the executive board.

3. *The restrictions upon union security have operated unfairly.*—In one instance there was a union shop election at the Zenith Dredge Co. where only one employee was involved. This employee had the right to vote for the union shop. He voted in favor of the union-shop clause. As a result the contract covers all future employees who were hired after the election. The international union with which the employee was affiliated was required to go to the expense of sending a representative from Cleveland, Ohio. The NLRB was required to go to the expense of making an investigation and conducting the election. The expense was possibly as great as if several hundred employees had been involved.

Another instance is the case of the Western Electric Co. in Duluth and the electrical workers union. The union petitioned the NLRB for a union-shop election after it had been certified by the Board as the collective bargaining representative. The certification election was held on the premises of the employer. The union had sufficient signatures and authorizations for the union-shop election, but the employer refused to cooperate with either the union or the Board in allowing voting booths to be set up on their property and also refused to furnish information necessary for the conduct of the election. The employer made the statement: "That, as the matter was by and between the NLRB and the union, they should hold their elections uptown, away from the company property." The location of the plant is such that it was impracticable to find another place where the election could be held. The closest place available was the city hall which is about a mile away from the plant in a congested traffic area. Although there is no doubt that a majority of the employees would vote for the union shop if given a fair opportunity, the union felt that because of the impossibility of locating a convenient voting place combined with requirement that the majority of all employees must vote for the union shop that the election could not safely be held.

4. *The hardship which results to small unions from the necessity for filing complex forms and affidavits.*—Many of the unions in Duluth are small. For the most part they do not have paid representatives. Since the passage of the Taft-Hartley Act there has been a great deal of confusion with reference to filling out the many forms and affidavits required by the act. Without compensation, officers of these small unions have spent a great deal of time after working hours in an attempt to comply with rules and regulations which we believe to be unnecessary and unfair and which create a hardship on the members of the unions involved. The time spent on these activities should have been spent furthering the real interests of the members of the union.

5. *The confusion among building-trades unions.*—Under the Wagner Act building-trades unions were not considered to be covered by the law. Some courts have held that they are not covered by the Taft-Hartley Act. The general counsel for the board has taken the position that they are covered. Yet, he has failed to set up a procedure to handle elections in building-trades unions. This has resulted in confusion, uncertainty, and hardship because the members of these organizations do not know what their rights and obligations are. We understand that attempts to setup pilot procedures in the building trades and other areas failed. As a result, the members of these unions are held by the general counsel to be under the law but there is no procedure for making the provisions of the law applicable to them.

6. *The prohibition against making political contributions by labor organizations operates unfairly.*—Members of unions in the Duluth area are practically unanimous in recognizing the necessity for political action through the labor organizations to which they belong. Before the enactment of the Taft-Hartley Act they authorized the use of union funds for this purpose and no member of a Duluth union ever objected to this procedure. It is true that during the past election, most members of unions made individual contributions. However, this required much work and took time that should have been used for other purposes. In addition, it is less expensive for individual members when general union funds can be used for legitimate political activity.

7. *Objections to the secondary boycott provisions of the Taft-Hartley Act.*—On the water front in Duluth-Superior harbors there are approximately 24 unions who are affiliated with several international unions. They have banded together into a trade council known as the Maritime Trades Council for the purpose of bringing about uniform conditions and wages for employees doing comparable work. Before the passage of the Taft-Hartley Act it was a custom of these organizations to assist one another when they were in difficulty. The Taft-Hartley Act provisions wiped out this right to help out a sister organization in distress and virtually made strikebreakers out of unions who could not help or assist another union who was in a dispute with an employer even though it was in the same or an allied industry.

8. *Objections to the so-called free speech provisions of the Taft-Hartley Act.*—Prior to the passage of the Taft-Hartley Act, although both the National Board and the United States Supreme Court had recognized the employer's constitutional right to free speech, it was illegal to a certain extent for employers to interfere with, coerce, or intimidate employees in their right to join or not to join an organization. After the passage of the Wagner Act we had no trouble with employer interference until the passage of the Taft-Hartley Act when several of the employers then wrote letters to individual employees purporting to advise them of their rights under the Taft-Hartley Act but interpreting the act with an employer's slant. Although they did not break the law, they went just as far as they possibly could without getting into trouble. This did not happen under the old law, only after the Taft-Hartley Act was passed.

9. *Objections to the prohibition against guards and watchmen being members of unions that are affiliated with other organizations.*—A specific example of the

unfair manner in which the prohibition against the right of watchmen and guards to belong to unions that are affiliated with other organizations occurred on the water front at Duluth. For years coal docks at Duluth have employed persons who were classified as watchmen. However, part of their duties is to do work of firing boilers, janitor work, and other work of a similar nature. These employees for years had been members of and represented by the same union which represents other employees. Only a few men were involved and it would be impracticable to have a separate organization. The act provides no guide by which it could be determined whether or not these men fall under the category of guards and watchmen. A dispute over this question almost resulted in a serious controversy which has not yet been definitely settled.

Mr. KELLEY. Some of the Members of Congress were unable to appear this morning as scheduled. Now, these Members may file their statements with the committee, and without objection they will be entered in the record.

Mr. JACOBS. Will they be filed in sufficient numbers so that we may have copies of them?

Mr. KELLEY. They will all be printed in the record.

(The following statements were subsequently received and, by order of the chairman, as above stated, are made a part of the record:)

STATEMENT BY HON. ANDREW JACOBS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Gentlemen, within the next 15 minutes I hope to be able to induce you to give serious consideration to some much-needed labor legislation. This will pertain to evils which have not been heretofore covered by legislation.

We much accept the facts as they exist, recognizing that combinations of wealth or men or both possess economic power with which an individual cannot cope. Then we must acknowledge that a prime function of government is to regulate and restrain such excessive power so as to enable all men to fairly compete for their just share of what they help produce by their labor or investment. To apply this principle of government, we must do four things:

(1) Evaluate the general economic power of the usual types of combinations.

(2) Determine who is normally the object of the abuse of such combined economic power.

(3) Determine the corresponding economic power of those upon whom the first is ordinarily exerted.

(4) Regulate and restrain any abuse of such excessive economic power so as to restore competition and enable ordinarily prudent and energetic men to bargain for what they helped produce by their labor or investment.

For a half century legislative bodies recognized the inability of the employee to meet the general economic power of the employer. More than a half century ago the Federal and most State legislative bodies enacted into law the principles of the Wagner Act, only to have them stricken down or denied enforcement by the courts.

This was a strange jurisprudence, since the common law recognized and curtailed economic duress in almost every contractual matter save the labor contract. Fortunately, the principles of the Wagner Act are no longer seriously challenged. They are enacted as the first sections of the Taft-Hartley Act.

However, the opponents of, and those who did not fully understand, the Wagner Act abandoned the direct assault for a flanking attack. Though the act was left standing, its effect was largely emasculated by the Taft-Hartley Act.

Some of the detailed provisions, and an analysis thereof, are more fully set out in my response to the General Electric questionnaire, now a part of the Congressional Record; and which I request, Mr. Chairman, be made a part of the record of this hearing.

Suffice it to be recorded at this point that the most damaging effect of certain provisions of the Taft-Hartley law has now been conceded by its senior coauthor, Senator Taft, as well as by three national periodicals, which are generally accepted by business as sound reliable publications.

I hasten to say, Mr. Chairman, I do not mention Senator Taft's concession as partisan chiding of an opponent. I believe his change of mind is perfectly honest and highly commendable. The politics of this question should not concern us. I will join with, or oppose Democrat or Republican to gain a fair law. I believe a majority of this committee feels likewise.

I will not dwell longer upon either the Wagner or Taft-Hartley law, except as they may illustrate my proposals. Both of those laws will be the principal consideration before this committee including the administration provisions regarding boycotts and jurisdictional disputes, which I discuss in response to the General Electric questionnaire. Rather I come here in the capacity of a witness and urge you to consider the necessity of applying the rules I suggested to another phase of the labor problem.

The proponents of the Taft-Hartley law claimed it reduced the power of union officials. That it did. But I feel that in so reducing such power they did not "Determine who (was) normally the object of the abuse of such combined economic power." And the Taft-Hartley law did not restrain the abuse of such excessive economic power so as to relieve those who were the objects thereof.

The power of the union officer can be directed toward bargaining for wages and working conditions. But that power can also be used to oppress members and local union organizations affiliated with the national or international.

It was the former power, or the power to bargain for wages, that the Taft-Hartley law curbed, not the latter. It is the latter that is sometimes abused and concerning which I will urge legislaive restraint.

Many union people know of this, and want remedies. I urged it upon the Seventy-ninth Congress and again upon the Eightieth. I will furnish you names of witnesses, good union men, who will give you illustrations of what I want remedied. These practices are certainly not prevalent in all unions, and there should be no objections from those unions that recognize and honor democratic processes.

I will, to induce your interest, give you a relatively brief example:

A local union was held in a captive status for over 16 years. It was never permitted to elect an officer. Every officer was appointed by the international president. The same group served through the entire 16 years. Vacancies by death were filled by the international president. Petition after petition to elect officers were rejected or ignored by the international president, until finally he yielded after 16 years and permitted a partial election. But the partial election, together with ground rules laid down by the international president, left his personal appointees in full control of the local's finances.

Finally, the few newly elected officers summoned up the courage and demanded to see the books. They were gone. Suit was filed against the international president, who then produced remnants of the books. Most of them had been destroyed after a very questionable audit by a Washington accountant.

Then, in order to intimidate the local into dismissing its suit for possession of its own books and an accounting of his stewardship, the international president suspended from the union pension roll all the old members of the local who had fully paid for their pensions. I think that was one of the cruelest acts I ever saw committed by an individual who had somehow been favored with a human appearance.

Finally, after proof of embezzlement became overwhelming, he repaid the local a large sum from the international treasury, promising to recoup it by proceeding against his own agents. But, in the meantime, the local had another problem. The wage scale had lagged to 34 cents per hour less than that in an adjoining district in the same craft. This occurred while it was captive and its contracts were made by the administrator, trustee, or whatever you choose to call him (these union members had a few very choice names, which don't belong in the record).

The employers in that district had to learn collective bargaining all over again. The pretended representative of these laboring men had become a mere broker of their labor. But the scale was finally raised. How much the men lost during the captivity of their local is incapable of quick estimate, but the equalizing increase amounted to about one and a half millions per year.

Now, let's have this cleared, on the point of financial reports. The members got financial reports. But without looking at the books and behind the financial reports, the reports didn't mean aynthing. And without protection when demanding a look at the books, no one was apt to demand a look except in desperation.

This is pretty well illustrated by the next phase of the matter.

Part of the local embezzlement was concealed by items in the audit and some of the recovered books. "Special organizing" was the only explanation for items totaling $90,000. So the very term "special organizing" was suspect.

Recall the international president had obligated himself to proceed against his agents who were at least the primary, though probably not the sole defaulters in the local. Well, he dragged his feet for 8 months without commencing action. In the meantime, an international convention was called. A financial report was furnished and again up bobbed our friend "special organizing." But this time he was responsible for expenditures of over a million dollars. The local's officers announced they would press action against the defaulters of their own treasury and demand, through their delegates, to know who got the million dollars from the international and what the international got in return. Whereupon the international president intimidated the convention into expelling the four elected delegates.

I won't prolong this by outlining the method of intimidation further than to say it was implied threats of expulsion against the delegates, and requiring them, when voting, to stand long enough to be identified.

He also intimidated the convention into granting him power to revoke the local's charter. Then he put up a $700,000 bond and, without notice, recaptured the local, its treasury, offices, and functions by a mandatory injunction.

During this time, the matter was brought to the attention of one of the Senators from the State where the local was situated. He was vainly asked to sponsor legislation such as I am going to ask you to consider.

Finally, the charter was restored with autonomy, but the local's president was never again recognized as a member. He is still wandering about like a lost soul, and the Taft-Hartley law does not help him in the least. This will become apparent during these hearings.

But to return to the court that ousted the local's elected officers. That court refused to listen to the evidence of those things heretofore related. While the judge no doubt wanted to be fair, he just didn't comprehend the problem, its scope nor its effect upon the workers.

Being reduced to the utter lack of representation they had suffered for almost 17 years, the local members accepted a compromise that did not reinstate the local president; the man who had led the fight that restored its autonomy, its treasury and its wage scale. This man later obtained a civil court judgment ordering him reinstated as a member, but that was appealed and the appeal is still pending.

Now, during the same convention, the international president refused to permit nomination of candidates to run against himself and at least one of his coofficers. The same intimidating methods were employed. The delegates trying to make nominations were simply ruled out of order. The printed convention proceedings will establish these facts without verbal proof.

I have related these matters as pertaining to one case. They have their counterparts in other cases. I do not represent that they are prevalent in many unions. But that these conditions exist in a few unions is too much. We cannot in good conscience ignore them.

These abuses were offered as excuses for the Taft-Hartley Act. Thus some union officials themselves furnished ammunition which apparently justified destruction of unions. On March 12, 1947, I offered to the then chairman of this committee this information as a basis for remedial legislation. He ignored me. I hope that you gentlemen won't.

Let me assure you the case I outlined is not a single isolated instance. True, a few unions have most of the trouble. The law reports are replete with examples where these matters have reached the highest courts.

There are remedies for these abuses at common law, but they are long, delayed, tedious and too expensive for those who are thus abused. I believe a more expeditious remedy should be provided in the labor act with jurisdiction in the National Labor Relations Board. It can comprehend the problems.

Proper remedies would, in my judgment be:

(1) Provisions requiring periodical election of union officers, and a remedy for fraud or duress in such election.

(2) Provisions for any member to audit or examine the books of the local or international, and of the local and international to audit each other's books.

(3) Provisions requiring due process of law, including disinterested trial boards for violation of union laws, and a right to have a Government agency review heavy penalties, including expulsion, which are capriciously or arbitrarily imposed.

(4) A requirement that a union accept qualified workers in a craft or area where such union controls all or substantially all work in that category.

With these provisions, the abuses of the closed shop can be eliminated and the worker can again establish a single unified front to meet the unity of the corporate employer. If we treat those four matters properly in our legislation, we will contribute decency to the unions whose officers have abused their power and we will not injure any union or employer.

We will have determined the persons who are the objects of that abuse of power and protected them by eliminating the abuses rather than destroying the only instrumentality they have to protect themselves from the economic power of the employer.

Our economic system cannot function without large employers; employers whose power is too great for the employee to meet and bargain with. Hence the only hope for a free economy is that labor can organize to match the employers' economic power. Let those who preach free economy and in the same breath damn the unions find another solution. And let those who damn the unions for such abuses as I point out here come forward and help legislate union decency and not union destruction.

It is possible, even probable, that I have not made friends nor influenced people (even you gentlemen) by this statement and these recommendations. But my statement is true, and what I recommend will have to be eventually adopted.

STATEMENT BY HON. STEPHEN M. YOUNG, REPRESENTATIVE AT LARGE OF THE STATE OF OHIO

Mr. Chairman and members of the committee, the fact that I am back in Congress is, in itself, evidence that the people of Ohio, like the people of the United States, have looked upon the Taft-Hartley Act and found it bad. They want it repealed and replaced by the Wagner Act with amendments such as those provided in H. R. 2032.

I have no doubt about this fact. During the campaign, speaking from one end of Ohio to the other, I made a major point of standing for repeal of this iniquitous, one-sided statute. No one who voted for me could have been in any doubt as to where I stood on the issue of continuing or repealing the so-called Labor-Management Relations Act, of which the senior Senator from Ohio was—and still is—a cosponsor and defender, though recently with many reservations and amendments.

My predecessor boasted of his support of the Taft-Hartley law and denounced union labor. He said he did not want the support of labor. Labor complied with his wishes. The record of the Eightieth Congress, including enactment of the Taft-Hartley Act, was more than he could carry. The figures tell the story: The Democratic candidate for Representative at Large received 1,455,972 votes, the Republican candidate for reelection received 1,342,388 votes. He ran behind the Republican nominee for President, Governor Dewey, who had not played an active part in passing the Taft-Hartley Act and who received 1,455,684 votes in Ohio.

These figures speak for themselves, and I would only add that in Ohio eight Republican Representatives were defeated by Democratic candidates. In the last Congress, Ohio was represented by only four Democratic Congressmen. In this Congress there are 12 of us from Ohio. Throughout Ohio, for the particular reason that the coauthor of the law is a native and political leader in that State, the Taft-Hartley Act was a prime issue in the campaign and the results were an unmistakable repudiation of that statute and a clear call to the Eighty-first Congress to repeal it and replace it with a Labor Relations Act fair in purpose and equitable in the methods provided for administration to achieve the ends sought. That end, made plain in the original Wagner Act and declared constitutional by the Supreme Court, is to protect workers in organizing themselves into unions of their own choosing and to engage in peaceful collective bargaining with their employers regarding wages, hours, and conditions of work. This is what is provided in H. R. 2032, which includes also certain provisions for dealing with jurisdictional disputes and unjustifiable secondary boycotts. H. R. 2032 brings the Wagner Act up to date in the light of experience. Fairmindedness and statesmanship of leaders of organized labor is evident in the fact that this bill, with its provisions for outlawing certain forms of secondary boycotts and providing arbitration machinery for the settlement of jurisdictional disputes, is supported by organized labor.

Now, I should like to point specifically to provisions of the Taft-Hartley Act which are wrong and harmful not only to workers, not only to peaceful industrial relations, but to the welfare of the Nation and to democracy itself.

The Taft-Hartley law represents the first shameful, ugly step toward fascism in this country. Attacks upon labor unions and upon farmers' and consumers' cooperatives were the first step toward fascism in Germany and Italy. The same is true in America.

If I were a laboring man instead of a professional man, I would belong to the union of my craft and sit in the front row. For a half century organized labor has battled for and won many of the proudest treasures of our American tradition and heritage—for example, free public education, the abolition of child labor, the right of self-organization and collective bargaining, the 40-hour week, workmen's compensation laws, and the highest standard of living in the world.

I have here, and I should like to have included in the record at the conclusion of my remarks, a sample of how the Taft-Hartley Act was a real issue in the campaign. It is, as you will see, a popular and, I believe, essentially accurate statement of the effect of the Taft-Hartley Act upon the workers in the Pipe Machinery Co., a plant located in my home town, the city of Cleveland. Later in my remarks I propose to describe this case.

Labor unions and the members of labor unions have helped to maintain the American way of life and those who would, by restrictive legislative enactment, destroy unions, would destroy one of the most dynamic and vital forces of our democracy.

The Taft-Hartley law effectively curtails the constitutional rights of workers to be free from employer domination. It restricts the rights of workers to bargain effectively as a group for improved wages and working conditions.

The claim has been made that the Taft-Hartley Act emancipates working men and women from the domination of unions and union bosses.

It is somewhat curious that the National Association of Manufacturers has been so interested in protecting the workers from being oppressed by unions of their own choosing and by officers whom the workers themselves have elected from their own ranks.

Collective bargaining, as we have known it under the Wagner Act, furnished labor and management a wide range of freedom in negotiating and reaching agreements.

Now the Taft-Hartley law has established an entirely new pattern. It discourages and, in practice, blocks free collective bargaining. The freedom of bargaining is eliminated and the ruling of a third party, the Government, becomes a deciding factor. Under such circumstances, it is difficult to build agreements on a foundation of trust and mutual understanding. Labor relations have been and, until this act is repealed, will continue to be embroiled in a maze of regulations and legal restrictions that make for friction, strife, and industrial chaos.

Most employers should now realize, and undoubtedly do realize, that the best way to achieve and maintain industrial peace in this free Nation is through collective bargaining. If our American way of life and free-enterprise system is to be preserved, employers and employees must solve their own problems themselves around the bargaining table. Collective bargaining must be free, not hampered by useless and punitive restrictions.

Advocates of the Taft-Hartley law had much to say regarding high union initiation fees. Many unions provide their members with unemployment benefits, retirement funds, and burial benefits, and it would seem proper to require new members, who become immediately eligible to such benefits, to pay an initiation fee to represent their share of what other members have paid. Unions are confronted with the necessity for more financial strength if they are to do an effective job of collective bargaining. The representatives must be paid for their time, legal services are required, economic research is necessary, education must be provided the members if the responsibility expected of unions is to be attained. This is not extortion. No one claims our Government should be given the power to determine initiation or entrance fees into a church or a lodge or a fraternity. Why is it necessary to give it such power over labor-union affairs?

The Taft-Hartley law requires unions to file very complete data with the Secretary of Labor. It is claimed that corporations are required to give such detailed reports to the Securities and Exchange Commission. I maintain that unions should not be run like corporations. Corporations are operated for private profit. Unions are not. They are operated to render service to their members. Furthermore, corporations operated for private profit are almost invariably run by a compact, tightly run management group. Except at the outset when security issues are floated, stockholders in corporations find it nearly impossible to learn how their corporations are run. Obviously, the only purpose of this provision is to make the operation of a union as difficult as possible.

Another objection I voice to this law is the ban against direct contributions to political parties; and the provision of the Taft-Hartley law that unions make no contributions nor expenditures in connection with any national election. It is well known that corporations, through their officers, make huge contributions to their political favorites.

Labor, organized and unorganized, is bound to oppose the act for this reason above. Those who sponsored the act sought to prohibit labor unions from publishing the congressional records of candidates in papers, circulars, or pamphlets supported in whole or in part by union dues. It sought to prohibit unions from using their funds to rent halls and hold meetings to discuss political candidates and their congressional records and to buy radio time to speak in support or opposition to any candidates.

Is this not a threat to our political freedom? Is this not an infringement upon the right of free speech? Is this not a violation of the very first amendment of our Constitution which provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to assemble and to petition the government for redress of grievances."

The attempt to prevent workers from effective political expression of their views regarding those who wrote and voted for the Taft-Hartley Act was too obvious to be overlooked.

One of the outstanding examples of the unfairness of the Taft-Hartley law is the method of voting for a union shop. The requirement of the law is that a majority of all eligible employees must vote "yes" in order for the union to win the election. In other words, every worker who fails to vote has his vote counted as a "no" vote. No candidate for office in the United States, no other issue on the ballot, must face such a test.

The Norris-LaGuardia Act, which was a fine forward-looking law, limited the use of injunctions. This salutary provision was repealed by the Taft-Hartley Act. When an injunction is issued in a labor dispute, it drives the parties farther apart and converts an industrial relations problem into a legal contest. A great abuse of the past was the fact that judges very frequently and very arbitrarily issued injunctions against workers and without the production of evidence to justify such high-handed proceedings. We should not, in this country, set up one set of standards for unions and another for employers. We should not promote Government interference in labor relations.

In many other respects the Taft-Hartley law, which should be repealed, sets labor and management apart and prevents teamwork and cooperation in the field of collective bargaining. There are more than 30 separate procedural items imposed before the union is entitled to ask an employer to grant a union shop. Many of these items present virtual obstacles to collective bargaining. There are about 20,000,000 American employees working under various kinds of union security contracts. It is obvious what a widespread handicap this restrictive legislation presents. If this law is construed to require elections every year, as appears to be the case, the National Labor Relations Board would require not less than 20,000,000 man-hours each year to conduct tens of thousands of elections with respect to union-shop authorization. Under the Wagner Act, with only 7,000 elections a year, even the simplest kind of representation elections were delayed for periods of 6 months or longer.

President William Green of the American Federation of Labor asserted that labor's antagonism to the law at the outset has been intensified by recent developments in the field of labor-management relations which would bear out every charge made against this restrictive and oppressive law. President Green stated that the National Labor Relations Board, a Government agency created to protect the rights of labor, has been perverted by the Taft-Hartley law into a prosecutor of labor unions.

The Taft-Hartley law, according to United States Senator Wayne Morse, Republican of Oregon, a leading liberal, is "a device for making unions so weak they cannot bargain collectively."

We must realize that labor, business, and agriculture are all interdependent and that our whole Nation cannot enjoy stable prosperity unless all groups receive their fair share of the national income. We must establish a decent standard of living as a minimum for every American, and constantly improve the distribution of our production so that all Americans benefit.

Under the Taft-Hartley law the United States Department of Labor has been weakened. This weakening in this Department of the executive branch of the Government has proved a severe blow to the workers. The separation of the Conciliation Service from that Department and a change in its basic conception has alienated the confidence of union members. Furthermore, the Wage and Hour Division has been weakened to a point where it cannot make adequate inspections of the violations of the provisions of that law. We should not stand idly by and permit the lowering of the prestige of a once great department of our Government, devoted to the welfare of the laboring men and women the country over.

An example of the chaos caused by the Taft-Hartley law is the situation of the International Typographical Union, one of the greatest and oldest unions. For 75 years this union and its members had little, if any, trouble with employers, had very few strikes, customarily arbitrated differences, negatiated wage scales, and became known as one of the great democratic trade unions of the world. Yet this situation was entirely disrupted by the Taft-Hartley Act. The union was forbidden to negotiate wage scales, working conditions, and rules in the shop by reason of the Taft-Hartley Act, and strikes resulted in various parts of the Nation. Union printers previously steadily employed walked the streets jobless. Millions of dollars were lost to both employers and employees as a result of this reactionary law.

The Taft-Hartley Act is an antilabor act. This is the judgment of Maurice J. Tobin, Secretary of Labor. The Secretary calls attention in particular to one unfair labor practice written into the law, that management can go into court and get an injunction in 24 hours, whereas in the case of an unfair labor practice by management it would take at least 12 to 18 months to get an injunction under the law.

The Taft-Hartley Act is slanted against labor and makes it extremely difficult to organize those 12 to 15 million unorganized workers in the country, many of whom today work for sweatshop wages, and the law makes it most difficult for labor unions to preserve the gains they have made and for the unorganized to organize.

Now, I want to give you briefly a case that, to my mind, proves that the Taft-Hartley Act is, in fact and in its operation, what labor has said it is, "a slave labor act," a law conceived, designed and intended to break unions, to prevent genuine collective bargaining and to bring back the days of labor relations by arbitrary injunction, company unions, and finally the open shop.

This full course has not been run already for three reasons:

(1) The loyalty of workers to the unions they have formed and the officers they have elected, as proved by the results of NLRB elections which, under the undemocratic provisions of the Taft-Hartley Act, require, not a majority of those voting, but a majority of all those eligible to vote, to authorize a union shop.

(2) The fact that we have had substantially full employment resulting from an accumulated demand for goods, with the result that even antiunion employers have often preferred to keep in production rather than use all the weapons provided in the Taft-Hartley Act to weaken and break unions.

(3) Union members have taken the advice of the NLRB and the Supreme Court to seek relief from the Congress—from a new Congress, which they as citizens helped elect—and they have held their lines as members of unions. Let us repeal an act which workingmen and workingwomen believe, and with good reason, is aimed at the very life of their unions and at their own security and the welfare of their families and the Nation.

Let's look at this Pipe Machinery case to which I referred at the beginning of my remarks.

I have here a report of a case taken from page 1510, et seq., from 22 LRRM.

The report quotes this significant language from the October 13, 1948, decision of the National Labor Relations Board:

"The intervenor [International Association of Machinists] asserts that this [the application of sec. 9 (c) (3)] places such hazards upon the right to strike as to make the guarantee of that right in section 13 of the act a nullity. This contention, being directed to the desirability of the amendment contained in secion 9 (c) (3), should be directed to the Congress and not to this Board. As we pointed out in another connection, 'It is our duty to administer the law as written, not to pass upon the wisdom of its provisions.' "

This broad hint—going as far as any administrative agency might go in suggesting appeal to the Congress for relief—was made immediately after the Board had made this admission:

"* * * Section 9 (c) (3) places no limitation upon the right to strike although it may indeed discourage its exercise in some situations by denying the franchise to those strikers who lose their right to reinstatement."

How did the strikers at the Pipe Machinery Co. lose their right to reinstatement?

By the action of the employer, assisted by the Taft-Hartley Act, which allows strikebreakers to vote in NLRB elections while denying the strikers the right to vote.

Perhaps Governor Dewey had this in mind when in his labor speech at Pittsburgh last October 11 he asserted "the right of the worker to quit his job." In other words, under section 9 (c) (3) of the Taft-Hartley Act, it can happen, and it has happened, that if you strike you quit.

The workers at the Pipe Machinery Co. in Cleveland were represented by the International Association of Machinists. After trying for months by peaceful collective bargaining to negotiate a wage increase, they went on strike in February 1947—exercising a right which the Taft-Hartley Act affirms in theory in section 13 but, as the NLRB admits, denies in practice under section 9 (c) (3) as interpreted by the present Board.

The employer then hired strikebreakers and ran them into the plant, which resumed operations May 12, 1947. The strikebreakers thereupon formed an "independent" union and petitioned the NLRB for an election.

Now let's see how the strikebreakers became "permanent employees," how the strikers were held not to be entitled to reinstatement, and how, upon certification of the so-called independent union, the strike itself was transformed from a legal to an illegal strike and subject to injunctive action under section 10 (1) of the Taft-Hartley Act and the bona fide union subject to a damage suit.

I quote from the Board's decision of October 13, 1948:

"The strike began in February 1947 and the plant was closed down. It resumed operations on May 12, 1947. Thereafter it attempted to induce the strikers to return to work. On about June 9, 1947, the employer advised the strikers that if they did not return to work by June 13, new employees would be hired to fill the jobs available. It stated further that, 'Old employees who are returned to work after June 13 will not bump out newly hired employees who have been working prior to the time they ask to be returned to work.' The employer's personnel director testified that all new applicants for employment were informed that if they were hired, they would be hired as permanent and not as temporary employees.

"On August 22, 1947, the employees at work, including the replacements, were informed by the employer's vice president that they were hired as permanent employees and would not be replaced by strikers upon termination of the strike. The same assurances were given on November 17, 1947, by the employer's personnel manager to the employees then working. Of course, unilateral utterance of the word 'permanent' is not in itself determinative; the actual facts in every case must be carefully weighed. * * * Although the employer had a substantial number of applications from qualified applicants on file, only two employees were added to the pay roll between August 24, 1947, and March 7, 1948.

"There is no showing that any of the individuals currently on strike ever made an unconditional application for reinstatement.

"Under all of the above circumstances, we find that the replacement workers were hired as permanent employees, that they are eligible to vote, and that the strikers whom they replaced, as they are not entitled to reinstatement, are not eligible to vote."

Let me read again one sentence from that decision:

"There is no showing that any of the individuals currently on strike ever made an unconditional application for reinstatement."

In plain language, no member of the bona fide union, the International Association of Machinists, ever offered to become a strikebreaker. No union man ever offered to scab on his union brothers.

And yet there are men who will try to tell you that the Taft-Hartley Act is not an antilabor, antiunion, strike-breaking law in purpose and intent, in its provisions and in its application!

I tell you this law is wrong.

It is wrong in its assumption that workers are not loyal members of the unions they have formed and for which they have sacrificed much in order to establish some security on the job, some decency in working conditions, some measure of equality in bargaining power with employers, some measure of equity in the wages they receive. This has been proved by the overwhelming votes in NLRB elections, elections by secret ballot under the supervision of Federal employees of the NLRB. Members of unions again and again have been given votes of confidence and trust and burning loyalty. No one can deny that.

This law is wrong from beginning to end in attempting to substitute litigation for peaceful collective bargaining between workers and employers.

It is wrong in its premises, wrong in its methods and wrong in its results. It should be repealed.

Action for this Congress to take is to return to the Wagner Act, which has right in its premises, right in its purposes, right in its methods. Reenact that fair, just, successful law, with the amendments proposed in H. R. 2032, and we are on the road of progress, contentment, and tranquility.

Statement by Hon. Chester C. Gorski, a Representative in Congress From the State of New York

Although practically all segments of organized labor have demanded the repeal of the Taft-Hartley Act, and all true students of labor relations clearly recognize that this act must be repealed, some of the real evils of the act have not been brought to the attention of the public.

Some of those which have received publicity are as follows:

(1) The section of the act which provides for the conduct of elections to determine whether a majority of the eligible employees desire to authorize their union to enter into a contract with their employer, in which union membership is a condition of continued employment. This provision is covered in section 9 (e) of the act and is commonly known as the union-shop election section. The foes of labor in the enactment of this section apparently believed that there was a major segment of union membership which was dissatisfied with their unions and if given an opportunity would vote against union shop or union-security contracts. The history of the last 2 years has proven them wrong. The records of the National Labor Relations Board show that since the enactment of this act and until September 30, 1948, the Board has conducted 25,999 elections. Of this number, the unions have been successful and the majority of eligible employees have authorized the union to enter into such contracts in 25,378 of all the elections held. Of the votes cast in such elections 2,442,354 American workmen have voted, have shown that they are behind their unions 100 percent in demanding union security as part of their collective-bargaining agreement. Of course, the money and time expended by the Board in conducting these unnecessary elections have resulted in delay and interference with the other important work of the Board. The time and delay caused by the conduct of these elections have also interfered with and delayed collective bargaining in many plants. Certainly no one can argue that we should continue this futile, empty, and time-consuming proceeding which merely harasses and delays labor in seeking its just aims.

(2) Another very controversial part of the act is section 9 (f), (g), and (h) which require officers of labor organizations to file non-Communist affidavits and certain financial statements before they can use the services of the National Labor Relations Board. Certainly this section seems to unduly discriminate against labor unions. Congress in effect has said that before we will give this great segment of our population equal rights under the law, they must have a passport of good conduct. No such requirements exist for employers when they wish to use the Board's services. Labor is not in agreement as to what should be done to this secton. Certain unions have suggested that employers should be required to file similar affidavits, and also swear that they are not members of any Fascist or Nazi or Communist group which advocates overthrow of our form of government. Other unions desire that this entire section be eliminated. Other unions point out that although this section is discriminatory, it has aided in focusing a spotlight on the small number of Communists who had infiltrated into labor unions, and has assisted the non-Communist members of such unions in their effort to clean house. An examination of the record will show that this section has been used to advantage in many situations. Unions which have not been able to purge the fellow travelers and Communists have not been able to use the services of the National Labor Relations Board and have, therefore, been at a great disadvantage when they came in conflict with unions who

have filed their affidavits. Communistic-dominated unions cannot be placed on election ballots by the National Labor Relations Board. Consequently, a large number of locals and a tremendous number of individual members of unions, who have not been able to clean their house, have left such communistic unions to join unions which are in compliance with this section and can give to their members the benefits of the National Labor Relations Act and the services of the Board. Certainly in an organizing conflict between a complying and noncomplying union, the advantages all rest with the complying union since the other union cannot even participate in the election. Naturally, different unions will view this section of the law in different lights depending on the problems in their industry. This provision of the act should be amended after all segments of organized labor have had a chance to fully express their views.

The hidden gimmicks in the act—

(3) In amending the Wagner Act, the foes of labor slipped into the Taft-Hartley Act provisions which did not appear to be vicious on their face but were found in practice to be damaging to the cause of labor and to collective bargaining in general. An example of this is the rewording of section 9 (c) as it appeared in the Wagner Act. The new section prohibits the holding or directing of any election where the employer refuses to consent to an election until a full-dress hearing is held and an order issued by the Board. Under the Wagner Act, the Board interpreted section 9 (c) to mean that "prehearing" elections could be held even though the employer did not consent, if no serious questions such as the "appropriate bargaining unit" were involved. In other words, if the employer just refused to consent without any good reason, the Board went ahead and held the election and then conducted the formal hearing after the election was held. Anyone at all familiar with collective bargaining processes knows that the quickest way to kill a union-organizing campaign is by the use of delay and stalling tactics. If the Board must hold a formal hearing and then direct an election, a delay of 2 or 3 months must occur. As this section was rewritten or amended by the Taft-Hartley Act, the Board must hold a hearing before such an election could be directed. This has resulted in a number of disastrous strikes because employers were deliberately delaying the holding of such elections in any attempt to destroy a union before it could obtain legal recognition. An illustration of this occurred at the Goldblatt store located at Broadway and Fillmore, a prominent shopping area in Buffalo. The union requested the employer to agree to a consent election but the employer refused to do so. After the union had signed petitions for an election, the employer fired some of the union leaders and otherwise took advantage of the delay caused by its refusal to consent to an election, to question the employees about the union and to otheriwse attempt to intimidate or coerce the employees to get out of the union. The only course of action open to these employees in their efforts to protect their rights to collective barganing was to go out on strike. Although the strike continued for some weeks, the employer was adamant in its refusal to consent to any election and finally the employer canceled its lease and moved its store from Buffalo. This loss of business to Buffalo, the loss of jobs to these employees, and the financial loss to the company, could all have been avoided if the Board had been empowered to conduct a prehearing election and resolve the controversy, as it could have done under the Wagner Act.

(4) The Taft-Hartley Act also prohibits the Board from conducting an election if a previous election has been held within 12 months. This prohibition to representation elections applies to section 9 (c) (3) and to union-shop elections, 9 (e) (3). It can be readily seen how much an iron-clad prohibition would work a hardship and destroy employees' rights to collective bargaining in many cases. In effect this section means that if the union is unsuccessful in an election, the employees then are prohibited from receiving the rights of collective bargaining for a 12-month period. This rule holds true even though all of the employees may decide 6 months after the election is held that they want a different union to represent them. Certainly under such circumstances, the orderly processes of the act which were designed to be used in selection of a bargaining representative should not be denied to employees since the only alternative is to strike and to fight it out on the picket line. The purpose of this section is designed to eliminate the causes of labor disputes and under the wording of the section as it was in the Wagner Act, few strikes for recognition occurred. As the section now reads, it promotes strikes for recognition rather than prevents them.

STATEMENT OF HON. VITO MARCANTONIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ON BEHALF OF THE PROGRESSIVE PARTY

The position of the Progressive Party is that the Taft-Hartley Act must be repealed in its entirety and that the Wagner Act must be restored in its entirety to our statute books if we are to have a sound labor policy in the United States.

The Progressive Party is opposed to the administration bill because it does not realize the objective of restoring the Wagner Act. The administration bill, in our opinion, is a step in the right direction but it contains certain serious amendments to the Wagner Act which, in our view, are undesirable.

1. *The Wagner Act was the most important piece of legislation ever enacted in this country.*—Under its protection millions of American workers were able to resist the historically antiunion powerful employers' interests in this country and form labor organizations.

With the aid of the Wagner Act, union membership which had fallen from 4,000,000 in 1929 to 3,000,000 in 1933 was enabled by 1937 to reach a high of 7,000,000. By 1939 this figure reached 9,000,000. By 1945, 15,000,000 workers were organized and almost every large open-shop citadel had been leveled.

But the Wagner Act was not merely a benefit to labor and to labor unions by promoting collective bargaining, the Wagner Act enabled union members to restore our country's economy to a healthy level and vastly increased purchasing power.

Workers through their unions made up for many of the wage losses which they had suffered during the depression.

The great gains that working people made under the Wagner Act represented, however, only a small fraction of the ground they had lost since the beginning of the century.

Between 1920 and 1931 the share of the largest 5 percent of nonfinancial corporations in our net income increased from 78 to 87 percent. During the period in which the Wagner Act was in effect this percentage went down to 84 percent and workers, through their unions, achieved a higher share of the national income.

But it is important to bear in mind that only a small percentage of our total labor force enjoyed the benefits of unionism and self-organization under the Wagner Act. This was due to a large number of reasons, but the principal reason was the fact that the powerful employer groups in this country, typified by the NAM and the National Metal Trades Association, maintained a steady fight in the Halls of Congress, in the courts, and in the public press to frustrate the law, to prevent its effective operation, and to encourage employers to evade and destroy it. The story of the fight against the Wagner Act is a story which has been indelibly impressed upon the America of the late thirties. It is the story of strikebreaking, industrial espionage, industrial munitions, company unionism, the black list, and similar practices. A part of that story is reported in the hearings and reports of the La Follette-Thomas committee.

2. *The Taft-Hartley Act represents a triumph for those forces who through the years fought in vain to repeal the Wagner Act and to undermine its effective operation.*—The Taft-Hartley Act was designed to make it difficult to organize the unorganized workers. Bear in mind that in this country only a fourth of the entire organizable labor force has been organized. This is the lowest percentage of any comparable country on the face of the earth.

A second purpose of the Taft-Hartley Act was to break strikes. Any number of provisions were written into the law such as the provision giving the strikebreakers the right to vote in Labor Board elections, but not strikers. To make it easier for the employers to crush a strike, the law provides for not one but three different and distinct types of injunctions to be used of course primarily against unions. To put it another way, it was the purpose of the Taft-Hartley Act to force workers to take the employers "No" for an answer by stripping them of an effective means to resist.

Third, it was the purpose of the Taft-Hartley Act to destroy the militancy of existing trade-unions, to draw their teeth, to give employers a larger share in the selection of the bargaining agent and the manner of its functioning.

This was done through special concessions to company unions through the affidavit requirements which has as their purpose the dictation by Government of the leadership of labor unions and to various provisions granting employers, directly or indirectly, access to the machinery of the Board. The Taft-Hartley Act was not written in a vacuum. It was intended to place on labor a yoke. The figures show how well its purpose was achieved.

During the period in which the Taft-Hartley Act has been in effect real wages have drastically declined. In contrast, the power of corporate monopoly waxes greater. Corporate profits after taxes increased from 5 billions in 1939 and 10 billions at the peak of the war, in 1943, to 21 billions in 1948.

In addition, the relationship of corporate profits to wages has rapidly deteriorated with an increasing percentage of the national income going to profits and a steadily smaller percentage going to wages.

The slight correction which the Wagner Act had made in this relationship as compared to the ratio which had prevailed immediately prior to the Hoover depression has been completely lost. The Taft-Hartley Act has again made possible the depletion of purchasing power and increase of profits which inevitably spells depression. The Taft-Hartley Act is a depression statute. It must be repealed as one step in an over-all program to avert a threatening depression.

3. *The Progressive Party wishes to emphasize its fundamental objections to certain basic provisions of the Taft-Hartley Act which form the core of the act, and concerning which compromise means surrender.*—(*a*) *The affidavits.*—One of these basic provisions is section 9 (h) of the act. This provision denies to labor organizations and their members the facility to act if their officers fail to take an oath of political orthodoxy. This provision is unconstitutional because it deprives labor organizations, their officers and members, of the right of freedom of speech, thought, and assembly in violation of the first amendment.

It requires union officers to hold politically approved views if they are to remain officers. This is thought control in its purest form.

How can we boast of a free government if we refuse to recognize the right of workers and their leaders to determine their beliefs for themselves and to act on their beliefs? In a brief recently filed with the Supreme Court on behalf of the United Steelworkers and Philip Murray, its president, the characterization of this section is as follows:

"A more direct interference with the freedom of union members—freedom of speech, freedom of assembly, and freedom to engage in political activities is hard to imagine."

The brief also makes a point that this section is an unconstitutional interference with the freedom of union officers. The brief says:

"The principal purpose and effect of section 9 (h) is to prevent persons of designated political and economic views from serving as union officers. Thus the statutes strike directly at the freedom of belief, speech, and political activities of union officers. And persons who have exercised these constitutionally protected freedoms in a fashion inacceptable to Congress are, in consequence of their unorthodoxy, denied another right essential to the expression and effectuation of our beliefs—the right, if the membership agrees, to be an officer of a labor union. Thus they are excluded from the very positions in which they might give effective expression to their views—and that, of course, is why they are excluded."

This section has had the effect of inviting complying unions to raid noncomplying unions. This section does more than repress freedom of speech, thought, and assembly. It places in the lap of employers the power of determining who their employees' bargaining agent is to be by the simple device of refusing to deal with the so-called noncomplying union. An employer can throw his weight to another union which may not be the representative of the employees. He knows that in an election the noncomplying union will not appear on the ballot and he will to that extent determine for himself what union he will deal with. This grossly violates the provision of the act which purports to give employees free choice of a bargaining agent. How can there be free choice if one of the candidates is banished from the ballot?

This section also permits a violation indirectly of the ban in the statutes upon employer assistance of labor organizations. In other words, company unions. How can it be claimed that employer assistance is outlawed when by the simple act of refusing to deal with the union the employer may assist a rival organization with impunity in becoming a bargaining agent and thus foisting it upon the employees? Finally, the act fostered division and disruption in the organized labor movement. Complying unions have gained strength not from unorganized workers but from raids upon organizations which have refused to submit to the political restraints employed in section 9 (h).

Injunctions.—The so-called emergency injunction provisions of the Taft-Hartley Act are a danger to a free labor movement. Under these provisions the Government serves as an instrument of the employer in enjoining a strike for a period of 80 days. One does not have to be a labor expert to realize that this means in effect that the Government may force workers in providing industry to labor for the profit of their employers nor does one need to be a labor expert to realize that an 80-day injunction in many strike situations is as destructive as an 80-year injunction.

The plea that the injunctions may be obtained only in an emergency is a sham plea. In not one of the major strikes where injunctions were obtained, such as the longshoremen's strike, or maritime strike, or the coal strike, could it be said that a national paralysis prevailed.

The plea of emergency has always been the handmaiden of repression as the rise of fascism so well illustrates. Today we find a greater and greater resort to arguments of emergency to justify repression. At the moment we talk of cold war "emergency" and on the basis of this type of emergency we justify growing repression in the field of free speech, free press, and free assembly.

We wish to make it clear that we are also opposed to the administration bill because that bill seems to also create the basis for Presidential interference, through injunctions, with the right to strike. Any ambiguity on this score, has been clarified by Attorney General Clark's claim that the administration has the power and intends to exercise the power to obtain injunctions in so-called emergency situations. If we permit the pattern of injunctions to survive we will find that every strike will be designated in a routine manner as an emergency requiring the issuance of a strikebreaking injunction.

Employers' "free speech."—A third point which I think is important to emphasize involves the so-called employers' free-speech provisions of the Taft-Hartley Act. One of the lesser known features of the Taft-Hartley Act is the manner in which it has destroyed free industrial elections.

No labor statute can work if the workers are not free in elections to decide for themselves whether they are to have a bargaining agent and what labor organization is to be that bargaining agent. To an increasing extent, powerful employers of this country have taken over the Labor Board election machinery. They have justified this usurpation on the basis of the free-speech provisions of the Taft-Hartley Act. These employers do not appear to be troubled by the fact that the employees should be left free to choose their own bargaining agent. "Free speech" has become an employer weapon to alienate employees from labor unions or to influence their choice in favor of one and against another labor organization. Every day that the Taft-Hartley Act is on the books its evils multiply and its repressions become more unbearable to our workers. Speed is essential to wipe the Taft-Hartley Act off our books and to restore the Wagner Act. The modifications in the Wagner Act which the administration has proposed seriously interfere with the right to strike, the right to picket, and to engage in other concerted activity. Neither jurisdictional disputes nor secondary boycotts constitute such a national problem as to justify curtailing the basic rights of working people.

Restoration of the Wagner Act and the repeal of the Taft-Hartley Act is imperative in the interest of sound labor relations. It is also imperative in the interest of a healthy economy which is even now being threatened by declining real wages and growing unemployment.

STATEMENT OF HON. JOHN E. FOGARTY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

I appear before you today in a dual capacity—as a Member of Congress and as an active member of organized labor. In both capacities I earnestly plead for the immediate repeal of the Taft-Hartley law.

As a Member of Congress who ran on the Democratic platform in the last campaign I sincerely hope that we keep faith with the people who returned us to office. That platform was clear-cut in its promise to repeal the act. There has been no doubt of the decision of the people in this matter—not only in my own State of Rhode Island but throughout the entire Nation.

The greatest propaganda movement ever unleashed in this country has tried to sell the infamous Taft-Hartley law as one which would free union members from the shackles imposed upon them by their unscrupulous leaders. Through every medium possible, this falsehood has been repeated and repeated until it has worn thin. As a card-carrying member of organized labor, it gives me a great deal of pleasure to report that this program of falsity has fallen of its own weight. Labor, today, is not the gullible mass of yesteryear. Both individually and collectively it knows the real purpose of this law.

The laboring man knows that the actual intent of the Taft-Hartley law, although unpublicized and unadvertised, is the ultimate destruction of all organized labor. Born in the minds of confirmed labor haters, it was diabolically conceived to eventually relegate labor back to its old position of a commodity with no consideration for its dignity and well-being. That this must not prevail is the confirmed thought of all the American people as evidenced by their solid action in the recent election.

The time for action is now. The subject has been thoroughly discussed and analyzed for the past 2 years. Congress, itself, is guilty of procrastinating at a time when it should be taking affirmative action. There is no need for prolonged hearings or presentations. It is our duty to reflect the wishes of our people and I, for one, want the right to stand on the floor of the House and cast my vote with that thought in mind. In the light of these facts, therefore, I earnestly entreat the members of this committee to report a bill which will immediately repeal the Taft-Hartley law and reinstate the Wagner Act. Only through such action will the laboring force of this great country be assured that we have kept our trust with them.

STATEMENT OF HON. NEIL J. LINEHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

THE CLOSED SHOP—ITS IMPORTANCE TO LABOR

In any discussion of the measure involving organized labor, it is inevitable that the point dwelling on the "closed shop" principle must arise. For this "closed shop" element has become over the years in the evolution of unionization, such a part and parcel, and keystone of union labor stability, that it has not only earned recognition, but further, it has merited its right to continue to exist.

It is human nature to want to have "like accompany like"; so we can easily understand the desire to union members to insist that their fellow workers be union members also, and more than that, that the fellow worker not be employed unless he comes from union ranks. The world today is too overburdened with people addicted to the "hitch-hiking" attitude. The circumstances of a person's employment are largely determined by the status battled for and won by previous employees. A person who comes along after the benefits have been achieved is certainly lacking in judgment who does not seek to maintain them. Thus when a labor union has contended mightily for betterment of hours, wages, and working conditions, is it any wonder that they should ask to have all new employees come from within their own ranks?

Unions are not alone in subscribing to the closed-shop principle; indeed by far the largest group of employers using employees from such ranks, have enjoyed amicable relations and wholehearted cooperation where such relationships were engendered. The employers there do not have the burden of procuring or training the men for specialized work; discipline is established and centralized. Lastly a closer working relationship between employer and employee inures in the industry, which is reflected in the creation of finer goods or services.

The closed shop has only appeared in industries where a preparation period is necessary to fit the workers for efficient discharge of their responsibilities. To cite a few, we might list the electricians, plumbers, bricklayers, printers, and maritime activities, etc. The professions, medical, legal, and dental, all make use of the basic principle set out here, why should not the trades be afforded the equal opportunity?

In concluding I should like to emphasize that where employer and employee would agree on contracts based on the closed-shop principle, in the United States today, they would be accused of breaking the law; yet such conduct is unlawful we declare, not because it is bad in itself, but because it serves the interests of the few who wish to undermine the trade-union movement. By the very fury of the onslaught they manifest in their attacks, these few make clear the cornerstone importance of the closed shop, and its importance to, and safeguarding of, the entire trade-union movement.

STATEMENT BY HON. EDWARD A. GARMATZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND, IN SUPPORT OF H. R. 985, A BILL TO REPEAL THE TAFT-HARTLEY ACT

At the beginning of my testimony in support of H. R. 985, a bill to repeal the Taft-Hartley Act, I would like to thank the committee for giving me this opportunity to present my views. I shall try to make a brief statement of my position from a practical legislative viewpoint.

I believe the committee and the Congress are faced with two major problems in handling the Taft-Hartley Act: (1) Whether the Taft-Hartley Act should be repealed; and (2) what procedure should be followed in taking the appropriate legislative action.

REPEAL OF THE TAFT-HARTLEY ACT

As legislators, it is our duty to comply with the mandate of the people whenever there is a clear expression of public opinion. It is my strong belief that the recent election has furnished an adequate opportunity for testing public opinion on this subject. I am not going into the statistics on votes in various districts for the purpose of presenting a statistician's judgment on this question. It is clear from any experienced legislative viewpoint that the issue of the Taft-Hartley Act was before the people both in the Presidential and the congressional elections. The answer given by the people to the question is clear. They want the Taft-Hartley Act repealed, although a measure of reasonable regulation would undoubtedly secure public support. It is my understanding that organized labor recognizes this and has indicated its willingness to go along with reasonable regulation.

I wish to add a word about the effort of certain columnists and newspaper writers to go through all the election figures for the purpose of demonstrating that what happened did not really happen. I believe those efforts, which may be intended for public consumption, sometimes have a tendency to mislead even the authors. In this connection I think it might be well to note that, ex-Congressman Fred A. Hartley Jr., in his book Our New National Labor Policy, stated that:

"After a year, however, a new fact is emerging from the confusion of politics. It is now evident that supporting the new labor law will not react politically against candidates. Actually, it now appears that candidates who voted for the Taft-Hartley Act can take credit for assisting in the development of a sane labor policy for the Nation, and will receive the approval of the electorate for that action" (pp. 131–132).

I do not cite this statement to show that Mr. Hartley's predictions were far from accurate nor do I believe that this committee should be guided in its deliberations by consideration of personal political favor or disfavor. It is the duty of this committee to recommend legislation which will be in the interest of the Nation and of all its component groups. It is also the duty of this committee to take into account the expressed will of the people and, as I have stated previously, I think we have had a clean-cut expression of the public desire to repeal the Taft-Hartley Act.

There is good reason for the expression of the public will. Even management is coming forward now with statements of displeasure with the Taft-Hartley Act. I refer in particular to the recent article in Business Week entitled "The Trend," dated December 18, 1948. The substance of the Business Week article reads as follows:

"What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate from one which could destroy.

"Given a few million unemployed in America, given an Administration in Washington which was not prounion—and the Taft-Hartley Act conceivably could wreck the labor movement.

"These are the provisions that could do it: (1) Picketing can be restrained by injunction; (2) employers can petition for a collective-bargaining election; (3) strikers can be held ineligible to vote—while the strike replacements cast the only ballots; and (4) if the outcome of this is a no-union vote, the Government must certify and enforce it.

"Any time there is a surplus labor pool from which an employer can hire at least token strike replacements, these four provisions, linked together, presumably can destroy a union.

"By going that far, the law defeated itself. It was more than a pendulum swing away from the Wagner Act. As a result, not only will the potentially destructive features of the law go, but also some of its constructive aspects will be lost in the reaction."

There are many other specific reasons which can be given to illustrate the main contention that the Taft-Hartley Act went too far but I am sure you will get such detailed evidence from the experts in the labor-law field who will undoubtedly testify before the committee. As I have reviewed the enactment of the Taft-Hartley law and the experiences under it, I have come to the conclusion that the draftsmen of this law tried to do entirely too much. There were problems in the labor-law field which merited consideration by the Congress. The draftsmen, however, went far beyond these problems and took advantage of the opportunity which had been created to impose on American labor and management a most detailed system of regulation which was thoroughly inconsistent with our free-enterprise system. I have been told by many of my constituents that persons subject to the law, both on the labor and management sides, who were conscientiously interested in operating in a manner which would not violate the law, found themselves thoroughly enmeshed in legal entanglements. They could not handle even the simpler matters of day-to-day labor relationships without consulting legal counsel who, in turn, were at a loss to render definite opinions because of the intricacies and complexities of the legislation.

It has also come to my attention that the draftsmen formulated an extremely complicated legislative history of the act which has further increased its complexities. I believe that any experienced legislator who reads the conference report carefully will see what I mean. There are many references to sections of the act and previous cases decided by the Board and the courts which would have an undoubted effect on interpretations of provisions of the statute. Actually it is not possible to understand the statute withou having a thorough knowledge of its complicated legislative history. As an illustration of this point, I refer to the provision of the Taft-Hartley Act relating to the "preponderance of testimony" rule. There is an interesting article in the August 1947 issue of the American Bar Association Journal written by the counsel of the Chrysler Corp. which gives an explanation of this technical subject. A point which is even of greater interest than the technicalities of this matter is the conclusion of this gentleman who, according to the journal, is charged with some responsibility for the drafting of the act, that the technical procedural provisions of the law are perhaps of "greater general importance" than any other provision of this law.

As we all know, President Truman, in his speech supporting a veto, charged that the Taft-Hartley Act was much harsher than the public had any idea. This charge has now been confirmed by the admission of Mr. Hartley in his book. I am attaching an excerpt from pages 75 to 77 of his book which sets forth his position on the matter. I want to call your special attention to that paragraph in which he states as follows:

"We had to create the general impression that most of the original Hartley bill had been discarded by the conferees in favor of the so-called milder provisions of Taft's bill."

PROCEDURE TO REPEAL THE TAFT-HARTLEY ACT

I strongly urge that the Congress make a complete departure from the legislative practices which surrounded the enactment of the Taft-Hartley law. I believe we should be open and forthright and that we should place all the cards on the table. There is no need for secrecy or complicated maneuvers. Certainly we want the public to know exactly what is being legislated.

It seems to me that the only effective way of handling the problem is to return the legislative situation to where it was before the Taft-Hartley Act became law even though reasonable amendments to the Wagner Act may be advisable. Such objective cannot be accomplished by trying to amend the Taft-Hartley Act. The complexities of this law are such that no expert could give any guaranty as to what is being left in the law and what is being taken out. Certainly the public would not be able to follow our discussions on the subject. A return of the law to the situation which existed prior to June 23, 1947, will permit us all to know exactly where we stand.

After such action has been taken we could then legislate intelligently on the few subjects which require attention. That is the reason why my bill proposes a repeal of the Taft-Hartley Act and reenactment of the Wagner Act. The question of amendments can then be taken up and given proper consideration. Such procedure will have an additional advantage of eliminating the confusion which now exists for the responsible leaders of labor and management. At the present time the Taft-Hartley Act, although completely discredited by the election, is still on the books. With the imminent prospect of repeal, however, the affected parties are unable to plan their relationships on a firm foundation. They do not know whether to proceed on the assumption that the Taft-Hartley Act will be the law or whether to proceed on the opposite assumption. As the result, it is most difficult for them to handle the collective-bargaining relationships. Quick action of repeal would eliminate this confusion.

It may be urged that we cannot take the risk of removing the Taft-Hartley Act from the books before a substitute bill has been enacted into law but I do not share this view personally. It seems to me that the Nation did not founder during the many years when the Wagner Act was on the books and that we could return to that situation for the short period required to enact reasonable amendments to that act.

[Excerpt from Mr. Hartley's book, Our New National Labor Policy]

"The conference on the measure went on for three busy weeks.

"The Senate passed its version of H. R. 3020, my bill, on May 13. Three weeks later, on June 3, I reported the combined Taft-Hartley bill to the House of Representatives.

"Our strategy at that time was so simple as to be almost transparent.

"We had to retain as much of the House measure as we could without jeopardizing the final two-thirds majority in the Senate.

"As the situation developed, the conference became a battle of nerves, and more than that, a battle of public relations.

"We had to create the general impression that most of the original Hartley bill had been discarded by the conferees in favor of the so-called milder provisions of Taft's bill.

"The press of the country did an excellent job in presenting the major differences between the two measures. In contrasting the two versions an impression had been created that the Senate bill was weak, confused, and inadequate. More than one Member of the House was to approach me during the 3 weeks of conference and urge that I insist on particular provisions of the House bill 'at all costs.' Other Members took almost opposite views.

"Senator Taft was well aware of the sensitive nature of the situation in the Senate. I am convinced, as was Senator Taft at the time, that many Senators who supported the conference measure were still on the fence during the later conference and could easily have been lost to the opposition.

"The House of Representatives was proud of the Hartley bill. Its major provisions had been considered many times and represented the results of many years of effort. While I did not have the same problem as Senator Taft, it was necessary that I consider the desires of the great House majority in favor of the Hartley bill. Too many concessions to the Senate would have reduced the margin of approval for the conference bill in the House, possibly not below the two-thirds margin, but sufficiently to affect the legislative sentiment then prevalent on the Hill.

"What I wanted, and succeeded in getting, was to record ever-increasing majorities in the House as a means of encouraging our cosponsors in the Senate.

"Anticipating a certain amount of criticism when I took the conference bill to the House floor, I opened the conference session by publicly announcing that I intended to make certain concessions at once.

"This was an unusual step.

"Conference managers for the two Houses usually maintain stoutly that their versions of legislation are the better, and that they must insist on every provision approved by their respective bodies.

"The Taft-Hartley bill required unusual treatment.

"Too many weeks and months of effort by too many people had gone into its creation for the personal feelings of any of us to be considered.

"The recorded vote in the Senate against industry-wide bargaining prohibitions certainly dictated my course in this respect. Similarly, the Senate had shown clearly that it wanted no part in restoring the rights of private injunction in labor disputes. It was obvious to me that two-thirds of the Senate had no intention of approving a measure conaining those particular provisions, for this would have required many Senators to reverse announced positions. Such reversals are not easy.

"Consequently, even before the conference opened I announced that the House would not insist on the provisions banning industry-wide bargaining, nor the right of private injunctions against labor abuse.

"Criticism was immediate.

"I was pictured as abandoning the most essential sections of the House bill, and as succumbing to labor union pressures.

"Such criticism was all right with me.

"First. I had conceded nothing that wasn't already lost.

"Second. It contributed to the public impression that the seemingly milder Senate bill would determine the general outlines of the final bill.

"Third. It gave my critics time to cool off before the conference bill was to come up for its House vote.

"*Since the passage of the Taft-Hartley Act I have had no opportunity to discuss the conference measure and to point out how much of the House bill was retained in the act, in spite of the general impression to the contrary.*

"*The facts are that the Hartley bill set the general outlines of the final Taft-Hartley Act, established its scope, and dictated the final provisions in a majority of instances*" (pp. 75–77).

STATEMENT BY HON. JAMES V. BUCKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

The people in America today are interested in what we as duly elected representatives in the Congress of the United States are doing. One of the most important pieces of legislation ever to come before this Congress, or any other Congress, is the bill now before a committee to replace and repeal the Taft-Hartley Act. This is one of the most important matters facing Congress today. Our entire society is connected to and will be benefited by the outright repeal of the Taft-Hartley Act. Society today senses the responsibility of good social relationships between labor annd management. The mandate of the people in the last election is evidence of their growing sense of responsibility toward the mutual problems which face labor and management today.

"A lasting national labor policy," says Secretary of Labor Tobin, "can be founded only upon understanding and justice." In order to give sense and understanding to Secretary Tobin's statement, it is necessary to restore the sound, practical, and efficient working machinery of the Wagner Act of 1935. It is the goal in this country to bring about harmonious relationships between labor and management. This can only be done by encouraging collective bargaining, and ultimately and finally, through cooperation between labor and management, which will in turn bring about peaceful relationships. This can only be done by repeal of the Taft-Hartley Act. The differences between labor and management do not arise because of labor's desire to take over the job of running industry, but labor desires only an efficient management with the right of collective bargaining reserved to themselves by which they may receive the just deserts of their efforts.

Even employers and powerful industrial interests opposed the Taft-Hartley Act, and many employers refused to obey it. Labor has a right to work shoulder to shoulder with each other and to carry on relationships with management without being fettered or enslaved in any way or manner by legislation which causes or tends to cause dissension or growing unrest between labor and management. The Wagner Act was founded upon the principles that the average workman in the United States could not adequately protect himself when dealing with large powerful employers individually with respect to wages, number of hours per week to be worked, length of employment, and other conditions of employment incidental thereto. The Wagner Act was predicated upon the thesis that men would find greater freedom and security in their relationships with management if they dealt collectively with the employers by and through unions of their own choosing. The Wagner Act recognized the fact that the main reason unions were weak in the great mass production industries of the country was because most workmen were afraid to join them in fear that they would lose their place of employment. It was a common practice for years prior to 1933 for many employers to impose upon their employees the "yellow-dog contract." Under this kind of a contract, workmen were given jobs only on condition that they would not join a union or talk with union organizers. At that time, men signed these contracts because they had no alternative. They needed money badly to support their families, and rather than let their families starve, they were forced to work under these conditions. The Wagner Act attempted to remedy this. It said that it was an unfair labor practice for an employer to discriminate or discharge a worker because of his active participation or membership in a labor union. The Wagner Act further provided that if a majority of the workers chose a certain union to represent them after holding a free and fair election, that it was then the duty of management to sit down with the chosen and duly elected representatives of the workmen and bargain collectively with them, and attempt at all times by negotiation to reach an agreement. Under the Wagner Act the employers were left free to reject any and all of the unions' terms; it merely provided for negotiation to take place.

The repeal of the Taft-Hartley law is, in my opinion, as I said before, one of the most vital questions before the Congress today, because the voters in this last election were asked to choose between the principles embodied in the Wagner Act of 1935 and those of the Taft-Hartley law passed by the Eightieth Congress in 1947, and as you will remember in practically every contest in which this was an issue, the voters chose the Wagner Act and rejected the Taft-Hartley law. We who believe that elections are basic guides of public policies are trying to carry out the people's will. We are trying to do so in the face of attempts in some quarters to so confuse the voters with distinctions and technicalities that they will be unable to see what is at stake in the present Senate hearings on this labor bill. The Wagner Act gave the laboring man the right to collective bargaining, and the Taft-Hartley law upon its passage abolished those rights, depriving labor of all of its gains for the past 16 years. The Taft-Hartley law as it now stands, forbids the so-called closed shop, even though the workers want it and the employers are willing to accept. It prevents the workers from even asking for the union shop unless they had won an election permitting them to do so. The Taft-Hartley law has made it possible for employers to break unions and destroy collective bargaining. The Taft-Hartley law by outlawing all forms of secondary boycots, compells members of a union to work on struck goods coming from or destined for another plant where employees are on strike. The Taft-Hartley law also makes unions liable financially for the acts of their so-called agents, even though a union has never approved or ratified the acts in question. These are only a few of the crucial weaknesses of the Taft-Hartley law. In addition, it lays down such a series of legal requirements and prohibitions that it is impossible to determine just what the legal rights and duties of unions actually are.

Labor is entitled to and must have its full share of the profits and progress of industry. This is a system that has made America great. It is the only system which will keep us a progressive people. The unjust crippling of labor with such a law as the Taft-Hartley law retards the onward march of America.

I, as a Member of the Eighty-first Congress, am in favor of and will vote for the outright repeal of the Taft-Hartley law.

STATEMENT BY HON. W. M. (DON.) WHEELER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, it is a pleasure for me to appear before your subcommittee to present my views on the important labor-management relations legislation now under consideration. Since this legislation has a definite effect and impact upon every man, woman, and child in the United States, I feel that it is my duty to make my views on this subject known to the committee.

It is extremely doubtful if there has ever been a perfect law enacted. No law will please everyone. However, it is up to Congress to enact a labor-management relations law that will be as perfect as human intelligence, understanding, and experience can create. It must be fair and equitable to both labor and management. If either side is given rights under this law, then it must be given the responsibility which must necessarily accompany those rights.

The Labor-Management Relations Act of 1947 probably isn't a perfect law, however, it is my personal opinion and observation that the basic provisions of this law are very sound, are in the best interests of the general public welfare and should certainly be incorporated into any labor-management relations legislation that wil lbe reported out by the House Committee on Education and Labor. These basic provisions are as follows:

(1) The guarantee of a union's right to strike except in strikes that would affect the health and security of the general public. It should be recognized that the strike is the only weapon a union has against the resources of management

in securing an equitable work contract for its members. This right to strike should be guarded jealously and used wisely by those possessing the right to strike. However, it is my sincere conviction that the health, security, and general welfare of the public is paramount to any individual or group interest and that no union or any other group should have the right to endanger the public health or security by a strike or any other method. Therefore, it is imperative that the Government have the authority to intervene and take what steps may be necessary to provide sufficient protection for the health and security of the general public.

(2) In order to use the facilities of the National Labor Relations Board, the officers of unions must file an affidavit stating that they are not members of the Communist Party nor a party that believes in the overthrow of the United States Government. I personally don't see how any American could object to signing a statement that he is not a Communist. I had to sign such a statement and every other Government employee has to do the same. To me, it is a privilege and a pleasure to sign a statement proclaiming my loyalty to my native country. It seems that union officials should equally be delighted to express their loyalty to their Government. In order to make the law more fair and equitable, I suggest that this provision be expanded to require that the employer also be required to sign a statement that he is not a Communist or a Fascist. This suggested change should meet most union objections in this section.

(3) Jurisdictional strikes should continue to be outlawed. I can see no earthly reason why an innocent employer should be penalized simply because two unions can't get together peacefully and decide which union is to do a certain job in the employer's place of business. Mr. William Green, president of the American Federation of Labor and one of the great labor leaders of our time, couldn't justify jurisdictional strikes when he was before this committee 2 years ago.

(4) Secondary boycotts should continue to be outlawed. It is inherently unfair for a third party, not a party to the principal dispute, to be injured by the action of a union on strike for recognition or economic reasons.

(5) Management should not be compelled to bargain with supervisory employees. It is an old and fundamental axiom of law which states, "no man can serve two masters." It is readily seen that foremen or other supervisory employees cannot enforce company rules and regulations among employees and at the same time represent them at the bargaining table. Foremen are the lowest echelon of management and are in direct contact with the employees. It is absolutely necessary that management have the loyalty and integrity of the supervisory employees at all times in order to maintain efficient operations and morale.

(6) The union-shop-provision must be continued. The present law allows an employee to exercise his own personal discretion as to whether or not he wishes to join the union. It is his right as an American citizen to refrain from joining a union if he thinks it is in his best interests not to join. The closed shop of the Wagner Act did not respect this right of the employee. Joining a union should not be a prerequisite to allowing a man to go to work. Experience has shown that in many cases the closed shop has been used to interfere with political freedom, to suppress criticism of union activities, and to punish because of personal dislikes of union officials. Under the union-shop provision the worker is entitled to join the union upon payment of the regular initiation fees and dues as provided by the union constitution and he cannot be expelled from the union except for failing to pay his dues. I believe that this latter provision should be changed to allow expulsion from the union when it has been proven that the union member is a member of the Communist Party or other subversive organization. A member so expelled should have the protection of a review by a court or impartial board.

(7) Both labor and management should be obligated to bargain in good faith. To provide that one side be obligated to bargain in good faith and exempt the other is manifestly unfair. Both sides should have equal duties and obligations to settle their dispute at the bargaining table. The Wagner Act made it an unfair practice for management to refuse to bargain but imposed no such obligation on the union. Since it takes two sides to make a bargain, it is essential that both sides have the same duties and legal obligations.

(8) Both labor and management should have the right of free speech among the employees.

It is not a condition of slave labor for management to present its side of the case to its employees. The term "free speech," however, should not be confused with coercion and intimidation and any coercive or threatening action on the part of either labor or management should not be allowed.

(9) Both labor and management should live up to their contracts and should be responsible for any breaches of their contracts.

Since a work contract represents the meeting of the minds of the union members and management and conveys in writing the working conditions, hours, rate of pay, etc., it is an important instrument and one on which both sides should be able to rely with the utmost confidence. If a breach of the contract should result in injury to one of the parties to the contract, then that party should have the right to redress and damages. The present law simply makes the union equally responsible with management for living up to the terms of its contract agreements.

It is impossible for me in this short time to go into the details of the present law and I have, out of necessity, confined myself to the points of the problem now under consideration which I think are outstanding. I would like to point out that President Truman, himself, in his last State of the Union message, asked that jurisdictional strikes, secondary boycotts, and strikes affecting the public health or interests be prohibited in any labor-management legislation enacted by the Eighty-first Congress.

In doing so he recognized the fact that there are some labor practices permitted by the Wagner Act which are not conducive to the best labor-management relations.

It is my earnest belief that the Government should do everything it can to encourege collective bargaining between unions and management because there are few problems that can't be worked out around the bargaining table provided both sides are sincere in their efforts. This country needs strong labor unions and it needs good, strong, healthy management, for both are essential to our continued economic prosperity. The purpose of any labor-management relations legislation should be to prevent unfair actions by either side and to insure that neither labor nor management shall be given any arbitrary advantage over the other in its fight for economic survival.

In conclusion, I earnestly request that the committee consider carefully the points I have outlined above when reporting out a new Labor-Management Relations Act.

STATEMENT BY HON. J. FRANK WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I want to take this opportunity to enter in the record of the hearings held by the House Subcommittee on Education and Labor my views on labor-management relations. My views are well known to the people of my district as I ran and was elected to the Congress of the United States on a platform which contained a six-point labor program many of which points are included in the Labor Relations Act of 1947 for which I voted.

I am a friend of the laboring man. I shall always defend his right to strike and his right to bargain collectively, which collective-bargaining contracts must be equally honored by labor as well as management.

I shall always defend the right of the American laboring man to work for the employer of his choice without fear of intimidation and without tribute to anyone.

I believe that the rights of the laboring man should be protected in that he should not be compelled to join a union in order to obtain employment and that an employer should be able to hire the necessary skilled workers and not be forced to employ those workers only who belong to a particular union.

Labor laws should not only protect the employee against unfair practices by either unions and management but employers and employees alike should be allowed freedom in the expression of their viewpoints and thoughts on employee relations problems to the end that some workable and beneficial plan can be evolved in the best interests of all concerned.

The President of the United States should have the right under law to protect the health and safety of the Nation by delaying through a court of law any strike which would cause a national emergency jeopardizing the general welfare of our country.

Under existing law, companies are required to make appropriate reports to owners and to the Government and it is only reasonable and fair to require under law that unions make appropriate reports to members and to the Government.

Union contributions to political campaigns must be limited in the same way that contributions by corporations are limited. The stockholders of a corporation deserve protection from flagrant misuse of their money and by law the American workingman should be protected from flagrant misuse of his hard-earned union dues. The American workingman deserves this greatly needed protection at least as much as do the Nation's stockholders.

Unions should be made to incorporate so that they can be held equally responsible for violations of contracts and other illegal acts. Equal rights demand equal responsibility and we cannot advance any further industrially if complete responsibility in all contracts rests entirely on one side.

Combinations of unions should be subject to the antitrust laws just like other combinations of businesses. I say that we can never have permanent industrial security in this country as long as laws permit the power of any individual or individuals to paralyze the Nation's industry on their own initiative and the only way to avoid this threat is to have unions as well as corporations made subject to the Federal antitrust laws.

Jurisdictional strikes, secondary boycotts, and "feather bedding" should be made illegal and prohibited forever by law.

It is my belief that union officials as well as company officials should be required to swear that they were not Communists or Fascists or members of any party or organization which aids or plans to overthrow the United States Government by force or violence.

It would be difficult for foremen and other supervisors, who are responsible to management as well as to the workers under them, to properly perform their duties to all if they are permitted to have unions of their own, and, therefore, I am opposed to allowing bargaining for supervisors by unions.

When a worker is out on an economic strike, one not involving any unfair labor practice, and he is replaced by another worker, it would hardly be practicable for the worker who is out on strike to be permitted to vote in an election to determine what union will represent the workers.

As I stated above, I voted for the Labor Relations Act of 1947, the so-called Taft-Hartley law, and I also voted to override the President's veto as did a large majority of the Members of Congress. I have carefully watched the operation of this law since its enactment and I believe it has worked well and that labor-management relations in this country have been at their best since its enactment. It may be that after several years some minor amendments may be necessary. If so, I would give such amendments fair and impartial consideration in the light of the facts and if I believed such revisions necessary, I would not hesitate to vote for them.

In my opinion, the Labor Relations Act of 1947 is in the best interests of the laboring man as well as the general public welfare and believing this, I cannot vote for its repeal or for the presently proposed labor legislation reported by the Committee on Education and Labor to the House of Representatives for passage.

STATEMENT OF HON. THOMAS J. LANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS, IN SUPPORT OF H. R. 2032

Mr. Chairman and members of the committee, I want to go on record as favoring H. R. 2032, which is a bill to repeal the Labor-Management Relations Act, 1947, to reenact the National Labor Relations Act of 1935, and for other purposes.

The climate most favorable to the real settlement of industrial disputes is one in which labor and management work out a compromise without interference.

This is the voluntary, mature, and responsible way, free from the heavy hand of Government.

Someday we shall have to define the limits of Government before it becomes the lord and master of all our actions and perhaps of our thoughts. We shall have to stress and encourage those voluntary groupings by which people compose their differences in order to forestall the encroachments of a Government that just grows and grows until it chokes out all freedom of compact.

A true constitution has its roots in the people, developing from their traditions and customs as they, through experience, have evolved practical ways of adjusting differences.

From this common law has come the written law of our statute books. This is the process of social organization—at least it is so, or intended to be so—in a democracy.

In a totalitarian state, by way of contrast, a constitution is imposed from above. There are forced solutions, accepted for the moment because there is no alternative.

Behind the lip service to arbitrary law, there is discontent. The people have not participated in the making of such law. It is not representative of them.

In the present discussion concerning the formulation of a labor-management relations act which will help the two principal parties of an industrial dispute to reach an understanding, a third consideration—that of the public interest—, has been injected.

Neither management nor labor is without conscience. From their experience of the past 20 years, both have learned that one cannot have progress without the other, and that one cannot prosper at the expense of the other. And the good will of the public is important to both.

In our efforts as one nation to find basic security for all our people without sacrifice of our fundamental liberties we are adopting a voluntary form of collective bargaining.

To cry "havoc" at this statement is only to deceive ourselves.

Look at the various economic controls exercised by our Government today, and authorized by a Congress representative of the people.

Consider the range and meaning of the social-security program which will in our time embrace every American. To have mentioned such a possibility 25 years ago would have been considered as heresy and would have raised doubts concerning the sanity of the individual who dared to suggest such a revolutionary step.

Today it is regarded as a necessity. Both major political parties are pledged to increase the coverage and the benefits of old-age insurance and assistance.

Take another pressing problem, that of national health. It was not so long ago that the medical profession opposed voluntary health insurance. Now they warmly advocate such group cooperation to head off compulsory health insurance and Government control.

With these examples before us, we should go slowly on legislation which would lead to the compulsory arbitration of industrial disputes. If government should acquire too much power in the determination of such problems, the freedom of management and labor to negotiate would be restricted, if not eliminated. Government would be the sole judge, and we would be on the road toward the all-powerful state.

I contend that the Taft-Hartley Act is a step in that direction. I am going to vote for its repeal. My present concern is that it may be repealed by name, but that its substance may be retained in another bill which purports to be a new and different bill, but which is only a rephrasing of Taft-Hartley, couched in disarming language.

There is no basis for the argument that the Federal Government should intervene to stop a local strike by the exercise of arbitrary power. For work stoppages which constitute a national emergency, under the Taft-Hartley law, the President, after studying the report of a fact-finding board, can direct that the Government seek an injunction to block a strike, or decide against that course.

The injunction can stay in effect up to 80 days. It occurs to me that this is a one-sided restriction on labor, depriving it completely of its only recourse. There is no equivalent or balancing compulsion exerted against management.

Seeing the cards thus stacked against labor, it is likely that management, in some instances, will take advantage of it. Just by sitting tight and going through the motions of the bargaining process they can defeat labor.

When it happens once, there is injustice. When it happes several times, the whole process of collective bargaining breaks down.

Under such circumstances, the Government abandons its role of conciliator and, in effect, sides with management. Even before a dispute arises, Government says that it will bear down on labor singly and exclusively by enjoining labor's right to strike. There is no thought or expectancy of management going on strike. The provision concerning injunctions is therefore aimed at labor and labor alone.

Collective bargainng has no chance to function in such a prejudiced atmosphere.

It is a retreat from the development of that industrial democracy which is necessary if our way of life is to survive.

I maintain that we should encourage the collective-bargaining process, with a minimum of Government interference, because this is consistent with the American tradition of individual and group responsibility.

By bringing labor and management together around the conference table, mutual suspicions tend to dissolve and old habits of thought are reexamined in the light of mutual interest. No longer is management solely concerned with the welfare of the enterprise. In turn, the horizons of union leadership have widened. Both are beginning to sense that they are partners in the business. Most unions now understand that the security of their members depends upon the welfare of the business. The action of the garment workers in deciding not to seek another wage increase, is a case in point.

They realize that, under present conditions, such a move would weaken the competitive position of the clothing industry and result in unemployment.

Some management representatives believe in the continuance of management prerogatives. Others take a static view and prefer to maintain the present set-up. There are many others, however, who understand the fluid character of the collective-bargaining idea.

It is a living organism which must grow and mature to prove that democracy can make the necessary social and economic adjustments to a developing technology without reducing mankind to a machine-like existence as pawns of an all-enveloping state.

They have faith that collective bargaining will survive the passing uncertainties of its growth and develop to the point where trade unions play an increasingly important part in areas which are presently considered as the exclusive province of management.

Instances of union-management cooperation in matters relating to the advancement or survival of the enterprise in which both have a real interest have not been given the recognition they deserve.

I refer to the 500 companies which have adopted the multiple-management experiment, or the setting up of three subordinate boards of directors, one apiece for junior executives, factory workers, and sales.

Ideas agreed upon unanimously by the junior boards have to be given serious consideration by the regular board. Management gets its problems across to the workers. The workers' problems, in turn, reach the management quickly, dissolving the artificial tensions of the past where management and labor were regarded as natural antagonists, instead of partners both necessary to the success of the enterprise.

I also refer to those occasions where clothing workers' union have made financial loans to enterprises which were in difficult straits.

It is the voluntary nature of collective bargaining which develops the favorable climate of gradual understanding and cooperation without interference from a third party.

It is unfortunate that the many cases which prove this have not been given as much publicity as those instances where the parties have failed to reach an understanding.

We are fully informed concerning the sensational divorces in this country, but we are not given the positive and constructive story of the millions of marriages which are succeeding.

By way of analogy, I contend that the major and responsible virtue of the collective-bargainng process is that it provides an opportunity for the private parties immediately concerned to work out their own answers to their mutual problems.

The postwar hysteria engendered by strikes obscures the fact that the mass of union membership is a major element of the consuming public, and overlooks the concern for the broad aspects of national welfare which is to be found in the conduct of collective-bargaining negotiations and in the legislative programs put forward and diligently supported by the CIO and the AFL.

It is significant that the conduct of many negotiations has reflected public pressures. There is increasing evidence that management and labor consider the effects of their actions upon the public.

The Taft-Hartley law was brought about through the tendency of the public to place the burden for more responsible action on the unions rather than management.

To counter this, the unions conducted a broad information program, designed to correct the imbalance. It is safe to say that this changed the composition of Congress to the extent that the Taft-Hartley law is now up for repeal.

The administration bill seeks to eliminate many of its provisions, including:

The ban on the closed shop.

The right of employees to refrain from union activities and be free from union coercion.

The ban on strikes by Federal employees.

The provision relieving employers of a duty to bargain concerning foremen.

The powers of the Labor Board's general counsel to have sole charge of the investigation and prosecution of cases and to seek injunctions in unfair labor practice cases.

The non-Communist provision requiring union officers to file affidavits for access to the Labor Board.

The ban on union political spending.

And the requirement for unions to bargain in good faith.

Steps for dealing with "national emergency" strikes affecting the public welfare, under the administration bill, provide that:

1. The President would issue a proclamation saying the public interest is affected by a dispute, and asking that there be no work stoppage.

2. The President would appoint an emergency board to investigate. The Board would report its findings and recommendations in 25 days. The disputants would be asked to refrain from a work stoppage another 5 days.

3. The Government would rely on acceptance of these recommendations. There is no provision in the bill for forcing acceptance of, or for a court injunction to block a strike.

This is in line with the Wagner Act, which should be restored, an act which, in the words of Leon Keyserling, and I quote: "was pointed toward more than strengthening labor or bettering its economic position. It was founded on the proposition that the whole economy would prosper through a better distribution of the Nation's goods. It also evaluated collective bargaining as an essential attribute of a free society and as they only alternative to an intensely centralized economy in the modern industrial state."

The Wagner Act was a simple law which restricted Government intervention to a minimum. The Taft-Hartley Act covers the whole field and pushes Government right into the middle of the collective-bargaining process, where it doesn't belong.

This is dangerous. It weakens that voluntary quality without which there cannot be collective bargaining in the democratic sense of the word.

The Taft-Hartley Act, by prohibiting the closed shop, by dictating the provisions of a union shop, and by the limitation of health and welfare provisions, is an attempt to undermine progress by those who believe in feudalism.

The extensive use of injunctions, employed so often in the past to crush the labor-union movement, has the effect of giving to the National Labor Relations Board and the courts, a decisive role in the collective-bargaining process.

It must be repudiated by repeal of the Taft-Hartley Act and by reenactment of the Wagner Act.

Responsive only to public opinion, labor and management need the opportunity to work out the collective-bargaining experiment to its full realization. Through this they will fashion a free people's solution to the modern industrial problems which Fascists and Communists would solve with iron controls.

The issue is not one of labor versus management.

The issue is freedom or dictatorship, with labor, management, and the public working for the American way.

STATEMENT BY HON. LOUIS B. HELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, URGING OUTRIGHT REPEAL OF THE TAFT-HARTLEY LAW

The encouragement and promotion of genuine and free collective bargaining should be the primary objective in the formulation of a national labor policy. Mutually satisfactory bargaining arrangements are indispensable to the attainment and maintenance of an era of industrial peace. With these objectives in mind, it is my considered opinion after carefully considering the subject of employer-employee relations that the Taft-Hartley Act of 1947 should be repealed for the following reasons:

(1) The Taft-Hartley Act's ban on the closed shop has resulted in the outlawing of collective-bargaining agreements which had been mutually beneficial to both labor and management and had assisted in the maintenance of industrial peace for a period of over 100 years. We are all aware of the bitter controversy involving the International Typographical Union, which had a long history of peaceful labor relations prior to the enactment of the Taft-Hartley Act. The act has also disrupted the hiring halls which had been established by collective bargaining and had stabilized industrial relations in the maritime industry. At

the time the act was passed more than 11,000,000 workers were covered by union security agreements. Not only was the closed shop outlawed, but restrictions were put upon union-shop agreements. The procedure under the Taft-Hartley law requiring the National Labor Relations Board to hold elections among employees before authorizing the consummation of union-shop agreements has proved very costly to the Government and useless. The elections have merely demonstrated the overwhelming preference of workers for this form of security. In about 97 percent of such elections the workers chose a union shop. Proponents of this section, who devised it as a method of harassing unions, have found to their chagrin that it actually resulted in a large favorable vote for the union shop. By providing for numerous elections—representation, union shop, employer's last offer—the Taft-Hartley Act keeps the relation between employers and unions in an unsettled condition, instead of on the basis of stability and confidence so necessary in assuring free collective bargaining.

(2) The Taft-Hartley Act completely outlaws peaceful picketing in many situations, even such types as have enjoyed protection of our courts for several decades. Thus, employees who picket an employer because he persists in making them work on partially finished goods produced in another plant at sweatshop wages may be found guilty of the unfair labor practice of engaging in an unlawful secondary boycott.

(3) The Taft-Hartley Act places unreasonable restraints on many aspects of collective-bargaining agreements. The check-off—a legitimate labor-management practice—has been surrounded with many unnecessary procedural requirements, violation of which carries a criminal penalty, to the detriment of harmonious relations between labor and management. The law removes from the area of free collective bargaining a subject which is a proper objective of workers—welfare funds established for the humanitarian purpose of protecting the health and security of employees. It is made a crime for employers and employees to establish such funds except under rigid rules limiting their purposes and methods of administration. Furthermore, violations may be enjoined without regard to the Clayton Act and the Norris-LaGuardia Act safeguards.

(4) Under the Taft-Hartley Act, State labor laws which contain more restrictive provisions governing union-security contracts supersede the National Labor Act. A recent line of Supreme Court cases upholding restrictive State labor laws clearly indicates that no national labor policy can be effectively administered under such circumstances. Even union shops are banned in some industries engaged in interstate commerce.

(5) The Taft-Hartley Act places special emphasis on the use of injunctions to settle labor disputes. The Board, for example, is under a mandatory duty to seek injunctions against unions in all cases involving secondary boycotts, including those for perfectly legitimate objectives, such as the protection of labor standards. In no case is it mandatory that the Board seek injunctions against employers. The increasing use of the injunction as a method of handling labor relations has aroused only hatred, suspicion, and resentment on the part of the workers and has not furthered either the interests of management or labor. The evils of the labor injunction are well known and were recognized by the Congress in the Norris-LaGuardia Act.

(6) The Taft-Hartley Act provides elaborate and inflexible procedures including boards of inquiry, an 80-day waiting period, enforced by injunction, and secret ballots which must be followed in emergency disputes. Nevertheless, as the President said in his veto message, he and his officers are deprived of their power to take effective action in securing peaceful settlement of such disputes. For example, even the boards of inquiry are deprived of authority to make recommendations for settling the dispute. In the atomic energy and longshore cases these procedures were unavailing and agreements between the parties were reached with the assistance of Government conciliation, only after the machinery provided by the law had ineffectively run its course.

(7) The Taft-Hartley Act's broad ban upon political contributions and expenditures by labor organizations is unfair and undemocratic. It is discriminatory legislation because it selects labor organizations as the only type of voluntary associations which are to be denied effective political participation.

(8) Under the Taft-Hartley Act the employer can, by petitioning for a choice of collective-bargaining representative, determine the time most advantageous for himself to call for an election, even when not faced with conflicting claims for recognition. An employer can thereby stifle and thwart organization efforts and assure a year's freedom from union organization.

(9) One of the most serious consequences of the law is the denial, not only of the right of reinstatement, as under the Wagner Act, but also of the right to vote in representation elections while granting a vote to strike-breaker replacements. The law thus permits an employer who is faced with a strike for better wages and hours in his plant, to hire sufficient nonunion replacements to outvote the members of the union and thereupon to demand an election, the result of which can well be to oust the union from the plant.

(10) The Taft-Hartley Act abandoned the uniform procedures of the Administrative Procedure Act of 1946 and singled out the National Labor Relations Board as the one administrative agency in our Government which should receive different treatment. The law set up a general counsel who has broad discretionary powers and who is independent of the Board. He has final and absolute authority to determine what complaints should come before the Board. Thus a tremendous amount of power is placed in the hands of one man since he can pick and choose among the cases to be prosecuted.

The Taft-Hartley Act was passed during a period of great emotional stress, arising from abnormal disturbance and readjustments, which was an inevitable accompaniment of the return to a peacetime economy. It is true that the strikes which occurred between August 1945 and June 1947 played a large part in creating the emotional atmosphere in which a law like the Taft-Hartley Act could be passed. As stated by Secretary of Labor Maurice J. Tobin before the Senate Committee on Labor and Public Welfare, on January 31 last, we should remember, however, that at the time the act was passed economic controls had been off for all practical purposes for almost a full year. In the period between June 1946 and June 1947, the Bureau of Labor Statistics Consumers' Price Index rose from 133.3 to 157.1, or 17.8 percent. During the same period average hourly earnings, exclusive of overtime, increased from $1.05 to $1.17, or 11.4 percent. Throughout the period the widening spread between wages and the cost of living caused dislocations which inevitably produced exasperation and conflict. Had the Congress been faced in the spring and summer of 1947 with writing a Federal labor law under different economic and psychological conditions, the result would have been very different from that act. Today, the balance between prices and wages is beginning to adjust itself, and economic conditions are on a more settled basis—of course, on a level of production, employment, and income substantially higher than that which prevailed in the years 1935–39. There is an opportunity now again to return to the basic principles of free collective bargaining which the National Labor Relations Act of 1935 established as the fundamental basis of our national labor policy.

Strong unions with effective power to bolster the wages of their members in terms of real buying power, through the process of collective bargaining, represent the most democratic means of preventing the boom-and-bust cycles which have plagued our economy over the past hundred years when business has fixed wages in all but a few industries without regard to the needs of their workers or to their ability as consumers to buy back the products which a constantly expanding economy was producing.

In the Wagner Act labor received its Magna Carta, its right to bargain collectively was granted. This guaranty must be preserved and protected.

The 1948 election and the special election on February 15, 1949 (when I was elected to Congress), were clear and convincing mandates from the people demanding the repeal of the Taft-Hartley law. Zealous public servants should therefore carry out the will and wish of the people. Immediate repeal of this unjust, unfair, and vicious legislation is the way to do it.

Mr. Kelley. We also requested Secretary of Labor Maurice J. Tobin to file a statement. When it is received, it will be made part of the record also.

(Mr. Tobin's statement is as follows:)

Department of Labor,
Office of the Secretary,
Washington, March 21, 1949.

Hon. John Lesinski,
Chairman, Committee on Education and Labor,
House of Representatives, Washington 25, D. C.

Dear Congressman Lesinski: This is with further reference to your request for my views on H. R. 2032, which you have introduced, to repeal the Labor Management Relations Act, 1947, to reenact the National Labor Relations Act of 1935, and for other purposes,

H. R. 2032 is identical with the provisions of the amendment introduced by Senator Thomas of Utah, chairman of the Senate Committee on Labor and Public Welfare, as a substitute for his bill, S. 249, which the Committee on Labor and Public Welfare has voted to report favorably to the Senate. My views on this legislation were set forth in my statement before the Senate committee on January 31, 1949. I should like to request that you accept this statement as an expression of my views on H. R. 2032. A copy of my statement is attached hereto.

In my statement before the Senate committee, I enumerated 16 specific objections to the provisions of the Labor Management Relations Act, 1947. Pursuant to a request made of me during the course of the hearings before the Senate committee, there were submitted to the committee for inclusion in the record of its hearings memoranda documenting each of these objections. I am also enclosing a copy of each of these memoranda for the information of your committee.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Yours very truly,

MAURICE J. TOBIN, *Secretary of Labor.*

(Enclosures.)

STATEMENT BY HON. MAURICE J. TOBIN, SECRETARY OF LABOR, BEFORE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, MONDAY, JANUARY 31, 1949, ON THE PROPOSED NATIONAL LABOR RELATIONS ACT OF 1949

Mr. Chairman and members of the committee. I am grateful for the honor which has been bestowed upon me by the chairman of the committee of being the first witness to appear before a congressional committee during the first session of the eighty-first Congress to support repeal of the Labor-Management Relations Act, 1947. The President, in his state of the Union message, delivered on January 5, of this year, recommended that that act be repealed; that the National Labor Relations Act be reenacted; and that certain improvements, which he indicated, be made in that law. Following delivery of the message, the chairman requested me to make available to the committee the language of a bill which would carry out the recommendations of the President. The various affected departments and agencies of the Government have conferred on a bill, and a draft of such a bill has been submitted to the chairman.

This bill, as recommended by the President in his state of the Union message, proposes to restore this country's policy in the field of labor-management relations to the philosophy of the Wagner Act. This is accomplished by repealing the Labor-Management Relations Act, by reenacting the Wagner Act, and by making certain improvements in that law.

The Labor-Management Relations Act has brought confusion to the field of labor relations, has limited the scope of collective bargaining, has unnecessarily injected the Government into labor disputes, and has abridged the rights of our working men and women. It has emphasized individual bargaining as against collective bargaining. It deals with collective bargaining as if it were inimical to the public interest instead of the foundation of our national labor policy. It has unnecessarily limited the rights of workers to strike, and even in some cases compels members of the same local union to strike-break against their own fellow members by forcing them to work on struck goods.

Under the National Labor Relations Act the basic objective of our national labor policy was to promote collective bargaining. This the act accomplished by affirming and protecting the right of workers to self-organization, to form and join labor unions, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

It is the purpose of the proposed National Labor Relations Act of 1949 to return to the policy first declared in the National Labor Relations Act of 1935. The bill regulates collective bargaining only where restraints are needed and practicable and seeks to develop a system of labor relations under which both labor and management, with the friendly assistance of Government, can live together and solve their own problems.

I should like to summarize for you at this time some of the important reasons why I believe the Taft-Hartley Act should be repealed.[1]

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[1] The reasons for repeal of the Taft-Hartley Act summarized here by Secretary Tobin are printed in full following his statement.

(1) The Taft-Hartley Act's ban upon the closed shop has resulted in the outlawing of collective bargaining agreements which had been mutually beneficial to both labor and management and had assisted in the maintenance of industrial peace for a period of over 100 years. At the time the act was passed more than 11,000,000 workers were covered by union security agreements. Not only was the closed shop outlawed, but restrictions were put upon union-shop agreements. The elections called before union-shop contracts can be consummated are wasteful and useless. They have merely demonstrated the overwhelming preference of workers for this form of security. In about 97 percent of such elections the workers chose a union shop.

(2) The Taft-Hartley Act places special emphasis on the use of injunctions to settle labor disputes. The evils of the labor injunction were recognized by the Congress in the Norris-LaGuardia Act. It is unnecessary for me to repeat here what has so often been said concerning the abuses which arose in the past from the frequent use of labor injunctions. Under the Taft-Hartley law, for example, the Board is under a mandatory duty to seek injunctions against unions in all cases involving secondary boycotts, including those for perfectly legitimate objectives, such as the protection of labor standards. In no case is it mandatory that the board seek injunctions against employers.

(3) The Labor-Management Relations Act removed the United States Conciliation Service from the Department of Labor, where it had functioned for 34 years. It created a new Federal Mediation and Conciliation Service as an independent agency. This was a completely unjustified dismemberment of the Department of Labor. During the 34 years of its existence in the Department, the Conciliation Service successfully settled more than 100,000 cases where serious disputes had arisen. Just before the Service was transferred from the Department it was settling without a work stoppage over 90 percent of those cases in which no stoppage existed at the time a conciliator was assigned to the case. This record could not have been achieved unless the Service was operating successfully, efficiently and fairly and had the confidence of both management and labor.

The exercise of concilation functions outside the Labor Department is inconsistent with principle, which I have often stated, that labor functions must be centralized in a Cabinet department. This centralization is necessary to achieve coherence in the formulation of national labor policies and in the administration of our labor laws.

The Service was removed from the Department by the Taft-Hartley Act on the announced ground that it could not be impartial so long as it was within the Department of Labor. I cannot state too strongly that I, as Secretary of Labor, consider myself to represent the more than 140,000,000 American people and every segment of our economy.

Conciliation functions must be exercised impartially if they are to be successful, and the record of the Department during the 34 years it had the Conciliation Service shows this was done and can be done in the Department of Labor.

This is not my opinion alone. The President's labor-management conference in November 1945 recommended that the United States Conciliation Service "be established as an effective and completely impartial agency within the Department of Labor." Mr. Ira Mosher, chairman of the executive committee, and Mr. Raymond Smethurst, general counsel of the National Association of Manufacturers, and Mr. Eric Johnston for the Committee for Economic Development, together with all the major labor organizations, testified in hearings held during the Eightieth Congress before this committee that no new agency should be created for handling conciliation functions outside the Department of Labor. If their point of view, that it was not desirable to remove the Conciliation Service from the Department of Labor was sound then, it is sound now to restore the Service to the Department of Labor.

(4) The Taft-Hartley Act abandoned the uniform procedures of the Administrative Procedure Act of 1946 and singled out the National Labor Relations Board as the one administrative agency in our Government which should receive different treatment. The law set up a general counsel who has broad discretionary powers and who is independent of the Board. This is an unwise and unnecessary division of the Board's functions.

The administrative procedures established under the original National Labor Relations Act, which would be restored under this bill, provided for the internal separation of the judicial and prosecuting functions of the Board in accordance with the provisions of the Administrative Procedure Act. There is no reason why any additional separation should be required.

Furthermore, the duty of the general counsel, under the Taft-Hartley Act, to determine what complaints should come before the Board places a tremendous amount of power in the hands of one man since it can be used to control policy in enforcing the act. The division of authority between the Board and the general counsel keeps the Board from considering issues vital and germane to its decisions.

The President in his veto message of June 20, 1947, predicted that the separation of power between the General Counsel and the Board—

"* * * would invite conflict between the National Labor Relations Board and its general counsel, since the general counsel would decide, without any right of appeal by employers and employees, whether charges were to be heard by the Board, and whether orders of the Board were to be referred to the Court for enforcement. By virtue of this unlimited authority, a single administrative official might usurp the Board's responsibility for establishing policy under the act."

This warning, like others contained in that veto message, has proved to be strikingly accurate.

(5) By providing for numerous elections—representation, union shop, employer's last offer—the Taft-Hartley Act keeps the relation between employers and unions in an unsettled condition, instead of on the basis of stability and confidence so necessary in assuring free collective bargaining. The provision that permits union-shop elections once each year could, under changed economic conditions, be used to harass and even crush unions.

(6) The Taft-Hartley Act completely outlaws peaceful picketing in many situations, even such types as have enjoyed protection of our courts for several decades. Thus, employees who picket an employer because he persists in making them work on partially finished goods produced in another plant at sweatshop wages may be found guilty of the unfair labor practice of engaging in an unlawful secondary boycott.

(7) The Taft-Hartley Act places unreasonable restraints on many aspects of collective bargaining agreements. The check-off—a legitimate labor-management practice—has been surrounded with many unnecessary procedural requirements, violation of which carries a criminal penalty, to the detriment of harmonious relations between labor and management.

(8) One of the most serious consequences of the law is the denial to "economic" strikers, not only of the right to reinstatement, as under the Wagner Act, but also of the right to vote in representation elections while granting a vote to strike-breaker replacements. The law thus permits an employer who is faced with a strike to improve wages and hours in his plant, to hire sufficient nonunion replacements to outvote the members of the union and thereupon to demand an election, the result of which can well be to oust the union from the plant.

(9) Under the Labor-Management Relations Act, the employer can, by petitioning for a choice of collective bargaining representative, determine the time most advantageous for himself to call for an election, even when not faced with conflicting claims for recognition. The employer can thereby stifle and thwart organization efforts and assure a year's freedom from union organization.

(10) The law removes from the area of free collective bargaining a subject which all must agree is a proper objective of workers—welfare funds established for the humanitarian purpose of protecting the health and security of employees. It is made a crime for employers and employees to establish such funds except under rigid rules limiting their purposes and methods of administration. Furthermore, violations may be enjoined without regard to the Clayton Act and Norris-LaGuardia Act safeguards.

(11) The Taft-Hartley Act impairs legitimate union security by providing that where State laws are more restrictive than the Federal statute, the State laws should prevail. As a result of this provision, even union shops are banned in some industries engaged in interstate commerce.

(12) The Taft-Hartley Act's broad ban upon political contributions and expenditures by labor organizations, in my opinion, is unfair and undemocratic. I consider this to be discriminatory legislation because it selects labor organizations as the only type of voluntary associations which are to be denied effective political participation.

(13) The Taft-Hartley Act provides for damage suits in the Federal courts for breaches of collective bargaining agreements and for violation of the prohibi-

tions in the act against secondary boycotts and jurisdictional disputes. These provisions throw upon the Federal courts the task of deciding many issues which should be settled by the parties themselves within the framework of their agreements. Furthermore, the burden of untangling the complicated economic problems out of which the evils of unjustifiable secondary boycotts and jurisdictional disputes arise is one that administrative agencies dealing continuously with employer-employee relations are far better equipped to handle than the Federal courts, where dockets are already seriously overcrowded. These provisions assume an attitude of hostility between employers and unions which is wholly incompatible with the maintenance of peaceful collective bargaining relations and with the assumptions upon which our entire national labor policy is founded.

(14) The Labor-Management Relations Act indiscriminately outlaws all secondary boycotts whether unjustifiable or not. As the President emphasized in his veto message, the provisions of the act go far beyond merely prohibiting certain unjustifiable secondary boycotts. The language used is so broad that even boycotts engaged in for the purpose of protecting the standards of union members against the competition of goods produced under sweatshop conditions are prohibited Such types of boycotts have long been recognized by the courts as justifiable in order to preserve the union's own existence and the gains made in genuine collective bargaining. Yet the act puts a mandatory duty on the regional director, subject to the supervision of the general counsel, to go into the Federal courts for injunctive relief when he has reason to believe that a union is engaging in such a boycott. And the act requires the regional director, in the preliminary investigation of a charge concerning such a boycott to give the case "priority over all other cases except cases of like character in the office where it is filed or to which it is referred."

(15) The Taft-Hartley Act grossly discriminates in the application of sanctions against unfair labor practices in favor of employers and against labor organizations. Mandatory injunctive action is provided for in the case of three employee or union organization unfair labor practices. In no case is it mandatory to afford relief to employees or a labor organization against any employer unfair labor practice.

(16) The Taft-Hartley Act provides elaborate and inflexible procedures including boards of inquiry, an 80-day waiting period enforced by injunction, and secret ballots which must be followed in emergency disputes. Nevertheless, as the President said in his veto message, he and his officers are deprived of their power to take effective action in securing peaceful settlement of such disputes. For example, even the boards of inquiry are deprived of authority to make recommendations for settling the dispute. In the atomic energy and longshore cases these procedures were unavailing, and agreements between the parties were reached with the assistance of Government conciliation, only after the machinery provided by the law had ineffectively run its course.

The 16 objectionable provisions discussed above and others too numerous to recount here could make possible the destruction of labor unions by unscrupulous employers This is a charge which has been repeatedly made. As was said in the reputable business publication, "Business Week," on December 18, 1948:

"What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate from one which could destroy.

"Given a few million unemployed in America, given an administration in Washington which was not prounion, and the Taft-Hartley Act conceivably could wreck the labor movement.

"These are the provisions that could do it: (1) picketing can be restrained by injunction; (2) employers can petition for a collective-bargaining election; (3) strikers can be held ineligible to vote, while the strike replacements cast the only ballots; and (4) if the outcome of this is a 'no-union' vote, the Government must certify and enforce it.

"Any time there is a surplus labor pool from which an employer can hire at least token strike replacements, these four provisions, linked together, presumably can destroy a union.

"By going that far, the law defeated itself."

It is my considered judgment that the law has had the net effect of dislodging long-established labor relations patterns and weakened collective bargaining. Statutory provisions which unduly restrict and hamper free collective bargaining in this country should be eliminated. I, therefore, urgently recommend immediate repeal of the Taft-Hartley Act.

The Taft-Hartley Act was passed during a period of great emotional stress, arising from abnormal disturbance and readjustments, which was an inevitable accompaniment of the return to a peacetime economy. If the same Congress had been considering such legislation during the 1935-40 period, it is highly improbable that such a far-reaching law would have been written. I intend to discuss this phase of the problem further, later in my statement.

I shall now turn to a discussion of the bill which has been submitted to the chairman, which is entitled the "National Labor Relations Act of 1949."

Briefly, the bill embodies the legislative recommendations made by the President in his state of the Union message delivered to the Congress on January 5 of this year. The bill would (1) repeal the Labor-Management Relations Act of 1947, (2) reenact the National Labor Relations Act of 1935, (3) amend that act to retain the present Board membership and panel structure, (4) enables the National Labor Relations Board to deal with jurisdictional disputes and unjustifiable secondary boycotts, (5) reestablish the Conciliation Service in the Department of Labor, (6) provide means for the settlement of disputes arising out of the interpretation of existing contracts, and (7) provide means for meeting national emergencies in vital industries which affect the public interest.

Title I of the bill embodies the first three of these recommendations. It completely repeals the Labor-Management Relations Act, 1947. It reenacts the National Labor Relations Act of 1935, as it existed prior to the passage of the Taft-Hartley Act, and provides for the following changes:

The National Labor Relations Board is to remain a five-man instead of a three-man Board as it was under the original act. In addition, the Board is authorized to use three-member panels to exercise its powers and expedite its work.

Certain types of activities are made unfair labor practices if engaged in by a labor organization. In conformity with the President's recommendation, these are limited to certain types of secondary boycotts and certain types of jurisdictional disputes, and failure to file 30 days' notice of proposed contract modification or termination. The latter is also made an employer unfair labor practice. Under the bill strikes or secondary boycotts are treated as unjustifiable only if they are for the purpose of compelling an employer (1) to recognize a union in violation of the National Labor Relations Act, or (2) to assign particular work tasks to a union contrary to an award of the Board.

The bill makes it an unfair labor practice for a union "to cause or attempt to cause" employees to engage in a secondary boycott or a concerted work stoppage for the following purposes:

(1) To compel an employer to bargain with one union if another is the certified representative, or if the employer is required by an order of the Board to bargain with another union, or if the employer has a contract with another union and the question of representation cannot appropriately be raised under the act; or

(2) To compel an employer to assign particular work tasks contrary to an award issued by the Board under the act.

With respect to jurisdictional disputes the bill is limited to disputes between two or more labor organizations. The procedures in the bill for the settlement of such interunion disputes over the assignment of work tasks give the National Labor Relations Board jurisdiction over these disputes under certain specific conditions. The Board can take jurisdiction of such a dispute only (1) when it has resulted in or threatens to result in a strike or secondary boycott, and (2) when it affects commerce. Once the Board has taken jurisdiction, it must afford the unions a reasonable opportunity to settle the dispute themselves. If the dispute is not so settled the Board may under regulations which the Board would issue, either hear and determine the dispute itself and issue an award, or appoint an arbitrator to do so. Certain guides which the Board or arbitrator must follow in making a determination are spelled out in the bill. The employer involved in such a dispute is entitled to be heard.

It if appears to the Board that the dispute is in fact one over representation instead of merely assignment of work tasks, it is required to treat the case as a representation case already instituted and proceed accordingly.

These provisions regarding secondary boycotts and jurisdictional disputes are designed to prevent certain conflicts between labor organizations where neutral employers are unjustifiably harmed or where the failure of employers to remain neutral tends to prolong or aggravate the dispute.

The blanket prohibition of the Taft-Hartley Act on all secondary boycotts, both justified and unjustified, is avoided in the committee print by defining specifically the types and purposes of those that are to be prohibited. The provisions of the Labor-Management Relations Act which assume that jurisdictional disputes are primarily concerned with the assignment of work tasks by the employer is also avoided in the committee print by providing that jurisdictional disputes arise only when there is a dispute over such tasks between two or more labor organizations.

The bill makes two further changes in the National Labor Relations Act.

First, it is made clear that employers subject to the act may make agreements providing for the closed shop or other forms of union security or for the check-off of union dues and assessments notwithstanding the provisions of conflicting State laws. This would make uniform rules on these subjects of collective bargaining applicable to all employers and labor organizations in interstate industries. No longer will employers or unions be subject to conflicting rules in the different States where they operate.

Second, the bill requires 30 days' notice to the Conciliation Service of a proposal to terminate or modify any collective-bargaining agreement and makes it an unfair labor practice for either an employer or a union to terminate or modify such an agreement without filing such notice. These clearly are reasonable requirements which will enable the Service to be apprised in time to be able to head off controversies before they ripen into open conflict.

Title II of the bill provides that the United States Conciliation Service be reestablished in the Department of Labor—where it properly belongs. This has been repeatedly recommended by the President and, as I have said, is required by sound administration of Government labor functions.

The bill sets forth in explicit terms the duties of employers and unions to exert every reasonable effort to make and maintain collective-bargaining agreements for definite periods of time and to participate fully and properly in meetings called by the Service to aid in settling disputes.

The bill encourages utilization of arbitration procedures, not only in grievance disputes, but in other appropriate cases, by authorizing the Service, upon request of the parties, to cooperate with them in formulating agreements for arbitration and in the selection of arbitrators. The Service is also authorized to enter into agreements with local mediation agencies and to furnish information concerning the establishment of agencies to aid in the voluntary settlement of labor disputes through peaceful means.

The provisions with respect to disputes over the interpretation or application of an existing collective-bargaining agreement are included in this title. In his state of the Union message of January 5 of this year the President recommended procedures be developed for the settlement of such disputes without the use of economic force.

The bill declares the public policy of the United States "that any collective-bargaining agreement in an industry affecting commerce shall provide procedures by which either party to such agreement may refer disputes growing out of the interpretation or application of the agreement to final and binding arbitration." The Conciliation Service would be directed to implement this policy by assisting employers and unions in developing procedures for arbitration, in framing the issues in dispute, and in selecting arbitrators. The Service would compile a roster of arbitrators which it could make available to the parties. If the parties so desired, the Service would be authorized to designate one or more arbitrators.

The bill carefully avoids the twin evils of compulsory arbitration and rigidity of procedure. Its provisions are clear and simple and will, I believe, be effective in carrying out the recommendations of the President. They provide a minimum of governmental assistance intended to induce both employers and unions to develop sound arbitration machinery of their own, adapted to their own particular needs and circumstances, for the settlement of grievance disputes without the use of economic force.

Title II also provides that labor-management advisory committees such as were originally set up when the Service was in the Department of Labor would be appointed by the Secretary of Labor to advise on questions of policy and administration regarding the work of the Conciliation Service. Such committees would have a representative of the public as chairman and would be equally representative of labor and management.

Title III of the bill deals with national emergencies resulting from work stoppages in vital industries which affect the public interest. It provides that when the President finds that a national emergency exists "because a stoppage of work has resulted or threatens to result from a labor dispute" in such an industry, he shall issue a proclamation to that effect and shall promptly appoint an emergency board to be composed of such number of disinterested persons as he may deem appropriate.

The board would investigate the dispute, seek to induce the parties to reach a settlement and make a report, including the findings and recommendations of the board, within a period of not more than 25 days after the date of the President's proclamation. The report of the board would be made to the President, be transmitted to the parties, and be made public. The bill provides that during the period of not more than 25 days after the Presidential proclamation has been issued and until 5 days after the emergency board's report "the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute unless a change therein is agreed to by the parties."

The procedure provided in the bill for dealing with national emergencies is simple and flexible. It is intended to be used only in limited cases involving a grave national emergency. The Government will assist affirmatively in the settlement of the controversy during the waiting period. The parties and the public will have the benefit of the considered judgment of a board of disinterested persons as to sound suggestions for settling the controversy.

The procedure proposed in the bill is based upon the assumption that our national labor policy is one of encouraging free collective bargaining. When labor and management are assured once again that this is our national labor policy, they will, I feel sure, comply with the procedures provided in the bill. In my opinion, there never was any valid reason at this time for departing from our declared public policy.

In this connection the report of the labor committee of the Twentieth Century Fund issued in 1947, said:

"A basic criterion of the value of any proposed legislation is that it should be helpful to genuine collective bargaining, not harmful; that the legislation should be calculated to build up creative conditions of labor peace on the foundations of industrial self-government."

The committee which wrote this report, which was unanimous on this point, was headed by William H. Davis as chairman. The other members of the committee included Sumner H. Slichter, Lamont University professor, Harvard University; Edwin E. Witte, professor of economics, University of Wisconsin; William L. Chenery, publisher, Collier's weekly; Howard Coonley, chairman of the board, Walworth Co., Inc., formerly president, National Association of Manufacturers; Clinton S. Golden, formerly vice president, United Steelworkers of America, CIO; and the late Robert J. Watt, formerly international representative, American Federation of Labor.

Title IV of the bill would continue in full force and effect the prohibitions in the Norris-LaGuardia Act and the Clayton Act against the issuance of labor injunctions. However, the National Labor Relations Board would be able to enforce its orders in the Federal circuit courts just as it used to do under the original National Labor Relations Act.

Title IV would restore the political contributions provision of the Federal Corrupt Practices Act as it existed before the War Labor Disputes Act. Both President Roosevelt and President Truman have pointed out that amendments to this statute have no place in a labor law.

There is a specific statement in title IV that titles II and III shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act.

In conclusion, I should like to express my firm conviction that the original Wagner Act, with the improvements proposed in the committee print, contains the essential elements of a sound national labor policy. The 1947 act impairs the hard-won gains of organized workers and hampers the efforts of the unorganized to form labor organizations.

It is important to bear in mind, as I mentioned earlier in my statement, the economic conditions which characterized the period when the Labor Management Relations Act was passed. At that time we were still in the midst of the upheavals and readjustments that always follow a major war. Just as we had such upheavals in the years 1919, 1920, and 1921 after the First World War, so we had them in the years 1946, 1947, and 1948. In fact, the readjustments after the First World War were characterized by even greater disturbances than those occasioned by World War II.

In 1919, for example, there were 20.8 percent of all employed workers who were involved in work stoppages. In the comparable year after World War II, 1946, 14.5 percent of all employed workers were involved in work stoppages. In the third year after World War I, 1921, 6.4 percent of employed workers were involved in work stoppages. In the third year after World War II, 1948, it is estimated that 5.6 percent of employed workers were involved in work stoppages.

It is true that the strikes which occurred between August 1945 and June 1947 played a large part in creating the emotional atmosphere in which a law like the Labor Management Relations Act could be passed. We should remember, however, that at the time the act was passed economic controls had been off for all practical purposes for almost a full year. In the period between June 1946 and June 1947 the Bureau of Labor Statistics consumers' price index rose from 133.3 to 157.1, or 17.8 percent. During the same period average hourly earnings, exclusive of overtime, increased from $1.05 to $1.17, or 11.4 percent. Throughout the period the widening spread between wages and the cost of living caused dislocations which inevitably produced exasperation and conflict.

A law written at such a time, as was the Labor Management Relations Act, inevitably reflects such exasperation and emotional reactions to such conflicts. The Congress was under great pressure from the people to pass legislation to deal with these conflicts Had the Congress been faced in the spring and summer of 1947 with writing a Federal labor law under different economic and pychological conditions the result would undobtedly have been very different from that act.

Today, the balance between prices and wages is beginning to adjust itself, and economic conditions are on a more settled basis, of course, on a level of production, employment and income are substantially higher than that which prevailed in the years 1935–39. There is an opportunity now again to return to the basic principle of free collective bargaining which the National Labor Relations Act of 1935 established as the fundamental basis of our national labor policy.

To carry out this purpose is the objective of the bill before this committee.

I urge the Congress speedily to enact the National Labor Relations Act of 1949.

POINT 1.—UNION SECURITY; THE CLOSED SHOP

"The Taft-Hartley Act's ban upon the closed shop has resulted in the outlawing of collective-bargaining agreements which had been mutually beneficial to both labor and management and had assisted in the maintenance of industrial peace for a period of over 100 years. At the time the act was passed more than 11,000,000 workers were covered by union-security agreements. Not only was the closed shop outlawed, but restrictions were put upon union-shop agreements. The elections called before union-shop contracts can be consummated are wasteful and useless. They have merely demonstrated the overwhelming preference of workers for this form of security. In about 97 percent of such elections the workers chose a union shop."

Section 8 (a) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, provides that it shall be an unfair labor practice for an employer—

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this act as an unfair labor practice) to require as a condition of employment membership therein on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Section 8 (b) of the act, as amended, provides that it shall be an unfair labor practice for a labor organization or its agent—

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Union Security Under the Taft-Hartley Act

(*a*) *The nature of these provisions.*—The combined effect of sections 8 (a) (3) and 8 (b) (2) is to render unenforceable agreements for closed shop (under which an employer may hire only members of the contracting union) and to permit lesser forms of union security agreements only if the National Labor Relations Board has certified, on the basis of an election, that a majority of the employees in the bargaining unit favor such a contract. The contract must also allow new employees 30 days in which to become union members. It cannot require the employer to refuse to hire or to discharge an employee for nonmembership in the union except for nonpayment of initiation fees and dues. If the employer who is operating under a union-security contract has "reasonable grounds" for believing the employee's union membership was denied or terminated for any other reason, he cannot discharge that employee merely for nonmembership.

(*b*) *Disruptive effect of these provisions*—(1) *Uselessness of union-shop voting procedure*—The uselessness of the election procedures specified in the act for determining whether the employees of a particular employer wish a union-security contract, is amply demonstrated by the fact that the union shop has been favored in approximately 98.2 percent of the elections conducted since the effective date of the Taft-Hartley Act (report of majority, Joint Labor-Management Committee, December 31, 1948, p. 49).

The majority of the Joint Labor-Management Relations Committee in its December 1948 report takes cognizance of the tremendous expense to the Government of such elections (estimated at about 40 cents per vote for the 2,457,352 employees who voted during approximately 1 year); the tremendous operating burden placed upon the staff of the agency conducting the elections (e. g., in May 1948 there were 4,420 elections; although the number was reduced in September 1948, the total was still 2,340); and the impracticability of conducting such elections in industries where employment is intermittent, e. g., the building and construction industry. The majority, therefore, recommended elimination of the union shop authorization vote but insertion of a provision permitting a vote to rescind authority for a union-security contract where one already is in existence (Rept. No. 986, December 31, 1948, p. 49).

(2) *Upset long-established and peaceful collective-bargaining relationship.*—According to studies made by the Bureau of Labor Statistics at the time the Labor-Management Relations Act was passed more than 11,000,000 of the 14,800,000 workers employed under conditions determined by written collective-bargaining agreements, or over 75 percent, were covered by some form of union-security agreements. Of these, nearly 5,000,000 were employed under a closed shop or a union shop with preferential hiring, which is substantially the same (Bureau of Labor Statistics, Extent of Collective Bargaining and Union Recognition, 1946).

The closed-shop system originated with the British guilds. It was transplanted to America as early as the seventeenth century.

The system originated and prevailed in trades and industries in which special crafts requiring high skills and long years of training predominated. Traditionally, there has been coupled with it an integrated system of apprenticeship training extending over a period of years. Thus, the closed shop is found to prevail in most branches of the printing industry, in building and construction, and in bakeries. Other industries placing less emphasis on crafts and training but with strong and firmly established unions, where the closed-shop form of union security is found, include the manufacture of men's and women's clothing, and shipbuilding (Bureau of Labor Statistics, Union Security Provisions in Collective Bargaining (1947); Rev. J. L. Toner, The Closed Shop (1942), pp. 91, 92).

That the closed shop has resulted in exceptional records of industrial peace in these industries has been widely recognized. Notable is the women's clothing industry with 380,000 members in the International Ladies' Garment Workers Union, which has not had a major strike since 1933 (see hearings of Senate

Committee on Labor and Public Welfare, 80th Cong., 1st sess., pp. 1332–1333). Best known of all perhaps is the long record of peaceful labor relations established in the printing industry under the closed-shop arrangements of the International Typographical Union. The majority of the Joint Committee on Labor-Management Relations recognized this when it said: "The International Typographical Union has long enjoyed public confidence by its record of winning gains for its members while maintaining peaceful relations with employers" (S. Rept. No. 986, 80th Cong., 2d sess., March 15, 1948, p. 27).

An outstanding example of the disruptive effect of the closed-shop ban of the Labor Management Relations Act of 1947 is presented in the case of the International Typographical Union. This union attempted, after passage of the act, to preserve union-security arrangements with employers in the printing industry. The result was the filing of 18 charges, 9 complaints, 1 injunction suit, and 2 damage actions against the union, and participation by the union in 8 strikes.

That employers find the closed shop to their advantage has been long recognized. A newspaper employer in St. Paul, Minnesota, has written as follows:

"In many industries the closed shop has existed for decades and has practically become incorporated in the structure and operating conditions of those industries. This is notably true in most branches of the printing industry. For example, most metropolitan newspapers, including this one, have closed-shop agreements covering the mechanical departments of the plant.

"Why should it be illegal or against public policy for a newspaper or a printing plant to make a contract whereby it designates a union as its agent to supply it with qualified printers * * * it seems to be a subject that should be left to voluntary agreement * * * between the employer and the (union)." (Editorial, The Pioneer Press, Dec. 10, 1946.)

In an investigation of the closed shop made just before the war, the National Industrial Conference Board, an employers' organization, found that employers with practical experience with a closed shop found that it—

"* * * places the union in a better position to keep its agreement, eliminates coercing of employees * * * gives employees greater feeling of responsibility and interest in their jobs * * * makes it possible to hold the union responsible for the action of its members." (N. I. C. B., Studies in Personnel Policy, No. 12, March 1939.)

Another employer has said:

"The effect on workers of a closed shop is an immediate improvement in morale. They at once recognize that management has wholeheartedly accepted them as a partner * * *.

"Responsibility is definitely fixed on and assumed by the union for discipline, full production, effective cooperation with management." ("Should the Closed Shop Be Outlawed," H. I. Buschsbaum, pres., S. Buschsbaum Co., Modern Industry, vol. 13, Feb. 15, 1947, p. 112.)

(3) *Permits State union-security prohibitions to operate in Federal field.*—The union security question is further complicated by section 14 (b) of the act, which provides that State laws are to govern union security agreements even with respect to employees in interstate industries. As pointed out in the discussion of that section elsewhere, the number of States which prohibit not only a closed shop but all other forms of union security provisions, has been increasing. Section 14 (b) encourages further extension of such prohibitions. Therefore, while only the closed shop is banned by sections 8 (a) (3) and 8 (b) (2) with which we are dealing, the potential effect of section 14 (b) can well be the elimination of many other types of union security arrangements in the future in many of the States.

(4) *Interference with internal affairs of unions and destruction of union discipline.*—As already pointed out, sections 8 (a) (3) and 8 (b) (2) permit an employer to refuse to hire or discharge an employee for nonmembership in the union even where a union security contract requires membership in the union, only if the employee has been refused admittance into or expelled from the union for non-payment of dues or initiation fees.

These provisions, which have the effect of interfering with a union's regulation of its own internal affairs, render the unions powerless to impose effective conditions, qualifications, or responsibilities upon their membership except with respect to payment of dues and initiation fees. Union dues and fees are in turn regulated by section 8 (b) (5) which makes it an unfair labor practice for a union to fix dues and fees found to be excessive by the National Labor Relations Board. They in effect render illusory the guarantee contained in section 8 (b) (1) (which prohibits a union from restraining or coercing employees in the exercise of their rights) that "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein" shall not be impaired.

Under the Taft-Hartley Act, the price which the union must pay for its illusory security under a union shop contract is the relinquishment of the disciplinary sanctions by which it is enabled to maintain its existence and its effectiveness as an organization.

Union Security Under the Wagner Act

(*a*) *Summary of the Wagner Act provisions.*—The Wagner Act did not require closed shop or other types of union security agreements. It merely permitted them if the labor organization concerned was not company assisted or dominated within the meaning of the act and if it was the duly certified collective bargaining representative of the majority of the employees in an appropriate unit at the time of consummation of the contract. Discharges for failure to join or maintain membership in a labor organization were unfair labor practices unless made pursuant to the terms of a valid closed or union shop contract which met the requirements of the act.[1]

(*b*) *Protection of the rights of individuals under the Wagner Act.*—The Board held in numerous cases that a closed shop contract could not be utilized to interfere with the right of employees to select a new bargaining representative.[2]

In Matter Monsieur Henri Wines, Ltd. (44 N. L. R. B. 1310), the Board held that an employee could not be discharged pursuant to a closed shop contract when he had been denied membership in the contracting union.

In Matter of Capital City Candy Company (71 N. L. R. B. 447), nonunion employees, as well as union members, who were found to have been discriminated against by an employer were held entitled to relief.

In Matter of Eureka Vacuum Cleaner Company (69 N. L. R. B. 878), and *G. E. X-Ray Corporation* (76 N. L. R. B. 64), the discharge of employees who had resigned from the union during the escape period provided for in a maintenance of membership agreement was held to be an unfair labor practice and the employees concerned were held to be entitled to reinstatement.

Although under the Wagner Act the Board was not authorized to proceed directly against unions, certification as exclusive bargaining representative was denied on a showing of membership cards and election ordered where proof was offered of intimidation or coercion by unions in obtaining the cards.[3]

Protection of Rights of Individuals by the Courts Irrespective of the Wagner Act

A long line of cases in which the courts have reviewed union discipline of members now appears to establish substantial judicial protection of the rights of union members against arbitrary union action.[4]

The courts extend this protection by applying three standards of procedural and substantive due process, the right to a fair trial, equal protection under the laws, and freedom of individual expression.[5]

These cases have held, for example, that a union law prohibiting the distribution of circulars within the union was void, and that threatened expulsion of members who violated the prohibition by issuing leaflets charging the national officers with financial mismanagement would be enjoined (*Edmington* v. *Hall*, 148 S. E. 403 (Ga. 1929)). However, courts have upheld union disciplinary action upon a finding that there was a fair trial and substantial evidence to support the action (*Love* v. *Brotherhood of Locomotive Engineers*, 215 S. W. 602 (Ark. 1919)); (*Pfoh* v. *Whitney*, 62 N. E. (2d) 744 (Ohio 1945)). One court set aside, for lack of a hearing, the expulsion of several locals which were penalized because they disagreed over policy with the regional representative of the parent union (*Cox* v. *United Brotherhood of Carpenters*, 69 P. (2d) 148 (Wash. 1937)). The

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[1] *International Association of Machinists* v. *N. L. R. B.* (311 U. S. 72); *N. L. R. B.* v. *Electric Vacuum Cleaning Company* (315 U. S. 685); *Pillsbury Mills, Inc.* (74 N. L. R. B. 1113); *Phelps Dodge Copper Products Corp.* (63 N. L. R. B. 686).

[2] *In Matter of Rutland Court Owners, Inc.* (44 N. L. R. B. 587); *Parjardo Development Co.* (76 N. L. R. B. 956); *E. L. Bruce Co.* (75 N. L. R. B. 522); *Eaton Mfg. Co.* (76 N. L. R. B. 261); *Lewis Meier Co.* (73 N. L. R. B. 520); *Geraldine Novelty Company* (74 N. L. R. B. 1503); *Rheem Mfg. Co.* (70 N. L. R. B. 57); *Durasteel Co.* (73 N. L. R. B. 941).

[3] *In Matter of Fisher Body Corp.* (7 N. L. R. B. 1083); *Armour & Co.* (15 N. L. R. B. 268).

[4] Joseph Kovner, The Legal Protection of Civil Liberties Within Unions (Wis. Law Rev., January 1948).

[5] *Bricklayers, Plasterers and Stonemasons Local 59* v. *Bowen* (183 N. Y. S. 855 (1920)); *Local No. 7, Bricklayers, Masons and Plasterers* v. *Bowen* (278 Fed. 271 (1922)); *Abdon* v. *Wallace* (165 N. E. 68 (Ind., 1929)); *Spayd* v. *Ringing Rock Lodge* (113 Atl. 70 (Pa., 1921)); *St. Louis & S. W. Ry. Co.* v. *Thompson* (113 S. W. 144 (Tex., 1909)).

New York courts have held that there must be substantial evidence to support expulsion on charges of libel or slander of officers, and that mere criticism of the officers is not substantial enough to justify expulsion (*Polin* v. *Kaplan*, 177 N. E. 833 (N. Y. 1931); *Shapiro* v. *Brennan*, 199 N. E. 515 (N. Y. 1935); *Koukly* v. *Weber*, 277 N. Y. S. 39 (1935); *Koukly* v. *Canavan*, 277 N. Y. S. 28 (1935)).

As Professor Robert Hale of Columbia University Law School has so aptly said:

"If (a worker) belongs to a union in a closed shop industry, it is perfectly true he has no freedom to work without being a member of the union, but he has a little more freedom through the brotherhood of his union against the restraint imposed upon him by the employer * * *.

"If he is subject to be governed by the rules of his union he presumably has a little more control over what those rules are than if he is governed solely by the rules laid down by his employer." (Hearings before Senate Committee on Education and Labor on S. 296, 73d Cong., 2d sess., p. 51 (1934).)

A unanimous report to the Governor of Massachusetts by a tripartite group of nine outstanding citizens of that State appointed by the Governor recommended that the closed shop not be prohibited:

"The committee believes that the closed shop, the union shop and maintenance of membership should be matters for collective bargaining. The committee, therefore, does not recommend that the closed shop be prohibited in the Commonwealth of Massachusetts. The closed shop and the union shop are well-established institutions in many industries, and serve useful purposes. In the absence of a closed shop or union shop, it becomes possible to accept the benefits of a trade union without bearing a share of the cost of maintaining the union and the cost of administering the agreement which the union has negotiated, and to shirk the responsibility of participating in the affairs of the union. Furthermore, the closed shop and the union shop mean that all members in the bargaining unit belong to the union and have an opportunity to participate in its affairs. This helps the union to become more representative of the people in the bargaining unit." (Report of the Governor's Labor-Management Committee, House Doc. No. 1875, the Commonwealth of Massachusetts.)

POINT 2.—EMPHASIS ON THE USE OF INJUNCTIONS IN LABOR DISPUTES

"The Taft-Hartley Act places special emphasis on the use of injunctions to settle labor disputes. The evils of the labor injunction were recognized by the Congress in the Norris-LaGuardia Act. It is unnecessary for me to repeat here what has so often been said concerning the abuses which arose in the past from the frequent use of labor injunctions. Under the Taft-Hartley Law, for example, the Board is under a mandatory duty to seek injunctions against unions in all cases involving secondary boycotts, including those for perfectly legitimate objectives, such as the protection of labor standards. In no case is it mandatory that the board seek injunctions against employers."

Injunctive proceedings are directed or authorized in labor disputes under the Labor Management Relations Act, 1947, in at least four different types of situations:

(*a*) Under section 10 (j) of the National Labor Relations Act, as amended by the Labor Management Relations Act, the National Labor Relations Board is authorized, upon issuance of a complaint charging that any one, employer, labor organization or individual, has engaged in any unfair labor practice as defined in the act,

"* * * to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

By agreement between the Board and the independent general counsel provided for in the act, this authority has been delegated to the general counsel (Code of Fed. Reg., Title 29, ch. 2, sec. 201.2).

(*b*) With respect to the union unfair labor practice of engaging in so-called secondary boycotts as broadly defined in the act,[6] the regional officers of the Board are required, if they have "reasonable cause to believe" a charge that a union is engaging in such an unfair labor practice, to seek injunctive relief in the Federal district courts. Section 10 (l) provides:

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[6] For discussion of secondary boycotts under the act, see the discussion under Point 14, infra.

"Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United Sates for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with resect to section 8 (b) (4) (D)."

The "relief" provided for in this subsection is also available to the Board's regional officers "where appropriate" in cases in which charges are filed that a union is forcing or requires an employer "to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, class, or craft" unless the employer is failing to conform to a Board certification or order as to the bargaining representative for such employees.

Under section 3 (d) of the act, as amended, the general counsel, not the Board, has "general supervision * * * over the officers and employees in the regional offices."

By section 10 (h) of the act, as amended, the Norris-LaGuardia Anti-Injunction Act is made expressly inapplicable to proceedings for "temporary relief or a restraining order" brought on behalf of the Board in the types of situations discussed in this paragraph and paragraph (a) above. Section 10 (h) provides:

"When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled 'An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115)."

(*c*) Under section 208 of title II, Labor-Management Relations Act, there is an additional provision for injunctions—in the case of "a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States, or with foreign nations, or engaged in the production of goods for commerce" which will "if permitted to occur or to continue, imperil the national health or safety" (sec. 206). Following appointment by the President of a board of inquiry in any such case and receipt by him of its report which "shall not contain any recommendations," the President is authorized to—

"* * * Direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

"(i) Affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"(ii) If permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

"(*b*) In any case, the provisions of the act of March 23, 1932, entitled 'An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' shall not be applicable

"(*c*) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347)."

Injunctions obtained under this section are continued in effect up to 80 days, at the expiration of which time they must be dissolved regardless of whether or not the labor dispute that gave rise to the situation calling for the invocation of injunctive relief is settled (secs. 209 (b) and 210).

(*d*) Under subsection (e) of section 302 of title III, Labor Management Relations Act, the provisions of the Norris-LaGuardia Anti-Injunction Act and sections 6 and 20 of the Clayton Act are made inapplicable to actions including actions by private parties, to enjoin the prohibitions[7] against payment by employees to, and receipt of funds by, employee representatives, in connection with the check-off and health and welfare funds, except under certain limited conditions which are specified in section 302 (c). Section 302 (e) provides:

"The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U. S. C., title 29, secs. 101–115)."

Under section 301 (b) of title III, Labor Management Relations Act, it is provided that:

"Any labor organization which represents employees in an industry affecting commerce as defined in this act * * * may * * * be sued as an entity and in behalf of the employees whom it represents in the courts of the United States * * *."

This section of the act may furnish still a fifth basis for injunction proceedings, in this situation in actions brought by private parties, to restrain labor organizations from violations of collective bargaining agreements.

The Joint Committee on Labor-Management Relations, created by title 4 of the Labor Management Relations Act, has reported[8] that during the period from August 22, 1947, when the amendments to the National Labor Relations Act made by that act became effective, through October 1948, so-called discretionary injunctions under section 10 (j) of the act were sought by the General Counsel on behalf of the Board in six cases. In four cases, injunctions were sought against activities of the following labor organizations:

American Federation of Labor (2): International Typographical Union[9]; Amalgamated Meat Cutters and Butcher Workmen of North America.[10]

Independent (2): United Mine Workers of America.[11]

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[7] The prohibitions contained in sec. 302 and also made punishable by a fine of not more than $10,000, or imprisonment for not more than 1 year, or both (sec. 302 (d)).

[8] Rept. No. 986, pt. 3, 80th Cong., 2d sess., p. 23.

[9] *Evans* v. *International Typographical Union* ((D. C., S. D. Ind.), 76 F. Supp. 881 (injunctive relief granted); 22 L. R. R. M. 2576 (union adjudged in contempt); 23 L. R. R. M. 2119 (union purged of contempt)).

[10] *LeBaron* v. *Amalgamated Meat Cutters, etc.* (petition dismissed by the agreement of parties).

[11] *Madden* v. *United Mine Workers* ((D. C., D. C.), 79 F. Supp. 616 (injunctive relief granted)); *Curry* v. *United Mine Workers* ((D. C., D. C.) (petition dismissed without prejudice on termination of strike)).

In two cases, section 10 (j) injunctions were sought against employers, namely: Boeing Airplane Co.[12]; General Motors Corp.[13]

Information submitted to the Senate Committee on Labor and Public Welfare during its current hearings on S. 249 shows that the provisions of section 10 (l) of the National Labor Relations Act, as amended, had been resorted to in 36 cases through January 31, 1949, to restrain activities of labor organizations under sections 8 (b) (4) (A), (B), and (C) of the National Relations Act, as amended.[14] The extent to which the activities of different labor organizations became involved in injunction actions under this provision of the Taft-Hartley Act is shown by the following table:

American Federation of Labor (27): International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, six cases;[15] United Brotherhood of Carpenters and Joiners of America, three cases;[16] International Brotherhood of Electrical Workers, two cases;[17] United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada;[18] International Longshoremen's Association;[19] Retail Clerks International Association;[20] Distillery, Rectifying and Wine Workers' International Union of America;[21] National Farm Labor Union;[22] Printing Specialties and Paper Converters Union, Local 388;[23] International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada;[24] Brotherhood of Painters, Decorators, and Paper Hangers of America;[25] Local Building Trades Councils, eight cases.[26]

Congress of Industrial Organizations (8): Oil Workers' Internatioal Union, two cases;[27] American Communications Association;[28] United Office and Profressional Workers;[29] Retail, Wholesale, and Department Store Union;[30] International Union of Mine, Mill, and Smelter Workers;[31] International Longshoremens' and Warehousemen's Union;[32] United Electrical, Radio, and Machine Workers of America;[33] National Union of Marine Docks and Stewards, two cases.[34]

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[12] *Graham* v. *Boeing Airplane Co.* ((D. C., W. D. Wash.), 22 L. R. R. M. 2243 (injunctive relief denied)).

[13] *Bowen* v. *General Motors Corporation* ((D. C., S. D. N. Y.), Civ. No. 44–674 (temporary restraining order greanted and continued pending Board decision)).

[14] Rept. No. 986, pt. 3, 80th Cong., 2d sess., pp. 24–27; data supplied to the Senate Committee on Labor and Public Welfare by General Counsel Robert N. Denham in a report dated February 14, 1949.

[15] *Douds* v. *Teamsters* (Conway) (75 F. Supp. 414 (injunction issued, complaint subsequently dismissed by the trial examiner)); *Douds* v. *Teamsters* ((Montgomery Ward) 21 L. R. R. M. 2154 (injunction held unnecessary in view of injunction in *Douds* v. *Teamsters* (Conway), *supra;* case retained on docket)); *Lebus* v. *Teamsters* (consent injunction issued); *Douds* v. *Teamsters and Retail Clerks* (Philan), (consent injunction issued); *Douds* v .*Teamsters* (Schultz) (injunction issued); *Douds* v. *Teamsters* (Howland, etc.) (no action; case retained on court docket though violation discontinued).

[16] *Barker* v. *Carpenters* (21 L. R. R. M. 2406 (injunction issued)); *Styles* v. *Carpenters* (74 F. Supp. 499 (injunction denied)); *Sperry* v. *Carpenters* (21 L. R. R. M. 2244 (injunction issued); 23 L. R. R. M. 2040 (aff'd. CA–10)).

[17] *Styles* v. *I. B. E. W.* (80 F. Supp. 119 (injunction issued)); *Douds* v. *I. B. E. W.* (consent injunction issued).

[18] *Styles* v. *Plumbers and Steamfitters* (placed on reserve calendar as picketing complained of had been suspended).

[19] *Douds* v. *International Longshoremen's Association* (20 L. R. R. M. 2642 (temporary restraining order issued; proceeding discontinued on settlement of strike)).

[20] *Douds* v. *Teamsters and Retail Clerks* (Philan) (consent injunction issued.)

[21] *Douds* v. *Distillery Workers* (75 F. Supp. 184, 447 (temporary restraining order issued but injunction denied upon settlement of dispute)).

[22] *LeBaron* v. *Farm Labor Union* (80 F. Supp. 151 (injunction issued)).

[23] *LeBaron* v. *Printing Specialities Union* (75 F. Supp. 678 (injunction issued); 23 L. R. R. M. 2145 (aff'd. CA–9)). Trial examiner has recommended dismissal of complaint.

[24] *Douds* v. *Stage Employees* (temporary restraining order issued).

[25] *Bott* v. *Glaziers* (23 L. R. R. M. 2181 (injunction issued)).

[26] *Cranefield* v. *Building Trades Council* (78 F. Supp. 611 (injunction issued)); *Sperry* v. *Building Trades Council* (Gould and Preisner) (77 F. Supp. 321 (injunction denied); complaint sustained by trial examiner; case now pending decision of Board); *Shore* v. *Building Trades Council* (23 L. R. R. M. 2112 (injunction granted)); *Sperry* v. *Building Trades Council* (Steele) (23 L. R. R. M. 2115 (injunction denied)); *Slater* v. *Building Trades Council* (22 L. R. R. M. 2565 (injunction denied)); *Styles* v. *Building Trades Council* (pending); *LeBaron* v. *Building Trades Council* (injunction proceeding authorized); *LeBaron* v. *Building Trades Council* (injunction proceeding authorized).

[27] *Brown* v. *Oil Workers* (23 L. R. R. M. 2016 (injunction issued)); *Findlay* v. *Oil Workers* (no action; case continued on docket though dispute temporarily adjusted).

[28] *Douds* v. *A. C. A.* (petition withdrawn on settlement).

[29] *Douds* v. *Metropolitan Federation of Architects, Engineers, Chemists and Technicians, Local 231* (U. O. P. W. A.) (75 F. Supp. 672 (injunction denied)).

[30] *Douds* v. *Department Store Employees* (22 L. R. R. M. 2544 (injunction issued); 23 L. R. R. M. 2045 (aff'd CA–2)).

[31] *Douds* v. *Mine, Mill and Smelter Workers* (no action; case continued on docket though violation discontinued).

Independent (7): United Mine Workers of America;[35] Pacific Coast Marine Firemen, Oilers, Water Tenders, and Wipers Association, two cases.[36]

Six injunction actions have been brought for 80-day injunctions under the provisions of section 208 of title II, Labor Management Relations Act, following appointment of boards of inquiry in national emergency situations as defined in the act.[37] These cases involved the following labor organizations:

American Federation of Labor (2): Atomic Trades and Labor Council;[38] International Longshoremen's Association.[39]

Congress of Industrial Organizations (2): National Maritime Union, two cases;[40] International Longshoremen's and Warehousemen's Union.[41]

Independent (1): United Mine Workers of America.[42]

No injunction actions to enforce compliance with section 302 of title III, Labor Management Relations Act, dealing with health and welfare funds, and the check-off, among other things, have as yet been reported.

It is to be noted that while the injunction proceedings provided for in sections 10 (j) and 10 (l) of the National Labor Relations Act, as amended, are intended to provide summary relief against alleged unfair labor practices pending decisions by the National Labor Relations Board on whether in fact unfair labor practices were being committed, the National Labor Relations Board has reached a final decision on the merits of the disputes in only two such cases.[43]

POINT 3.—CONCILIATION SERVICE

"The Labor-Management Relations Act removed the United States Conciliation Service from the Department of Labor, where it had functioned for 34 years. It created a new Federal Mediation and Conciliation Service as an independent agency. This was a completely unjustified dismemberment of the Department of Labor. During the 34 years of its existence in the Department, the Conciliation Service successfully settled more than 100,000 cases where serious disputes had arisen. Just before the Service was transferred from the Department it was settling without a work stoppage over 90 percent of those cases in which no stoppage existed at the time a conciliator was assigned to the case. This record could not have been achieved unless the Service was operating successfully, efficiently, and fairly and had the confidence of both management and labor.

"The exercise of conciliation functions outside the Labor Department is inconsistent with the principle, which I have often stated, that labor functions must be centralized in a Cabinet department. This centralization is necessary to achieve coherence in the formulation of national labor policies and in the administration of our labor laws.

"The Service was removed from the Department by the Taft-Hartley Act on the announced ground that it could not be impartial so long as it was within the Department of Labor. I cannot state too strongly that I, as Secretary of Labor, consider myself to represent the more than 140,000,000 American people and every segment of our economy.

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[32] *Graham* v. *I. L. W. U.* (no action; case continued on docket though violation discontinued). The Marine Cooks (CIO) and Firemen (Ind.) were also involved in this case.

[33] *Evans* v. *U. E.* (79 F. Supp. 318 (injunction issued)). Trial examiner recommended dismissal of complaint.

[34] *LeBus* v. *Marine Cooks and Firemen* (23 L. R. R. M. 2027 (injunction issued)). Both the Marine Cooks (CIO) and the Firemen (Ind.) were involved in this case. See also footnote 32.

[35] *Evans* v. *Mine Workers* (proceeding discontinued on withdrawal of charge).

[36] See footnotes 32 and 34, *supra*.

[37] Rept. No. 986, pt. 3, 80th Cong., 2d sess., p. 27.

[38] *United States* v. *Carbide and Carbon Chemicals Inc. et al.* (D. C., E. D. Tenn., March 19, 1948) (21 L. R. R. M. 2525).

[39] *United States* v. *International Longshoremen's Association (AFL) et al.* (D. C., S. D. N. Y., August 25, 1948) (22 L. R. R. M. 2421).

[40] *United States* v. *N. M. U. et al.* (D. C., S. D. N. Y., June 23, 1948) (22 L. R. R. M. 2275); *United States* v. *N. M. U. et al.* (D. C., N. D. Ohio, June 14, 1948) (22 L. R. R. M. 2306).

[41] *United States* v. *I. L. W. U., Waterfront Employers' Association of the Pacific Coast, Pacific American Shipowners' Association, et al.* (D. C., N. D. Cal., June 14, 1948) (78 F. Supp. 710).

[42] *United States* v. *United Mine Workers of America, et al.* (D. C., D. C., April 21, 1948) (77 F. Supp. 563).

[43] *In re Distillery Workers Union* (22 L. R. R. M. 1222 (cease and desist order issued against the union's unfair labor practice in a secondary boycott case under sec. 8 (b) (4) (A)); *In re Carpenters and Joiners* (23 L. R. R. M. 1102 (Board cease and desist order issued after injunction denied in *Styles* v. *Carpenters*, supra)).

"Conciliation functions must be exercised impartially if they are to be successful, and the record of the Department during the 34 years it had the Conciliation Service shows this was done and can be done in the Department of Labor.

"This is not my opinion alone. The President's Labor-Management Conference in November 1945 recommended that the United States Conciliation Service 'be established as an effective and completely impartial agency within the Department of Labor.' Mr. Ira Mosher, chairman of the executive committee, and Mr. Raymond Smethurst, general counsel of the National Association of Manufacturers, and Mr. Eric Johnston for the Committee for Economic Development, together with all the major labor organizations, testified in hearings held during the Eightieth Congress before this committee that no new agency should be created for handling conciliation functions outside the Department of Labor. If their point of view, that it was not desirable to remove the Conciliation Service from the Department of Labor was sound then, it is sound now to restore the Service to the Department of Labor."

The Organic Act of the Department of Labor,[44] enacted by the Congress and approved by President Taft as one of his last official acts on March 4, 1913, gave to the Secretary of Labor the authority "to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done."[45] The United States Conciliation Service was developed under this grant of power from the Congress. Until the Labor-Management Relations Act, 1947,[46] removed the Service from the Department of Labor and created the new independent Federal Mediation and Conciliation Service[47] to perform exactly the same kinds of mediation and conciliation services, but on a more formal and somewhat more narrow basis,[48] the Service was continuously operated in the Department of Labor for nearly 34 years, including both World War I and World War II.

The removal of the United States Conciliation Service from the Department of Labor not only deprived the Secretary of Labor of important conciliation functions but diminished the influence of the Department of Labor on behalf of stable labor-management relations, the promotion and maintenance of sound labor standards, and the advancement of sustained high levels of production and purchasing power and maximum employment opportunities.

The United States Conciliation Service was removed from the Department of Labor, notwithstanding the consistent record of success the Service had achieved in settling labor disputes. The Secretary of Labor pointed out in the course of his testimony before the Senate Committee on Labor and Public Welfare on January 31, 1949, that—

"During the 34 years of its existence in the Department of Labor the United States Conciliation Service successfully settled more than 100,000 cases where serious disputes had arisen. Just before the Service was transferred from the Department it was settling without a work stoppage over 90 percent of those cases in which no stoppage existed at the time a conciliator was assigned to the case.[49]

Detailed figures in support of these statements were given by the late L. B. Schwellenbach, former Secretary of Labor, at hearings before the Senate Committee on Labor and Public Welfare in 1947.

"In the first year of free collective bargaining the Conciliation Service handled 18,757 cases. It settled 3,350 work stoppages, involving 2,668,000 employees, and received 7,001 Smith-Connally strike notices.

"Of the 14,092 disputes closed during the period January through November 1946, 12,067 were not stoppages at the time of assignment of a conciliator; 10,892, or 90.3 percent of the disputes that were not stoppages at the time of assignment were settled without a work stoppage occurring. It is significant that 63.3 percent of the strike cases handled by the Service during the period from April 1 through November 1946 were in the strike stage before a conciliator was assigned.

"Let me say that under the procedure conciliators are not assigned except upon the request of one or both of the parties. That is the procedure under which the Conciliation Service operates. When we were called in before a strike started, 90.3 percent of the cases were settled without any strikes."[50]

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[44] Act of March 4, 1913 (37 Stat. 736).

[45] Sec. 8, act of March 4, 1913 (37 Stat. 738).

[46] Public, No. 101, 80th Cong., 1st sess.

[47] Title II of the Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[48] Secs. 203 and 204, title II, Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[49] Transcript of hearings held before Committee on Labor and Public Welfare (S. 249), 81st Cong., 1st sess., p. 20.

In the Thirty-fifth Annual Report of the Department of Labor for the fiscal year ended June 30, 1947, it was pointed out that—

"In the fiscal year 1947 conciliators were instrumental in aiding labor and management in the settlement of more than 16,711 labor-management disputes. This represented a decline of 2,129 over last year's case load. Labor disputes are now at the lowest period since the end of the war. Strikes are on the decline, as shown in reports issued by the Bureau of Labor Statistics. During the past year Bureau of Labor Statistics data show that there were 6,795 strikes involving 6,795,000 workers in contrast to 7,718 and 10,789,000 workers in the fiscal year 1946. During that year the country was torn by a number of Nationwide strikes in basic industries.

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"Despite the difficulties that labor and management have had in relearning the free collective-bargaining process, experience in the few months immediately preceding enactment of the Taft-Hartley Act gave us dramatic proof of the fact that collective bargaining can work. Agreements were reached through the processes of free collective bargaining in the steel industry, General Motors, Westinghouse, General Electric, Western Union, Radio Corp. of America, the men's clothing industry, the ladies' clothing industry, the textile industry, the Big Four meat packers, the Big Four rubber companies, and many others. These agreements worked out across the bargaining table by labor and management show that they are learning to work out their differences peacefully. In the first 6 months of this year the number of work stoppages was at its lowest since VJ-day. Not only was the number of strikes less than at any previous work period, but workers involved and idleness were less than one-fourth of the number involved in the same period of 1946 when reconversion problems resulted in widespread labor-management controversies."[51]

The attitude of the Department of Labor and the Conciliation Service in performing mediation and conciliation functions within the Department of Labor was made perfectly clear in the following statement included in the Department's thirty-fifth annual report:

"The major agreements consummated over the few months preceding the enactment of the Labor-Management Relations Act are wholesome proof of the fact that industrial relations have come of age in this country. As we make adjustments during this reconversion period from a war economy to a peace economy, the outlook for industrial peace improves to the same degree that we achieve economic stability and to the same degree that we allow the parties to work out their problems by themselves free of governmental interference and regulation. Labor and management have found to their dismay that Government interference and regulation act as a crutch upon which the parties rely, rather than helping them along the path of self-government. Just when labor and management are learning to walk without assistance, we must not set them back by a new dependence upon the crutch of Government regulation. A free-enterprise system cannot succeed in the absence of free collective bargaining. If we avoid the pitfalls of renewed Government interference and regulation, and with increased economic stability, collective bargaining can work even better than it has in the last few months. If Government participation is kept to a minimum, management and labor can work out their problems through the processes of free collective bargaining."[52]

The creation of a new independent Federal Mediation and Conciliation Service, which was accomplished by the Labor-Management Relations Act, 1947, only adds to the already numerous labor agencies.

The Eightieth Congress, in Public Law 162,[53] established the Commission on Organization of the Executive Branch of the Government. That Commission, headed by former President Herbert Hoover, has submitted its first reports to the Congress. The first finding of that Commission in its first report[54] stated:

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[50] Transcript of hearings held before Committee on Labor and Public Welfare (S. 55 and S. J. Res. 22), 80th Cong., 1st sess., pp. 26–27.

[51] Thirty-fifth Annual Report of the Department of Labor for the fiscal year ended June 30, 1947, p. 62.

[52] Thirty-fifth Annual Report of the Department of Labor, p. 71.

[53] Act of July 7, 1947 (Public Law 162, 80th Cong., 1st sess.).

[54] General Management of the Executive Branch, report to the Congress by the Commission on Organization of the Executive Branch of the Government, February 1949.

"The executive branch is not organized into a workable number of major departments and agencies which the President can effectively direct, but is cut up into a large number of agencies, which divide responsibility and which are too great in number for effective direction from the top.

"Thousands of Federeal programs cannot be directed personally by the President. They must be grouped by related function and divided among a small number of principal assistants who are the heads of departments." [55]

Upon the basis of its study of the executive branch, the Hoover Commission came to the conclusion that—

"Any systematic effort to improve the organization and administration of the Government, therefore, must—

"1. Create a more orderly grouping of the functions of Government into major departments and agencies under the President." [56]

The Commission found that—

"(*b*) There are too many separate agencies, several of which are not combined in accordance with their major purposes. Consequently, there are overlaps, duplications, and inadequacies in determination of policies, and in the execution of programs with a resultant lack of a clear-cut mission for each department.

"(*c*) The line of authority from departmental heads through subordinates is often abridged by independent authorities granted to bureau or division heads, sometimes through congressional act or stipulations in appropriations. Department heads, in many instances, do not have authority commensurate with their responsibilities. Such bureau autonomy undermines the authority of both the President and the department head. There is, therefore, a lack of departmental integration in performing the department's major mission.

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"(*f*) The department heads in most cases lack sufficient authority to assign within their departments such responsibility as would promote economy and efficiency.

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"(*m*) Confusion in the Government agencies bewilders the citizen in his contracts with the Government." [57]

To cure this situation the Commission has recommended:

"Recommendation No. 12:

"The numerous agencies of the executive branch must be grouped into departments as nearly as possible by major purposes in order to give a coherent mission to each department.

"By placing related functions cheek by jowl the overlaps can be eliminated, and, of even greater importance, coordinated policies can be developed.

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"Recommendation No. 14:

"Under the President, the heads of departments must hold full responsibility for the conduct of their departments. There must be a clear line of authority reaching down through every step of the organization and no subordinate should have authority independent from that of his superior." [58]

With respect to no department in the executive branch of the Government are the observations of the Hoover Commission more pertinent than they are with respect to the Department of Labor. This is particularly true in the light of the experience of 2 years of effort on the part of the executive branch of the Government to rebuild and strengthen the Department of Labor and the record of actions which have weakened and diminished the influence of the Department of Labor.

The Hoover Commission's Task Force Report on Departmental Management made in January 1949, attached to its first report as appendix E thereof,[59] found that there has been a general lack of any common conception of the function and organization of an executive department in the Federal Government and referred to the fact that a number of permanent administrative agencies headed by a single administrator have been created which are responsible to the President but which are not regarded as executive departments. Among the agencies to which the report specifically referred was the Federal Mediation and Conciliation Service.[60] The result of the practice of creating new independent agencies in the labor field, report pointed out, has been that "The Labor Department has been left primarily with one regulatory task and one statistical activity." [61]

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[55] Ibid., p. 3.

[56] Ibid., p. 7.

[57] Ibid., pp. 32–35.

[58] Ibid., p. 34.

[59] Task Force Report on Departmental Management, prepared for the Commission on Organization of the Executive Branch of the Government, January 1949.

In his message to the Congress of June 11, 1946, vetoing the proposed Federal Mediation Act of 1946 (Case bill) [62] President Truman discussed in some detail the considerations involved in the setting up of an agency outside the Department of Labor to handle mediation and conciliation functions. He said of the proposal in that bill to establish a new five-man Federal Mediation Board outside the Department of Labor that—

"I consider the establishment of this new agency to be inconsistent with the the principles of good administration. As I have previously stated, it is my opinion that Government today demands reorganization along the lines which the Congress has set forth in the Reorganization Act of 1945, that is, the organization of Government activity into the fewest number of Government agencies consistent with efficiency. Control of purely administrative matters should be grouped as much as possible under members of the Cabinet, who are in turn responsible to the President.

"The proposed Federal Mediation Board would have no quasi-judicial or quasi-legislative functions. It would be purely an administrative agency. Surely, functions of this kind should be concentrated in the Department of Labor.

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"The bill proposes to transfer that Service [the United States Conciliation Service] and its functions to the newly formed Federal Mediation Board. To me this is the equivalent of creating a separate and duplicate Department of Labor, depriving the Secretary of Labor of many of his principal responsibilities and placing the conciliation and mediation functions in an independent body.

"In the eyes of Congress and of the public the President and the Secertary of Labor would remain responsible for the exercise of the mediation and conciliation functions in labor disputes, while, in fact those functions would be conducted by another body not fully responsible to either.

"As far back as September 6, 1945, I said in a message to Congress: 'Meanwhile, plans for strengthening the Department of Labor, and bringing under it functions belonging to it, are going forward.' The establishment of the proposed Federal Mediation Board is a backward step." [63]

In his message of June 20, 1947, vetoing the Labor-Management Relations Act, 1947,[64] the President referred to the unanimous recommendation of the National Labor-Management Conference in November 1947 that the United States Conciliation Service to be strengthened within the Department of Labor. The President went on to say:

"* * * But this bill removes the Conciliation Service from the Department of Labor. The new name for the Service would carry with it no new dignity or new functions. The evidence does not support the theory that the conciliation function would be better exercised and protected by an independent agency outside the Department of Labor. Indeed, the Service would lose the important day-to-day support of factual research in industrial relations available from other units of the Department. Furthermore, the removal of the Conciliation Service from the Department of Labor would be contrary to the praiseworthy policy of the Congress to centralize related governmental units within the major Government departments." [65]

The Department of Labor is directed by act of Congress to have concern for the welfare of the approximately 44,346,000 [66] nonagricultural wage earners of the United States. In carrying out this responsibility, the Department of Labor no less serves the general interests and general welfare of the people of the United States than does the Department of Agriculture in connection with its manifold activities in the interest of the 6,763,000 [67] farmers of the United States. There has never been any serious doubt expressed as to whether it is proper to house within the Department of Agriculture services and agencies devoted to advancing the interests of agriculture which involve a balancing of the farmers' interests against those of the people as a whole. Similarly there should be no question that it is equally proper to house within the Department of Labor the various agencies and services which are concerned with the wage earning population of the United States.

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[60] Ibid., p. 23.
[61] Ibid., p. 25.
[62] H. Doc. No. 651, 79th Cong., 2d sess.
[63] Ibid., pp. 5–6.
[64] H. Doc. No. 334, 80th Cong., 1st sess.
[65] Ibid., p. 9.
[66] Based on Bureau of Labor Statistics figures for wage and salary workers in nonagricultural establishments in January 1949.
[67] Based on data of the Bureau of the Census for total agricultural employment in January 1949.

The restoration of the United States Conciliation Service in the Department of Labor is essential to the restoration of the Department of Labor as an effective Cabinet Department. The reorganization of this Department is in the interest of all the people of the United States, not merely the wage-earning population. After all, the Department of Labor cannot be strengthened if each individual proposal for accomplishing this objective is to be opposed. The restoration of the United States Conciliation Service in the Department of Labor is part of the general program of the President for rebuilding and strengthening the Department of Labor. It cannot be viewed separately from the attainment of that objective.

POINT 4.—GENERAL COUNSEL

"The Taft-Hartley Act abandoned the uniform procedures of the Administrative Procedure Act of 1946 and singled out the National Labor Relations Board as the one administrative agency in our Government which should receive different treatment. The law set up a general counsel who has broad discretionary powers and who is independent of the Board. This is an unwise and unnecessary division of the Board's functions.

"The administrative procedures established under the original National Labor Relations Act, which would be restored under this bill, provided for the internal separation of the judicial and prosecuting functions of the Board in accordance with the provisions of the Administrative Procedure Act. There is no reason why any additional separation should be required.

"Furthermore, the duty of the general counsel, under the Taft-Hartley Act, to determine what complaints should come before the Board places a tremendous amount of power in the hands of one man since it can be used to control policy in enforcing the act. The division of authority between the Board and the general counsel keeps the Board from considering issues vital and germane to its decisions.

"The President in his veto message of June 20, 1947, predicted that the separation of power between the general counsel and the Board——

" '* * * would invite conflict between the National Labor Relations Board and its general counsel, since the general counsel would decide, without any right of appeal by employers and employees, whether charges were to be heard by the Board, and whether orders of the Board were to be referred to the court for enforcement. By virtue of this unlimited authority, a single administrative official might usurp the Board's responsibility for establishing policy under the act.'

"This warning, like others contained in that veto message, has proved to be strikingly accurate."

Section 3 (d) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, provides:

"There shall be a general counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 4 years. The general counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law."

Under this provision, the general counsel has unlimited discretion, "on behalf of the Board," over the investigation of charges and the issuance of complaints of unfair labor practices. The exercise of this discretion by refusing to issue a complaint cannot be reviewed by the Board. Three consequencs flow from this statutory provision: (1) In such cases the general counsel is both prosecutor and judge, exercising in fact quasi-judicial functions similar to those entrusted to the Board, and his decisions cannot even be reviewed by the courts; (2) the general counsel has an absolute control over the cases which he will allow to come before the Board; and (3) conflicting rules can be established in similar cases, because the general counsel can refuse to issue a complaint in a case which under Board decisions would be an unfair labor practice.

Section 3 (d) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, provides that the general counsel shall have "such other duties as the Board may prescribe or as may be provided by law."

Regulations of the Board [68] have delegated to the general counsel the authority to seek compliance with orders of the Board and to apply to the courts for temporary restraining orders in appropriate cases. The general counsel is further authorized to act for the Board in prosecuting appeals through the appellate courts.

The processing of petitions filed under section 9 of the act has also been made a function of the general counsel subject to the regulations of the Board, as has the processing of employee votes on an "employer's last offer" under sections 203 (c) and 209 (b) of title II of the Labor-Management Relations Act.

The general counsel is delegated full and final authority to initiate and prosecute injunction actions under section 10 (j) and section 10 (l) and proceedings under section 10 (k) of the National Labor Relations Act, as amended.

The general counsel has been authorized by the Board to receive the affidavits required by section 9 (h) of the National Labor Relations Act, as amended; to maintain an appropriate file thereof; and to make available to the public, on such terms as he may prescribe, appropriate information concerning such affidavits.

The foregoing powers of the general counsel are limited only to the extent that his refusal to issue a notice of hearing on a petition filed under section 9 of the National Labor Relations Act, as amended, or his dismissal, of any such petition, are subject to review by the Board. The general counsel is not authorized to make information contained in the affidavit files open to unsupervised inspection.

The Thirteenth Annual Report of the National Labor Relations Board clearly demonstrates the significance of the separation of functions by the general counsel and the Board. Table 7 of appendix A of the report shows that 92.8 percent of all unfair labor practice cases closed during the fiscal year 1948 were closed before any formal action was taken. Cases were closed as a result of withdrawal of the charges filed in 45.3 percent of the cases and of adjustment after the filing of charges in 15.3 percent of the cases. Charges were dismissed in 32 percent of the cases. The percentage of cases closed by dismissal ranged from 34.7 percent in cases resulting from charges filed under section 8 of the National Labor Relations Act, prior to amendment, to 27.7 percent in cases resulting from charges filed under section 8 (b) of the National Labor Relations Act, as amended by the Labor-Management Relations Act.[69]

The nearly one-third of the cases involving charges of unfair labor practices in which the charges were dismissed by the regional offices, which operate under the exclusive supervision of the general counsel without any review by the Board, represents the potential scope of the general counsel's discretion in exercising functions conferred upon him by the Labor-Management Relations Act.

POINT 5.—MULTIFARIOUS ELECTIONS

"By providing for numerous elections—representation, union shop, employer's last offer—the Taft-Hartley Act keeps the relation between employers and unions in an unsettled condition, instead of on the basis of stability and confidence so necessary in assuring free collective bargaining."

Under the Wagner Act elections were conducted in two categories of cases: (1) where a labor organization or other employee representative sought to be certified as the statutory bargaining agent of employees and (2) where an employer petitioned for the determination of conflicting claims to recognition by two or more labor organizations.

The Taft-Hartley Act, on the other hand, makes reference to elections in at least 12 of its sections and subsections.

(1) Section 8 (a) (3) permits the making of a union-shop agreement only after the Board has certified that at least a majority of the employees eligible to vote have voted to authorize the making of such an agreement in an election as provided in section 9 (e).

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[68] Code of Federal Regulations, title 29, ch. 2, sec. 201.2.

[69] Thirteenth Annual Report of the National Labor Relations Board for the Fiscal Year Ending June 30, 1948, table 7, appendix A, p. 104.

(2) Section 9 (b) (1) provides for a vote by professional employees to determine whether a majority desire to be excluded from a bargaining unit which represents nonprofessional employees.

(3) Section 9 (b) (2) provides for an election to determine whether a majority of employees in a craft unit desire separate representation where a different bargaining unit has previously been established (so-called craft-severance elections).

(4) Section 9 (b) (3) prohibits inclusion of plant guards in bargaining units which include other employees and presumably would give rise to separate elections among guards to determine their collective-bargaining representatives.

(5) Section 9 (c) (1) (A) (i) provides for petitions by labor organizations or other employee representatives for certification, following a Board-conducted election, as statutory bargaining agent.

(6) Section 9 (c) (1) (A) (ii) authorizes the Board to entertain petitions by employees for, and to hold an election on, decertification of a labor organization or other representative perviously designated.

(7) 9 (c) (1) (B) authorizes a petition by an employer, to be followed by a Board-conducted election, in situations where he alleges that a union is claiming recognition as collective-bargaining agent of the petitioner's employees. (Formerly such petitions were entertained by the Board only when two or more labor organizations asserted conflicting claims.)

(8) Section 9 (c) (3) requires a run-off election in the event that none of the choices on the ballot has received a majority. It further requires that the run-off ballot shall provide a selection between the two choices receiving the largest and second largest number of votes cast in the election. (Run-off elections, while not required by the Wagner Act, were conducted under rules and regulations of the Board. This provision of the Taft-Hartley Act alters the practice of the Board, however, in that whereas formerly the "neither" or "none" choice was eliminated unless it received a plurality of votes cast in the original election, this choice must now appear on the run-off ballot if it received the highest or second highest number of votes.)

(9) Sec. 9 (e) (1) requires the filing of a petition by a labor organization for a secret ballot among the employees represented by it to determine whether such labor organization should be authorized to negotiate a union-shop agreement.

(10) Sec. 9 (e) (2) permits the filing of a petition by the employees in a bargaining unit covered by a union-shop agreement for a secret ballot to determine whether such authority shall be rescinded.

(11) Sec. 203 (c) directs the Federal Mediation and Conciliation Service to suggest (in labor disputes affecting commerce) the submission to employees of the "employer's last offer" for approval or rejection in a secret ballot.

(12) Sec. 209 (b) directs the National Labor Relations Board to take a secret ballot of the employees of each employer involved in a national-emergency strike on the question whether they wish to accept the "final offer of settlement made by their employer as stated by him."

During the fiscal year 1948, the National Labor Relations Board conducted a total of 21,277 elections, in which 2,245,734 employees were eligible to vote and 1,971,087 ballots were cast.. Of these, 17,958 were union-shop authorizations polls and 3,319 were votes on question of representation. The largest number of elections were conducted in any previous year was 6,920 in 1947. The total number of elections conducted in 1948 is approximately 58 percent of the number conducted during the entire previous existence of the Board, the Board having conducted 36,969 elections during that period.

While both sections 9 (c), relating to representation elections, and 9 (e), regulating union-shop authorization, contain subsections stating that no election shall be directed in any bargaining unit within which a valid election has been held in the preceding 12-month period, these subsections do not remove the possibility of a union-shop referendum being held during the same year in which a representation election is conducted (*Gilchrist Lumber Co.*, 21 LRRM 1302).

In a brief period of time, it is possible that a bargaining unit may be polled for: (1) representation purposes; (2) to authorize or deauthorize the negotiation of a union-shop agreement; and (3) to accept or reject an employer's last offer in a dispute situation.

The Thirteenth Annual Report of the Board shows that on June 30, 1948, there were 2,836 representation cases pending although the number of such cases filed during the year was only 7,038. In comparison, in fiscal year 1947, although 10,677 representation cases were filed, only 2,615 were pending at the end of the fiscal year. At the end of fiscal year 1948, therefore, there were 40 representation cases pending to every 100 filed during the year. At the end of the previous year, on the other hand, there were only approximately 24 representation cases pending to every 100 filed during the year.

The union shop authorization election provisions of the act have resulted in an overwhelming approval of union security. Ballots in favor of the union shop were cast by 82.9 percent of the eligible voters and only 5.1 percent voted in the negative. The remaining 12 percent failed to vote or had their ballots challenged. Unions were authorized to bargain for union-shop arrangements in 98 percent of the polls. This vote of approval is estimated to have cost the Government approximately 40 cents per vote.

The First Annual Report of the Federal Mediation and Conciliation Service, p. 35, sets forth a tabulation of the number of secret ballots on the employer's last offer proposed by the Service in accordance with sec. 203 (c). For reasons stated in the report, these figures are not considered accurate but it is indicated that 362 ballots were taken during fiscal 1948. With respect to such ballots, the report contains the following criticism of this requirement of the Taft-Hartley Act:

"It is the attitude of the Federal Mediation and Conciliation Service that a secret ballot on the employer's last offer may be useful under certain circumstances. The Service feels, however, that indiscriminately proposing a secret ballot in every dispute situation serves no useful purpose but may on the contrary destroy the usefulness of the secret ballot in those situations in which it may be successfully utilized to avert a work stoppage."

In every national emergency dispute the results of the ballot conducted by the NLRB pursuant to 209 (b) of the act have been overwhelmingly for rejection of the employer's last offer. The Annual Report of the Federal Mediation and Conciliation Service states that "it is fair to assume that the likelihood of any ballot in the future having a contrary result, is small and remote." The report further states: "These ballots are expensive to conduct, and the experience of a year demonstrates that they do nothing to promote settlement of a dispute. To the contrary, they are a disrupting influence in collective bargaining and mediation."

In an address to an audience of employers (Daily Labor Report, (BNA) No. 14, Jan. 14, 1949) the general counsel of the Illinois Manufacturers' Association stated that employers would suffer no great loss and indeed would gain in some instances from a repeal of seven features of the Taft-Hartley Act. The seven features listed by him included those provisions requiring a multiplicity of elections.

POINT 6—PEACEFUL PICKETING

"The Taft-Hartley Act completely outlaws peaceful picketing in many situations, even such types as have enjoyed protection of our courts for several decades. Thus, employees who picket an employer because he persists in making them work on partially finished goods produced in another plant at sweatshop wages may be found guilty of the unfair labor practice of engaging in an unlawful secondary boycott."

Prior to the enactment of the Labor-Management Relations Act, 1947, peaceful picketing to the extent that it has the purpose of informing the public of the existence of a labor dispute, was regarded by the courts as within the protection of the right of freedom of speech guaranteed by the first amendment to the Constitution of the United States.[70]

Under the National Labor Relations Act, as amended by the Labor-Management Relations Act, peaceful picketing in aid of a secondary boycott, as defined in the act, is an unfair labor practice. For example, in the *Sealright* case, the striking printing union was charged with picketing the premises of two companies which handled or transported products for their employer, against whom they were on strike. The picketing was peaceful and resulted in employees of the picketed concerns, members of a different union, declining to handle Sealright products. The Board's general counsel obtained an injunction.[71] On appeal, the Circuit Court of Appeals for the Ninth Circuit,[72] after stating that it was settled by repeated decisions of the Supreme Court that picketing, when resorted to peacefully for the legitimate purpose of publicizing grievances, is within the protection of the first amendment, nevertheless sustained the issuance of the injunction pointing out the broad sweep of the act with respect to peaceful picketing in aid of a secondary boycott as defined in the act:

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[70] *Thornhill* v. *Alabama* (310 U. S. 88 (1940)); *Carlson* v. *California* (310 U. S. 106 (1940)); *American Federation of Labor* v. *Swing* (312 U. S. 321 (1941)); *Bakery Drivers' Local* v. *Wohl* (315 U. S. 769 (1942)). Cf. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies* (312 U. S. 287); *Carpenters and Joiners Union* v. *Ritter's Cafe* (315 U. S. 722 (1942)).

[71] *LeBaron* v. *Printing Specialties Union* (75 F. Supp. 678).

[72] *Printing Specialties Union* v. *LeBaron* (15 Labor Cases 64,879 (December 13, 1948)).

"The debate here is whether peaceful picketing may constitutionally be confined by legislation to the area of industrial dispute, or, in plainer English, to the premises of the employer with whom the dispute is in progress. It is of course settled by repeated decisions of the Supreme Court that picketing, when resorted to peacefully for the legitimate purpose of publicizing grievances, is within the protection of the first amendment. *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *A. F. of L.* v. *Swing*, 312 U. S. 321. Congress has now undertaken, in the exercise of its power under the commerce clause, to prohibit altogether or sharply to curtail the use by labor organizations of certain economic weapons which they have heretofore freely employed. In an effort to narrow the area of industrial strife, and thus to safeguard the national interest in the free flow of commerce, *it has in effect banned picketing when utilized to conscript in a given struggle the employees of an employer who is not himself a party to the dispute.* Such we understand to be the purport of section 8 (b) (4) (A) of the act.

"The picketing in this instance falls plainly within the terms of that statute. Its primary object was to induce the employees of Los Angeles, Seattle, and west coast to engage in a concerted refusal to handle Sealright's goods and thus to force their employers to cease handling or transporting the same. There can be no doubt about that any more than there can be doubt of the success of the endeavor. Appellants say they were merely picketing Sealright's products and were not engaged in a secondary boycott as that term is commonly understood. *The statute, however, does not use the terms 'hot cargo', 'picketing the products,' or 'secondary boycott.' It broadly sweeps within its prohibition an entire pattern of industrial warfare deemed by Congress to be harmful to the public interest.*[73] [Italics supplied.]

The broad sweep of the act's provisions with respect to secondary boycotts is discussed under point 14.

POINT 7—CHECK-OFF

"The Taft-Hartley Act places unreasonable restraints on many aspects of collective-bargaining agreements. The check-off—a legitimate labor-management practice—has been surrounded with many unnecessary procedural requirements, violation of which carries a criminal penalty, to be detriment of harmonious relations between labor and management."

Section 302 of title III, Labor-Management Relations Act, 1947, provides in part as follows:

"Sec. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable * * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner;"

Section 302 of the act makes a violation of its prohibitions a crime punishable by up to 1 year's imprisonment and fines of as much as $10,000. Violations of the section may also be enjoined in the Federal courts without regard to the Norris-LaGuardia Act or sections 6 and 20 of the Clayton Act.

The check-off of unions dues has a long historical background and was until the enactment of the Taft-Hartley Act a common practice in industry. In 1945 an estimated 5½ million workers were employed under collective-bargaining agreements which provided some form of check-off of union dues. Most of the agreements provided for an automatic check-off.[74]

Significant aspects of the check-off have been described in the following excerpt from the Dynamics of Industrial Democracy by Messrs. Golden and Ruttenberg:

"A word about the check-off. It is a device used by management for years to collect various obligations of workers. The Federal Government uses it to collect social-security taxes from workers. Each pay period management deducts from worker's pay envelopes such items as cash advances, group insurance, restaurant bills, rent, company-store bills, safety shoes, and various other obligations that workers incur from time to time. The only instance when management makes a big point of refusing the check-off is when unions ask that it be used to collect the monthly dues of their members. This is not done on logical grounds, since obviously management cannot accept the check-off device for every other obligation of its employees and deny it for union dues without revealing an underlying motive for such discrimination. The refusal of management to grant the check-off of union dues is merely a barometer of its basic attitude toward unions. To us—and also to most other unionists—opposition to the check-off of union dues reflects a management attitude that looks upon unions and collective bargaining as unavoidable evils, to be recognized for the time being until the opportune moment arrives to destroy both. As management increasingly realizes that a return of nonunion days is a vain dream, the discrimination against union dues in the use of the check-off device, no doubt, will be removed. The check-off is only a side issue." [75]

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[73] 15 Labor Cases 64, 879. at pp. 74, 833.

[74] Florence Petersen, Survey of Labor Economics, Harper, N. Y., 1947, p. 547.

State laws, in a number of States, restrict the check-off by requiring the written consent from the individual employee.[76] Other States place other restrictions upon check-offs.[77] Still others permit automatic check-offs.[78] In other States, while the subject is not covered by a specific statute, there are statutes restricting assignment of wages in general.[79] The confusion caused by these different statutory requirements for employers and unions operating in several States would eliminated by a Federal law making such statutes inapplicable to employers whose operations affect interstate commerce, as would be done by section 107 of the proposed National Labor Relations Act of 1949.

POINT 8—RIGHT OF STRIKERS TO VOTE

"One of the most serious consequences of the law is the denial, not only of the right to reinstatement, as under the Wagner Act, but also of the right to vote in representation elections while granting a vote to strikebreaker replacements. The law thus permits an employer who is faced with a strike to improve wages and hours in his plant, to hire sufficient nonunion replacements to out-vote the members of the union and thereupon to demand an election, the result of which can well be to oust the union from the plant."

Section 9 (c) (3) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, provides, among other things, that "Employees on strike who are not entitled to reinstatement shall not be eligible to vote [in a representation election]." [80] This provision contrasts with the provisions of the original Wagner Act which, as interpreted by the National Labor Relations Board, did not make voting by strikers turn upon their right to reinstatement. The latest decisions of the Board prior to the Labor-Management Relations Act, 1947, ruled that both strikers and replacements were eligible to vote in an election with respect to the collective-bargaining representative.[81] Where strikers should have been reinstated, the replacement would not be eligible to vote, regardless of whether the strike resulted from an unfair labor practice.[82]

In such situations the strikers lost their right to vote only where the labor dispute was no longer current and where the strikers had obtained regular and substantially equivalent employment, so as to be no longer an "employee" within the meaning of section 2 (3) of the act.[83]

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[75] Golden and Ruttenberg, the Dynamics of Industrial Democracy, p. 225.

[76] Colorado Statutes Annotated, ch. 97 (94), sec. 6 (i); Georgia Act No. 140, 1947; Massachusetts General Laws, 1932, Annotated, ch. 154, sec. 8, as added by ch. 96, L. 1933, as amended, ch. 125, L. 1939; Pennsylvania, 43 Purdons Statutes Annotated, sec. 211 (6); Rhode Island L. 1947, ch. 1944; Texas L. 1947, ch. 284; Wisconsin Statutes, 111.06 (i).

[77] Delaware L. 1947, ch. 196, sec. 4 (b) (prohibited except upon direction of court); Mason's Michigan Statutes, 1940 Supplement, sec. 17115–353 (authorization required: held need not be in writing. Op. A. G. No. 418, July 16, 1947).

[78] Jones' Illinois Statutes Annotated, 45–013 (19); Paige's Ohio Code Annotated 6346–13.

[79] Deering's California Labor Code, sec. 300; Maryland Code Annotated, 1939, art. 8, secs. 11–16; Minnesota Statutes Annotated, 181.06.

[80] Sec. 9 (c) (3) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[81] *Rudolph Wurlitzer Co.* (32 N. L. R. B., No. 35 (1941)); *Columbia Pictures Corp.* (64 N. L. R. B., No. 90 (1945)); see *Killborn Mfg. Co., Inc.* (45 N. L. R. B., No. 51 (1942)), where unfair-labor-practice strike charged the Board indicated that replacements might not be eligible to vote.

[82] *Killborn Mfg. Co., Inc.* (45 N. L. R. B., No. 51 (1942)).

[83] National Labor Relations Act (49 Stat. 449).

The change necessitated by the Taft-Hartley Act is demonstrated by the *Pipe Machinery Co.* case in which the P. M. Co. Independent Union petitioned for certification during an economic strike by the International Association of Machinists, which, prior to the strike, had been the bargaining representative.[84] The strike began in February 1947 and the plant was closed down until May 12, 1947, when it was reopened with replacements who thereafter were given permanent employment when all except 31 of the strikers, having been previously notified, refused to return to work. The P. M. Co. Independent Union having then been formed, petitioned for an election. The Board observed that "there is no indication that any of the individuals currently on strike ever made an unconditional application for reinstatement," and concluded:[85]

"Under all of the above circumstances, we find that the replacement workers were hired as permanent employees, that they are eligible to vote, and that the strikers whom they replaced, as they are not entitled to reinstatement, are not eligible to vote."

POINT 9.—EMPLOYER PETITIONS

"Under the Labor-Management Relations Act, the employer can, by petitioning for a choice of collective-bargaining representative, determine the time most advantageous for himself to call for an election, even when not faced with conflicting claims for recognition. The employer can thereby stifle and thwart organization efforts and assure a year's freedom from union organization."

Section 9 (c) (1) (B) of the National Labor Relations Act as amended by the Labor-Management Relations Act, 1947, provides:

"Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—

(B) by an employer alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition, and if it has reasonable cause to believe a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice * * *. If the Board finds upon the record of such hearing that such question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."[86]

The dangerous possibilities of section 9 (c) (1) (B) were recognized by both the Senate Committee on Labor and Public Welfare which reported out the Taft bill (S. 1126) in the first session of the Eightieth Congress and by legal writers. The Majority Report of the Committee pointed out that the regulations of the National Labor Relations Board under the Wagner Act[87] did not permit an employer to petition for representation election where only one union was involved, and acknowledged that the Board's rules had "been defended on the ground that if an employer could petition at any time he could effectively frustrate the desire of his employees to organize by asking for an election on the first day the union organizers distributed leaflets at his plant."[88]

The Report admitted that this "may be a valid argument for placing some limitation upon an employer's right to petition,"[89] but claimed that the danger to which an unrestricted right of the employer to petition for a representation election could give rise could be prevented by requiring that the petition recite that the union named in the petition was claiming a majority of the employees and was demanding exclusive bargaining rights.[90] Whether or not these safeguards would have been sufficient, they were not put in the Labor Management Relations Act as enacted by this Congress.

The significance of employer petitions has also been pointed out by Professor Archibald Cox of Harvard Law School who has written:

"The amendments also make a number of minor modifications in representation proceedings. One permits an employer to file a petition for investigation and certification whenever it has been presented a claim for recognition as the exclusive bargaining representative. Another change forbids the Board to hold an election in any bargaining unit or subdivision thereof, within which a valid election has been held less than 12 months earlier. The fear has sometimes been expressed that these two modifications taken together, would enable employers to file petitions putting a union to a premature election and thus, when the unions were defeated to escape collective bargaining for a year." [91]

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[84] *Pipe Machinery Co.* (21 L. R. R. M. 1178, 22 L. R. R. M. 1510).

[85] *Pipe Machinery Co.* (supra, at 1511).

[86] Sec. 9 (c) (1) (B) of the National Labor Relations Act, as amended by title I of the Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[87] National Labor Relations Act (49 Stat. 449).

[88] S. Rept. No. 105 on S. 1126 (80th Cong.), p. 11, Legislative History of the Labor-Management Relations Act, vol. I, p. 417.

[89] Ibid., p. 417.

[90] Ibid., p. 417.

Professor Cox thought that the danger could be partially avoided by unions delaying their claims of recognition until they are ready to proceed to an election.[92] However, this would not cover the case where a few antiunion employees, in order to forestall an outside union, might claim, or would be induced by the employer to claim, recognition as a local independent union. Professor Cox recognized "the risk of an unscrupulous employer's instigating a subservient group to present a claim for recognition in order that it might file a petition," but claimed this could be minimized "by the Board's refusing to proceed to an election, unless the group claiming recognition is able to show substantial representation among the employees." [93]

While an early decision of the Board appeared to support this view,[94] a later decision indicates that in an employer's petition no showing of substantial representation is necessary. In its earlier decision the Board held that where, at a representation hearing, a union actually disavows its claim to representation of a majority of the employees in the unit, the employer's petition will be dismissed. Where, however, the union does not appear at the representation hearing and nothing is alleged concerning the extent of its representation of the employees, the Board has subsequently ruled that an employer's petition will not be dismissed.[95] It was pointed out that the words of the act do not require an employer's petition to make such an allegation and that, in any event, the employer could not make an investigation of the facts on which such a claim could be based without committing the unfair labor practice of interfering with union activity of his employees.

It is pertinent to point out, on this connection, that under section 9 (c) (1) (A) of the National Labor Relations Act, as amended, a union's petition for representation is expressly required to allege that a substantial number of employees wish to be represented. As has been pointed out, "Under the Taft Act, the Board made it clear that it will accept union petitions only where there is a showing that at least 30 percent of the employees in the unit have authorized the union to represent them." [96]

POINT 10.—HEALTH AND WELFARE FUNDS

"The law removes from the area of free collective bargaining a subject which all must agree is a proper objective of workers—welfare funds established for the humanitarian purpose of protecting the health and security of employees. It is made a crime for employers and employees to establish such funds except under rigid rules limiting their purposes and methods of administration. Furthermore, violations may be enjoined without regard to the Clayton Act and Norris-LaGuardia Act safeguards."

Section 302 of the Taft-Hartley Act states that—

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

* * * * * * *

"(c) The provisions of this section shall not be applicable * * * (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments, and their families and dependents) : *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute, shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

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[91] Some Aspects of the Labor-Management Relations Act, 1947, 61 Harvard Law Review (November 1948), p. 36.

[92] Ibid., p. 37.

[93] Ibid.

[94] *New York Lint Tool & Mfg. Co.* (77 N. L. R. B. 642, May 13, 1948; 22 L. R. R. M. 1061).

[95] *In re Felton Oil Co.* (78 N. L. R. B., No. 141, August 17, 1948; 22 L. R. R. M. 1332).

[96] The Taft-Hartley Act After 1 Year, Bureau of National Affairs, Washington, D. C., 1948.

"(d)" Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year or both."

A glance at the above provisions of the act suffices to show that they are complicated, rigid, and burdensome. In view of the millions of employees who are dependent on these funds for security—the benefits provided by the Social Security Act are now obviously inadequate with the rise in the cost of living—it would appear wise to encourage the establishment of health and welfare funds, rather than encumber them with burdensome restrictions. Any discouragement to the setting up of voluntary funds can only add to the burden of the Federal Government. This was pointed out prior to the passage of the act.[97]

The supposed justification for the restrictions placed on welfare funds by section 302 was the alleged diversion of funds from the purposes for which they were created.[98] It has been held that not even a majority of the members of a union could vote, against the wishes of a minority, to divert sick and burial benefit funds from the purposes to which they were originally dedicated (*Liggett* v. *Koivunen*, 23 L. R. R. M. 2035 (Minn. Sup. Ct., 1948)). (See *Low* v. *Harris*, 90 F. (2d) 783 (C. C. A. 7); *Harris, ex rel. Carpenters Union* v. *Backman*, 160 Or. 520, 86 P. (2d) 456 (Oregon Sup. Ct.).) These decisions bore no references to the Labor Management Act, 1947 and rested solely on equitable principles established under State law by judicial decision. It should also be noted that most welfare funds were prior to the enactment of the Labor Management Relations Act, 1947, either jointly administered by employers and unions or are administered primarily by an insurance company.[99]

Section 302 has criminal, rather than civil, sanctions, namely a fine of not over $10,000 and imprisonment of not over 1 year (subsection (d)). To escape the consequent risk of accidentally making or carrying out an agreement concerning a welfare fund in violation of section 302, one party secured an opinion from the Solicitor of Labor and from the Attorney General of the United States as to the validity of the proposed agreement.[1] However, such an opinion would not be binding upon either the Attorney General or the courts, or upon employers or labor organizations, in criminal proceedings against the trustees of such a fund. While a few cases have been decided concerning welfare funds as a result of civil actions,[2] the danger of being subjected to criminal prosecution in setting up new welfare funds is always present.

POINT 11.—UNION SECURITY: RESTRICTIVE STATE LAWS PREVAIL

"The Taft-Hartley Act impaired legitimate union security by providing that where State laws are more restrictive than the Federal statute the State laws should prevail. As a result of this provision even union shops are banned in some industries engaged in interstate commerce."

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[97] Legislative History of the Labor-Management Relations Act, pp. 370, 485.

[98] Ibid., p. 458.

[99] Health Benefit Programs Established Through Collective Bargaining, Bulletin 841, Bureau of Labor Statistics, 1945.

[1] Agreement in the recording industry (C. C. H. Labor Service, vol. 2, par. 9014).

[2] *In re Feller* (New York Superior Court, New York County, 22 L. R. R. M. 2367); *Van Horn* v. *Lewis* (22 L. R. R. M. 2232, District Court, District of Columbia).

Section 14 (b) of the National Labor Relations Act, as amended by title I of the Labor-Management Relations Act of 1947, provides:

"Nothing in this act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."[3]

Although the Labor-Management Relations Act did not change the declarations in the National Labor Relations Act that the national labor policy is founded on the principle and procedures of collective bargaining in interstate trade, commerce, and industry, section 14 (b) has had the effect of drastically curtailing the scope of such bargaining in interstate commerce industries. During the time when labor-management relations were under investigation by the Congress in 1947, 11 States[4] took action to ban by law all types of union security agreements.[5] Prior to this time only two States, Nevada and Florida, had provisions of law designed to remove completely the subject of union security from the realm of collective bargaining. In addition to the outright ban on closed shops, the laws of six[6] other States at the present time provide for various restrictions and conditions in connection with union security provisions, or declare such provisions against public policy without providing enforcement procedures.

Thus, in some States unions and employers can make the kind of union shop agreements which is permitted by the National Labor Relations Act, as amended,[7] while in others they cannot, even though they are engaged in interstate commerce or in activities which affect interstate commerce. The result is confusion and uncertainty for both unions and employers. Section 14 (b) is a major handicap to this development of fair, clear, and nondiscriminatory treatment of employees in interstate trade, commerce, and industry with respect to union security.

POINT 12.—POLITICAL CONTRIBUTIONS AND EXPENDITURES BY LABOR UNIONS

"The Taft-Hartley Act's broad ban upon political contributions and expenditures by labor organizations, in my opinion, is unfair and undemocratic. I consider this to be discriminatory legislation because it selects labor organizations as the only type of voluntary associations which are to be denied effective political participation."

Section 304 of title III of the Labor-Management Relations Act, 1947, provides:

"Sec. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; supp. V, title 50, App., sec. 1509) as amended, is amended to read as follows:

"'Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.' "

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[3] Sec. 14 (b) of the National Labor Relations Act, as amended in title I of the Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[4] Arizona, Arkansas, Georgia, Iowa, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Virginia.

[5] The validity of such laws was upheld in *Lincoln Union* v. *North Western*, Nos. 47 and 34, and *A. F. of L.* v. *American Sash Co.*, No. 27, on January 3, 1949, by the United States Supreme Court.

[6] Kansas, Colorado, New Hampshire, Wisconsin, Delaware, and Maryland.

[7] Secs. 8 (a) (3) and 8 (b) (2) of the National Labor Relations Act, as amended.

The scope of section 304 of the Taft-Hartley Act has been considered by the courts in two cases. In the first case arising under this section the Congress of Industrial Organizations and Philip Murray, its president, were charged with making expenditures in connection with a Federal election by publishing and circulating in the CIO News an editorial by Mr. Murray favoring one of the candidates in a special election held on July 15, 1947, to elect a representative to Congress in the Third Congressional District of the State of Maryland. The Federal district judge before whom this case was heard held that the section was an unconstitutional deprivation of freedom of speech, freedom of press, and freedom of assembly, guaranteed protection by the first amendment to the Constitution of the United States.[8]

On appeal, the United States Supreme Court sustained the district court's dismissal of the indictment, not however, on the ground of the unconstitutionality of the statutory provision but solely for the reason that the provision did not apply to the actions of the defendants in the case.[9]

In the other case brought under the section, another Federal district court has held, however, that the act prohibits a union from financing a newspaper advertisement and radio broadcast advocating the defeat of a candidate in a congressionl election.[10]

Section 304 ignores the basic difference in nature and purpose between a corporation whose primary purpose is profit, and a labor organization, whose primary purpose is the promotion of good living standards and working conditions for its members. The members of labor organizations are not ordinarily able, as corporation officials, to make sizable individual contributions to political campaigns.[11]

Labor organizations are the only type of voluntary unincorporated associations whose political activities have been restricted.[12] Employers' trade associations, to mention only one such type, are not subject to any comparable restriction on their political activities.

POINT 13.—DAMAGE SUITS

"The Taft-Hartley Act provides for damage suits in the Federal courts for breaches of collective bargaining agreements and for violation of the prohibitions in the act against secondary boycotts and jurisdictional disputes. These provisions throw upon the Federal courts the task of deciding many issues which should be settled by the parties themselves within the framework of their agreements. Furthermore, the burden of untangling the complicated economic problems out of which the evils of unjustifiable secondary boycotts and jurisdictional disputes arise is one that administrative agencies dealing continuously wtih employer-employee relations are far better equipped to handle than the Federal courts, where dockets are already seriously overcrowded. These provisions assume an attitude of hostility between employers and unions which is wholly incompatible with the maintenance of peaceful collective bargaining relations and with the assumptions upon which our entire national labor policy is founded."

Actions in the Federal courts against labor organizations are provided for in two sections of the Labor-Management Relations Act. Suits for breach of contract may be brought under section 301 title III, of the act, which provides as follows:

"Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this act and any employer whose activities affect commerce as defined in this act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

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[8] *United States* v. *C. I. O.* (77 F. Supp. 355).

[9] *United States* v. *C. I. O.* (335 U. S. 106).

[10] *United States* v. *Painters Local Union* 481 (79 F. Supp. 516).

[11] House Minority Report No. 245 (80th Cong.), p. 111; Legislative History of the Labor-Management Relations Act, 1947, U. S. Government Printing Office, 1948, p. 402.

[12] Ibid., pp. 402, 682, 683.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person in acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Damage suits for injury to business or property by reason of so-called secondary boycotts and jurisdictional disputes, defined in the same terms as the union unfair labor practices defined in section 8 (b) (4) of the National Labor Relations Act, as amended, are authorized in section 303 of the act. That section provides as follows:

"Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

"(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certfied as the representative of such employees under the provisions of section 9 of the National Labor Relations Act.

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

Union liability in damages for engaging in the activities defined in section 303 is in addition to the sanctions provided in the National Labor Relations Act, as amended, for engaging in the same activities. Thus, unions may be subjected to injunctions and cease and desist orders as well as damage suits if they engage in such activities.

As a result of the provisions with respect to damage suits, unions have sought contract provisions limiting or avoiding damage liability. Such provisions were said by the examiner in the Baltimore ITU case (21 LRRM 303) to be a proper subject of bargaining. Hitherto normal "no strike" clauses in collective bargaining agreements have been replaced by such clauses as "the union will not initiate, authorize, sanction, support nor engage in any strike, stoppage, or slow-down of work,"[13] and simple agreements to work when "able and willing."[14]

Section 301 permits damage suits in the Federal courts for breach of collective bargaining agreements without regard to the usual jurisdictional requirements of diversity of citizenship and minimum amount in controversy. This right of action is in addition to that accorded in the courts of the several States.

It has been pointed out with respect to section 301 that—

"I would be unfortunate if there should develop any strong tendency to look to the Federal courts to settle questions concerning the interpretation and application of collective bargaining agreements. A collective agreement is most workable when it is treated as a constitutional instrument or basic statute sharing an administrative authority with the day-to-day application of general aims. The determination of disputes arising during this process is more a matter of creating new law than of construing the provisions of a tightly drawn document. Few judges are equipped for this task by experience or insight; in addition, they would be hampered by the restrictions and delays of legal doctrine and court procedure. Wider voluntary use of arbitration offers a more promising method of settling such disputes."[15]

The burden on the Federal courts resulting from section 301 is shown by the fact that the number of civil actions[16] of all kinds pending in the United States district courts has risen from 29,927 on June 30, 1943, to 51,281 on June 30, 1947, constituting an increase of more than 43 percent, and an increase of almost 6,000 private cases pending on June 30, 1946. The cases pending would require approximately 11 months of disposition at the current rate, irrespective of new cases filed during that time.

It may be pointed out that the provisions of section 303 are one-sided, i. e., they give to an employer a right of action for damages against a union for certain unfair labor practices, but deny to a union the same right of action against an employer. The courts have held that the latter are properly brought only before the National Labor Relations Board.[17]

One case of the latter type, *Amazon Cotton Mill* v. *Textile Workers*, came up to the United States court of appeals in Richmond.[18] The union and the company had bargained collectively for 4 years. At the end of that time negotiations for a renewal of the contract broke down, and a strike resulted. The union charged the employer with unfair labor practices before the National Labor Relations Board. The union thereupon petitioned the Federal district court for damages and an injunction, and upon issuance of an interlocutory injunction both the employer and the National Labor Relations Board, as intervenor, appealed. On appeal the decree of the district court was reversed on the ground that the only remedy given by the Taft-Hartley Act to a union for the unfair labor practices of an employer was through a proceeding before the Board.

The fundamental objection, however, is that harmonious labor relations cannot be carried on through court fights.

"Pursuant to its legal-rights policy the Taft-Hartley Act authorized United States district courts to entertain suits by either pary charging violation of collective-bargaining agreements. It also declared it to be desirable that such disputes ought to be settled by a method agreed upon by the parties. But it did not act on this suggestion, though court procedures are about as helpful in securing friendly adjustments in cases of this kind as divorce suits are between man and wife."[19]

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[13] Agreement between Fall River Textile Manufacturers' Association and Textile Workers Union of America, CIO, December 3, 1943, art. IX.

[14] Referred to by Gerhard Van Arkel, former general counsel for the National Labor Relations Board, in Ex-Administrator's Forecast on L. R. M. A.'s Operation, 20 L. R. R. M. 68, 73.

[15] Some Aspects of the Labor-Management Relations Act, 1947, Archibald Cox, Harvard Law Review, vol. LXI, Nos. 1 and 2, No. 2, p. 305.

[16] Annual Report of the Attorney General of the United States for the fiscal year ended June 30, 1947; Annual Report of the Director of the Administrative Office of the United States Courts, 1947.

[17] *Amazon Cotton Mill* v. *Textile Workers Union* (167 F. (2d) 183 (April 1, 1948)); *I. L. W. U.* v. *Sunset Line and Twine Co.* (77 F. Supp. 119 (April 7, 1948)); *United Packing House Workers* v. *Wilson & Co.* (80 F. Supp. 563 (July 2, 1948)).

[18] 167 F. (2d) 183 (April 1, 1948).

[19] Leiserson, William M., For a New Labor Law—A Basic Analysis, the New York Times magazine, February 6, 1949, p. 7.

POINT 14.—SECONDARY BOYCOTTS

"The Labor-Management Relations Act indiscriminately outlaws all secondary boycotts whether unjustifiable or not. As the President emphasized in his veto message, the provisions of the act go far beyond merely prohibiting certain unjustifiable secondary boycotts. The language used is so broad that even boycotts engaged in for the purpose of protecting the standards of union members against the competition of goods produced under sweatshop conditions are prohibited. Such types of boycotts have long been recognized by the courts as justifiable in order to preserve the union's own existence and the gains made in genuine collective bargaining. Yet the act puts a mandatory duty on the regional director, subject to the supervision of the general counsel, to go into the Federal courts for injunctive relief when he has reason to believe that a union is engaging in such a boycott. And the act requires the regional director, in the preliminary investigation of a charge concerning such a boycott to give the case 'priority over all other cases except cases of like character in the office where it is filed or to which it is referred.' "

Section 8 (b) (4) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, provides:

"Sec. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certfication of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this act;" [20]

This broad prohibition amounts to an indiscriminate prohibition of all "secondary boycotts," as that term is commonly used. In order to compel unions to desist from the use of secondary boycotts, the Labor-Management Relations Act (1) declares secondary boycotts to be union unfair labor practices: [21] (2) makes it mandatory on the Board to give such cases "priority over all other cases of like character in the office where it is filed or to which it is referred" and directs the Board's officers to petition courts for restraining orders or injunctive relief pending the Board's final determination of such cases;[22] and (3) subjects unions to damage suits by any person injured by a secondary boycott.[23]

One of the primary effects of the secondary boycott provisions has been to provide a shield for nonunion employers by isolating them from peaceful economic pressures which a union could otherwise bring against them to observe decent working conditions established through the democratic process of collective bargaining. For example, in *Styles* v. *I. B. E. W.* (22 L. R. R. M. 2446), Roane-Anderson Co. had a contract with an electrical union, it subcontracted certain maintenance work to Kiser Electric Co., a nonunion contractor, the lowest bidder for the job. The maintenance employees of Roane-Anderson Co., the so-called neutral employer, members of the union, thereupon left their jobs. As the purpose of the strike was to induce the neutral employer to cease subcontracting work to the Kiser Electric Co., the court issued an injunction. If an employer for business reasons refuses to give up his right to deal with another employer whose working standards threaten the economic interests of the union, it is difficult to perceive any valid reasons for denying unions the equal right to withhold the services of their members from such so-called neutral employer.

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[20] Sec. 8 (b) (4) of the National Labor Relations Act, as amended by title I of the Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[21] Sec. 8 (b) (4) of the National Labor Relations Act, as amended.

[22] Sec. 10 (1) of the National Labor Relations Act, as amended.

[23] Sec. 303 (b) of the National Labor Relations Act, as amended.

The act provides an incentive to neutral employers to subcontract work to nonunion employers. In the long run, this can easily result in ruining unions and the gains made in genuine collective bargaining. For example, in *Baker* v. *Carpenters* (21 L. R. R. M. 2406). Montgomery Fair Co. had in its employ certain employees who were members of a carpenters' union. The company contracted with Bear Bros., Inc., a nonunion general contractor, to make certain improvements and alteration in its place of business. The union thereupon called a strike of its members against Montgomery Fair Co., the neutral employer, to cease dealing with the nonunion contractor. The court issued an injunction.

The possibility afforded by the law to use subcontractors as "strikebreakers" is well illustrated in the case of *Douds* v. *Metropolitan Architects* (21 L. R. R. M. 2256). In this case the union called a strike against Ebasco Services, Inc. Prior to the strike the company had subcontracted a limited amount of work to Project Engineering Co., under an arrangement whereby Ebasco supervised the work of the employees of Project engaged on its work, paid their wages, and allowed Project a certain amount for overhead and profits. After the strike began, Ebasco increased the volume of work it subcontracted to Project, work which otherwise would have been performed by employees of the Ebasco if they had not been on a strike. The union picketed Project, the neutral employer, and a charge of secondary boycott was filed. The court, with a keen appreciation of the facts of modern industrial practices, refused to issue the injunction, stating: "The economic effect upon Ebasco's employees was precisely that which would flow from Ebasco's hiring strikebreakers to work on its own premises." The court recognized that under the literal wording of the act an injunction would be required, but rationalized its refusal to issue the injunction by observing that to interpret that act literally would destroy it by driving it to absurdity.

The argument is commonly advanced that the purpose of the act is to protect a neutral employer's right to carry on his business without interference. As illustrated above, in many cases a so-called neutral employer is not in fact "neutral." The act even prohibits employers and unions from agreeing, prior to the time a controversy arises, that the employer will not deal with nonunion employers. Thus in *Douds* v. *Teamsters* (75 F. Supp. 414), Conway's Express agreed with the union representing its employees that if it leased its equipment to others, it would arrange for the lease to use union operators or otherwise Conway would sell the equipment. Conway's Express breached the agreement by leasing equipment to Middle Atlantic Transportation Co. which did not employ union operators. The court enjoined a strike to compel Conway's Express to abide by its agreement, since the union was in effect seeking to induce the employer to cease leasing such equipment to the nonunion employer.

In *Sperry* v. *Denver Bldg. and Cons. Trades Council* (77 F. Supp. 321), the court found that the union attempted to persuade two general contractors to cease doing business with a certain subcontractor who consistently refused to employ any union members. The court found that on one job the union called one carpenter off the job and that a plumber, on hearing that the subcontractor operated a nonunion business, quit his job of his own volition. The court found further that the union placed one picket on another construction site, and that the union had placed the name of the subcontractor on a blacklist by placing his name on a blackboard at union headquarters where labor unions and members held their meetings. As the court concluded that the evidence failed to show that the business involved affected interstate commerce, an injunction was denied.

In most cases courts issuing injunctions under the secondary boycott provisions of the Labor-Management Relations Act do not mention the reasons which induced the unions to impose a boycott. Such inquiry is not pertinent under the wording of the act; all secondary boycotts, without distinction, are prohibited. A superficial statement of the facts which label the act a secondary boycott, although sufficient to bring such activity within the prohibition of the act, is, of course, valueless for any intelligent evaluation of its social justification. In those few cases where courts have stated the facts which caused the union to boycott, or such facts may be reasonably inferred, it appears that the union struck because the employer of its members refused to cease dealing with another employer who paid wages below those established in collective bargaining agreements (*Sperry* v. *Building Trades Council* (Kansas City), 23 L. R. R. M. 2115; *Styles* v. *I. B. E. W., supra*); because the neutral employer with whom the union had a contract was either subcontracting work to, or working with, a nonunion contractor and thereby undoubtedly contributing to the perpetuation of lower working standards than those established by collective bargaining agreements of the crafts and trades employed on the project (*Styles* v. *Carpenters*, 74 F. Supp 499; I. B. E. W. case, *supra; Baker* v. *Carpenters, supra*); because the union was attempting to enlist the aid of members of other unions in its dispute with an employer (*LeBaron* v. *Printing Union*, 21 L. R. R. M. 2268, 23 L. R. R. M. 2145); or because the union was attempting to exercise rights contained in its contract with the neutral employer either not to make deliveries to or from a place of business where a strike or a picket line authorized by the building construction trades council was in effect, or to compel the neutral employer to observe other contractual requirements with respect to his business dealings with third person (*Sperry* v. *Building Trades Council* (Kansas City), 23 L. R. R. M. 2115; *Douds* v. *Teamsters* (Conway), *supra*).

The secondary-boycott provisions have had the further effect of prohibiting sympathy strikes and outlawing peaceful picketing in many situations. In *Douds* v. *Wine Workers Union* (21 L. R. R. M. 2120, 2204, 2282), the union was charged with refusing to handle products of Schenley Distillers for two distributors in order to assist a strike of an affiliated union against a subsidiary of Schenley. A temporary restraining order was issued, but was later dissolved when the strike ceased. In *LeBaron* v. *Printing Union* (23 L. R. R. M. 2145), the ninth circuit affirmed the issuance of an injunction against a union which was charged with conducting peaceful picketing of two carriers who handled Sealright Co.'s products and made shipments to it, thereby inducing the employees of the picketed carriers to decline to handle Sealright's products. The court pointed out that the prohibition on secondary boycotts "has in effect banned picketing when utilized to conscript in a given struggle the employees of an employer who is not a party to the dispute."

The history of Federal experience prior to the Labor-Management Relations Act with respect to injunctions in Labor disputes, including secondary boycotts, is a matter of common knowledge. When the Sherman Antitrust Act was passed, it was believed that it related to conspiracies in restraint of trade on the part of combinations of employers. After the Supreme Court in the Danbury Hatters case[24] held that the act was applicable to unions, both the Federal Government and private employers frequently invoked the act to obtain injunctions and recover damages in a variety of situations, including those involving a refusal to handle or work on goods made in open shops and other secondary boycotts. The use by courts of the Sherman Act to deprive labor of the use of the boycott and other traditional economic weapons led Congress to pass the Clayton Act. Section 20 of the Clayton Act provided that no injunction would be issued to restrain employees from ceasing to patronize or from recommending, advising or persuading others by peaceful means so to do. It was believed that this would have the effect of outlawing the use of the injunction in this type of case. Nevertheless, the United States Supreme Court in 1921 in the Duplex Printing Press case[25] involving a secondary boycott held, over the vigorous dissent of Justices Holmes, Brandeis, and Clarke, that section 20 did not preclude the issuance of injunctions. Justice Brandeis, speaking for the minority, pointed out:

> "May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it. * * *
>
> "* * * courts with better appreciation of facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself."

The Supreme Court's interpretation of the Clayton Act led to an increase in the number of injunction suits, not only in secondary boycott cases but in other situations where the powers of the Federal courts could be invoked. In the 83 cases which were brought under the Sherman Act against unions during the period 1890 to 1930, 64, or over 77 percent, were brought in the 14-year period after the passage of the Clayton Act. Thirty-four of these sixty-four cases were private injunction suits.[26] By 1932 the public was so aroused that Congress passed the Norris-LaGuardia Act which, by broadly defining the term "labor dispute," made it clear beyond doubt that Congress intended to prevent the use of injunctions in so-called secondary boycott situations.[27]

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[24] *Loewe* v. *Lawlor* (208 U. S. 274 (1908)).

[25] 254 U. S. 443 (1921).

The report of the Joint Committee on Labor-Management Relations shows that the use by Federal courts of the injunction in labor disputes is being revived on a scale heretofore unprecedented. As previously noted, in the 14-year period 1914–28, 64 injunction cases were brought against unions under the Sherman Act. The majority report shows that under the Labor-Management Relations Act in the 5-month period August 1947 to February 1, 1948, 132 charges alleging secondary boycotts were filed, or approximately 26 cases per month. During the 9-month period February 1, 1948, to November 1, 1948, 210 such charges were filed, or an average of 23 cases per month. The vast majority of these charges were later dismissed, and it is therefore impossible to state how many of such charges were valid. Notwithstanding this apparent decrease in the number of secondary boycotts, it is equally clear that injunctions are being sought in an ever-increasing number of such cases. In the first-mentioned period, 9 petitions for temporary restraining orders or injunctions were filed; however, in the latter period 22 such petitions were filed.[28] Thus, in the brief 14-month period, 31 suits for injunctions against unions were filed under the secondary-boycott sections alone as compared with a total of 83 injunction suits of all types filed under the Sherman Act in the 40-year period 1890 to 1930. The act makes it mandatory on the Board to give priority to such cases and directs the Board to seek an injunction whenever an officer of the Board finds any reason to believe that a charge of secondary boycott is true. It is wholly reasonable to anticipate, therefore, that unless the use of the injunction in labor disputes is again prohibited the present upward trend in the use of injunction in labor disputes will continue.

POINT 15—DISCRIMINATION AGAINST LABOR ORGANIZATIONS IN THE APPLICATION OF SANCTIONS AGAINST UNFAIR LABOR PRACTICES

"The Taft-Hartley Act grossly discriminates in the application of sanctions against unfair labor practices in favor of employers and against labor organizations. Mandatory injunctive action is provided for in the case of three employee or union organization unfair labor practices. In no case is it mandatory to afford relief to employees or a labor organization against any employer unfair labor practice."

Section 8 (b) (4) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, provides that it shall be an unfair labor practice for a labor organization or its agent "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:"[29]

(*a*) forcing or requiring an employer or employed persons to join a labor or employer organization or any employer to cease doing business with any other person;

(*b*) forcing or requiring an employer to bargain with the labor organization unless it is the certified representative under section 9 of the National Labor Relations Act, as amended;

(*c*) forcing or requiring an employer to bargain with such labor organization if another labor organization has been certified as the bargaining representative under section 9 of the National Labor Relations Act, as amended.

Section 10 (l) of the act provides that when it is charged that any "person," which by definition includes any labor organization,[30] has engaged in any of the three foregoing unfair labor practices "the preliminary investigation of such change *shall be made forthwith* and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe that such charge is true and that a complaint should issue, he *shall*, on behalf of the Board, petition any District Court of the United States * * * for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law." [Italics supplied.] [31]

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[26] Edward Berman, Labor and the Sherman Act, p. 219.

[27] *Milk Wagon Drivers Union* v. *Lake Valley Farm Products* (311 U. S. 91).

[28] Joint Committee on Labor-Management Relations, majority report, pp. 24, 27.

[29] See sec. 8 (b) (4) of the National Labor Relations Act, as amended by title I of the Labor Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st Sess.).

[30] Sec. 2 (1) of the National Labor Relations Act, as amended.

All other unfair labor practices provided in the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, including all unfair labor practices of employers, are made subject to the provisions of section 10 (j) which makes it discretionary with the Board to seek temporary injunctive relief. That section provides:

"The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper." [32]

It is to be noted that the provisions of section 10 (j) as well as the provisions of section 10 (l) are available to invoke injunctive action against labor unions charged with violation of section 8 (b) (4).

POINT 16—NATIONAL EMERGENCY DISPUTES

"The Taft-Hartley Act provides elaborate and inflexible procedures including boards of inquiry, an 80-day waiting period enforced by injunction, and secret ballots which must be followed in emergency disputes. Nevertheless, as the President said in his veto message, he and his officers are deprived of their power to take effective action in securing peaceful settlement of such disputes. For example, even the boards of inquiry are deprived of authority to make recommendations for settling the dispute. In the atomic energy and longshore cases these procedures were unavailing, and agreements between the parties were reached with the assistance of Government conciliation, only after the machinery provided by the law had ineffectively run its course."

The Labor-Management Relations Act, 1947, sections 206-208, inclusive, authorizes the President, whenever in his opinion, a threatened or actual strike or lock-out affects substantially an entire industry and would, if permitted to occur or continue, imperil the national health or safety, to appoint a Board of Inquiry which shall report the facts without recommendation. The Board is given subpena powers. After receiving the report the President may direct the Attorney General to petition for an injunction, and if the court finds that such peril exists it has jurisdiction to enjoin the lock-out or strike.

The order of the court is subject to review by the Circuit Courts of Appeals and the Supreme Court.

Sections 209-210 require that the parties to a dispute in which an injunction has been issued to make every effort to settle their differences with the assistance of the Mediation and Conciliation Service, although neither party would be required to accept any proposal of the mediation service. If settlement is not reached 60 days after the injunction, the Board of Inquiry makes a progress report to the Attorney General which report is made public. Within 15 days thereafter the N. L. R. B. holds an election among the employees of each employer to see whether they wish to accept the employer's final offer as stated by him. Within 5 days after the election the Board is required to certify the results of the election. Thereupon (or upon settlement at any time during the 80-day period if that is sooner) the Attorney General is required to move to have the injunction discharged. The President thereafter makes a full report to Congress with his recommendations.[33]

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[31] Sec. 10 (l) of the National Labor Relations Act, as amended.

[32] Sec. 10 (j) of the National Labor Relations Act, as amended.

Under the foregoing provisions of the Labor-Management Relations Act, 1947, the President is virtually under a congressional mandate whenever there is a threatened strike or lock-out affecting an entire industry or a substantial part thereof to invoke the procedures provided for therein. It is true that the questions whether such procedure should be invoked and whether an injunction should be sought in any particular case are left to the discretion of the President. Once the initial decision is made to invoke the procedures provided for in sections 206–210, however, the act provides for an inflexible succession of boards of inquiry without authority to make recommendations, an 80-day injunction, a vote on individual employers' last offers as stated by them and discharge of the injunction.

The Federal Mediation and Conciliation Service in its first annual report pointed out that:

"One of the conclusions which the Service is undoubtedly justified in drawing from its experience of the last year is that provision for an 80-day period of continued operations, under injunctive order of a court, tends to delay rather than facilitate settlement of a dispute. Parties unable to resolve the issues facing them before a dead-line-date, when subject to an injunction order, tend to lose a sense of urgency and to relax their efforts to reach a settlement. They wait for the next dead-line date (the date of discharge of the injunction) to spur them to renewed efforts. In most instances efforts of the Service to encourage the parties to bargain during the injunction period, with a view to early settlement, falls on deaf ears. Further, the public appears to be lulled into a sense of false security by a relatively long period of industrial peace by injunction and does not give evidence of being aware of a threat to the common welfare which would produce a climate of public opinion favorable to settlement." [34]

The report also observed that—

"In every national emergency dispute to date the results of a ballot conducted by the National Labor Relations Board pursuant to section 209(b) of the act have been overwhelmingly for rejection of the employer's last offer. For reasons which need not be elaborated here it is fair to assume that the likelihood of any ballot in the future having a contrary result, is small and remote. These ballots are expensive to conduct, and the experience of a year demonstrates that they do nothing to promote settlement of a dispute. To the contrary, they are a disrupting influence in collective bargaining and mediation. The last or final offer of an employer which the National Labor Relations Board is under an obligation to submit to ballot, is not likely to be the ultimate offer in fact, on the basis of which a settlement will be reached * * *

"A vote turning down an employer's last offer places additional obstacles and difficulties in the way of a settlement. Union representatives must necessarily accept the vote as a mandate from the rank and file of workers that they may regard as practicable and possible bases of settlement only those offers of employers substantially more favorable than the one rejected. With foreknowledge of this consequence, employers tend to keep in reserve, and not to represnt as a last offer which may be submitted to ballot, concessions which might result in a settlement. Union leadership and employees, aware that employers assess the situation in this manner, act accordingly. Thus, the mandatory last-offer ballot sets into action a cycle of tactical operations by both parties which cancel each other out and delay serious efforts to arrive at a prompt resolution of their differences." [35]

In his message of June 20, 1947, to the Congress, vetoing the Labor-Management Relations Act, 1947,[36] the President called attention to the fact that the boards of inquiry authorized by the act in emergency strike situations are forbidden to offer their informed judgment concerning a reasonable basis for settlement of the dispute.[37] This constitutes a serious handicap to the Government's efforts to assist the parties to settle the issues involved in this dispute. William M. Leiserson, former Chairman to the National Mediation Board and member of the National Labor Relations Board, has pointed out in an article published in the New York Times magazine, on February 6, 1949, at page 49, that—

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[33] Secs. 206–210 of title II, Labor-Management Relations Act, 1947 (Public, No. 101, 80th Cong., 1st sess.).

[34] First Annual Report, Federal Mediation and Conciliation Service, pp. 56–57.

[35] First Annual Report, Federal Mediation and Conciliation Service, p. 57.

[36] H. Doc. No. 334 (80th Cong., 1st sess.).

[37] Ibid., p. 7.

"This is a clumsy and undesirable substitute for the customary method of fact finding which is the final step in the mediation process developed from the practice of collective bargaining itself and often used to secure settlements by mutual agreement. It is common in any major labor dispute, whether it appears to affect public health and safety or not, when direct negotiations between the parties and mediatory efforts both fail and they cannot agree on arbitration, for a board to investigate positions of the parties and the facts in the case and then to recommend an equitable settlement.

"Such recommendations form the basis on which the parties usually reach agreement. This procedure takes time, but a provision in the law that neither party shall change the conditions out of which the dispute arose for a period of 60 days is now generally acceptable to both labor and management. There is no need to resort to injunctions and court procedures to secure maintenance of the status quo pending a fact-finding investigation."

The national emergency provisions of the Labor-Management Relations Act have proved ineffective not only in solving the disputes in which they were invoked but in preventing the occurrence of emergencies which they were designed to prevent.

In the atomic energy dispute, all of the statutory procedures were invoked, but the dispute had not been settled at the time when the injunction had to be discharged. At that time the "emergency" was still, therefore, as great as when the injunction proceeding was first initiated since the parties were still in dispute. The dispute was not in fact settled until the urgency of the situation was sufficiently felt by the parties to compel a settlement. Thereupon the parties themselves met, remained in continuous negotiation for over 50 days and, with the assistance of Government conciliation, finally reached an agreement.[38]

In the Pacific coast maritime dispute a settlement was not reached until almost 2 months after an injunction obtained under the national emergency provisions of the Labor-Management Relations Act had been discharged.[39]

In the Atlantic coast longshore dispute, also, there was no settlement reached until after the injunction obtained under the national emergency provisions of the Labor-Management Relations Act had run its course and been discharged. Settlement was finally reached by the parties assisted by Government conciliators.[40]

William H. Davis, former Chairman of the National War Labor Board, testified before the Senate Labor and Public Welfare Committee on February 7, 1949 that "there has not been a case under the Taft-Hartley law in which a settlement has been reached during the cooling-off period under an injunction." [41]

Mr. Kelley. The committee will meet tomorrow morning in this room at 10 o'clock, and resume this session, and at 3 :30 this afternoon a meeting of the full committee is scheduled to meet in the Labor Committee hearing room on the amendment to the Fair Labor Standards Act.

Mr. Irving. That is an executive session?

Mr. Kelley. That will be an executive session.

The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 2 p. m., the subcommittee adjourned until 10 a. m., Tuesday, March 8, 1949.)

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[38] First Annual Report of the Federal Mediation and Conciliation Service, pp. 41–42, 55–56.

[39] Ibid., pp. 47–48, 54.

[40] Ibid., p. 53.

[41] Transcript of hearings held before the Senate Committee on Labor and Public Welfare (S. 249, 81st Cong., 1st sess., vol. 7, p. 1694).

NATIONAL LABOR RELATIONS ACT OF 1949

TUESDAY, MARCH 8, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Augustine B. Kelley (chairman) presiding.

Mr. Kelley. The committee will please be in order. The first witness is Mr. Scott, general counsel, National Association of Motor Bus Operators.

Mr. Scott:

TESTIMONY OF JACK GARRETT SCOTT, GENERAL COUNSEL, NATIONAL ASSOCIATION OF MOTOR BUS OPERATORS

Mr. Scott. My name is Jack Garrett Scott. I appear before you as general counsel of the National Association of Motor Bus Operators, which is the national trade association of the intercity motor bus industry. That association represents approximately 1,000 motor carriers of passengers, either through direct membership or through its affiliated State associations. All of the carriers represented are subject to regulation by the Interstate Commerce Commission, or the various State regulatory bodies, or both.

Our industry employs approximately 65,000 persons, of whom about 64 percent, on the average, are unionized. The percentages of unionization vary with different classes of employees, being about 80 percent for drivers, 75 percent for maintenance employees, 60 percent for terminal employees, and a smaller percentage for office and administrative employees.

Our industry provides commercial passenger transportation facilities to practically every community in the United States, serving many thousands of such communities which have no other means of commercial passenger transportation. In recent years we have transported more passengers annually than the rail carriers. However, our principal competition is with the privately owned automobile. We feel that our industry has demonstrated itself to be an essential part of our national transportation system both in war and in peace.

Generally speaking, the members of our industry favor the retention of the Labor-Management Relations Act of 1947 in its present form, primarily because it has worked out well in fact, both as to the carriers and their employees, and consequently the public. This is amply proven, we feel, by the decrease in number and severity of strikes in our industry since the enactment of the 1947 statute.

Attached to this statement is a table which shows the facts concerning strikes, both in the intercity bus industry and all industry in the United States, for the periods of 16 months before and 16 months after the effective date of the present statute. The conclusions to be drawn from the table should perhaps be qualified to some extent because of the unsettled conditions in all industry following the cessation of hostilities which might be reflected in the figures for the early part of the first of these two periods, but we cannot of course specify the extent of that condition and feel that, even admitting its existence, the showing is a significant one as to the beneficial influence of the present law.

Our experience under the present statute has shown that certain of its provisions are of more importance to us than others. Therefore, in order to conserve the time of the committee, we shall confine our discussion to a few of the features of the existing law which we feel are of paramount interest to our industry.

We particularly urge the retention of the provisions of the Labor-Management Relations Act which place a measure of responsibility upon labor organizations and their officials, a most important feature which is not contained either in the Wagner Act or the proposed bill. The provisions concerning union responsibility which we earnestly hope will be preserved consist of three types, all closely related:

(1) The duty of a union to bargain collectively in good faith with an employer whose employees it represents; to this organized labor can have no sound objection, for if the employer is obligated to bargain, surely the same responsibility should be placed upon the representatives of the employees;

(2) The duty to abide by an existing labor contract to which it is a party; and

(3) The duty to refrain from coercion, either as against an employee in his right to join or not join a union, or as against an employer in the selection of his bargaining representatives. When a union has been recognized or certified as the exclusive bargaining agent of the employees of an employer and then refuses to bargain with the employer, it is apparent that the consequence cannot be other than destructive. The employer is helpless, having no recourse of any kind. That has happened at times in our industry to the great detriment of all concerned, particularly to the traveling public, and we hope that it will not be permitted to recur. I am sure that many instances of situations of that kind will be presented to this committee, so I shall not go into detail as to our particular experiences; but we can conceive of no good reason, in logic or justice, why an employer should be required by statute to bargain collectively with a certified union, when the union has no corresponding obligation.

As to the duty to abide by existing contracts, the same considerations apply. The bill under consideration limits the duty of a labor organization in the case of a termination or modification of an existing labor contract to the bare requirement of 30 days' prior notice to the United States Conciliation Service. On the other hand, section 301 of the present law authorizes suits for damages for contract violation, either by employers or by labor organizations, and makes a union responsible for the acts of its agents.

These are salutary provisions, and we are certain that they have been responsible in large part for the comparative degree of labor-management tranquility which as existed since the present statute became effective. A contract seems to us to be a contract, binding upon all the parties thereto. And it is and always has been elementary in our law that one injured by a contract breach may obtain redress by way of damages. There seems no good reason why this simple and fundamental rule should be removed from the field of labor law. Its retention can do not harm, for it is equally applicable to both parties to the contract. On the other hand, its removal will return us again to the unconscionable situation wherein an employer who has been wronged and injured has no redress.

As to the duty of a labor organization to refrain from coercion, it is noted that the equivalent duty on the part of the employer to refrain from coercion would be retained by the pending bill. Coercion is abhorred in the law generally. It is an unjustifiable practice in all types of business and human relationships. Why, then, should it not be prohibited as to labor organizations, as well as to employers? What real or reasonable rationalization can there be for permitting a labor organization to coerce either employees or employers with impunity? We contend that there is none, and that the principles of equal and even treatment require a retention of the present provision making it an unfair labor practice for a labor organization to engage in coercive practices.

We have no substantial doubt that the provisions of section 8 (2) (3) of the present law relating to the so-called union shop were the result of a legislative compromise. At any rate, they constitute what we think to be one of the primary weaknesses in the present statute.

We start with the fundamental principle that an employee should be perfectly free to join a labor union if he chooses so to do. If he is free to join, he must necessarily, in logic, be free not to join if he wishes. The answer to this which is given by organized labor frequently, at least, is that there should be no "free riders." It seems to us that it is far better to have a few "free riders"—and there are only few, so far as we know—in our unit—than to have a complete loss of employee freedom. We feel, therefore, that there should be statutory recognition of the proposition, as a basic doctrine, that no person shall be denied the opportunity to obtain or retain employment because of membership or nonmembership in a labor organization.

Except for the Taft-Hartley Act, that has been the public policy of the United States since at least 1926, when the Railway Labor Act was enacted. That statute contained, and still contains, a provision prohibiting any contract which requires—

> a person seeking employment to sign any contract or agreement promising to join or not to join a labor organization which effectively outlaws any union security provisions in railway labor contracts, to the detriment of no one so far as we have been able to learn. (45 U. S. C. A. 152 (5).) Later, in 1932, the Norris-LaGuardia Act (29 U. S. C. A. 102) was approved, which declared the public policy of the United States to be, in part, that though he (the unorganized worker) should be free to decline to associate with his fellows, it is necessary that he have full freedom of association—

and so forth.

Therefore, the Labor-Management Act of 1947, in its union-shop provision, for the first time, gave congressional sanction to the unsound principle that union membership may be required as a condition of employment, or at least retention of employment, after a 30-day period. These two situations amount to the same, in effect.

Further, it established the method by which such a contract provision could be obtained, a method which, in our judgment, is ineffective to accomplish any sound or salutary purpose. After a given union has been chosen as bargaining representative of the employees, which is a necessary condition precedent to bargaining at all, it is a foregone conclusion that a majority of the employees will vote for a union shop. That is why practically all of the many union-shop elections conducted by the National Labor Relations Board have resulted favorably to the union. Such elections have shown themselves to be a useless, unnecessary, and expensive requirement.

We can find no convincing evidence that the last election and a change in the political complexion of the Congress constituted a mandate for the enactment of a law which would permit any kind of union-security provisions in labor contracts. On the contrary, we call attention to the increasing number of States which have adopted "right to work" statutes and constitutional amendments, most of them by public referendum, and the recent decisions of the United States Supreme Court which have upheld their validity against challenges of unconstitutionality.

In its opinion in the Nebraska and North Carolina cases, the Supreme Court points to various of its past decisions which have upheld the right of the states to proscribe "yellow dog" contracts—which we think is a salutary determination—and then the Court concludes that, if it is reasonable and in accord with due process to afford protection to union members by statute, it is every bit as reasonable to afford similar protection to nonunion workers. We urge that philosophy upon the committee and submit that it should be followed.

The foregoing considerations seem to us to be a more impressive and cogent demonstration of the public will on the subject than the election. And they are based upon sound conceptions of justice and fair play, which is not true of the pertinent provisions of the Wagner Act and the present statute.

Mr. Cyrus Ching, Director of the Mediation and Conciliation Service, in a statement to the Senate committee, made a powerful and conclusive statement as to the need for preservation of the independence of that service. It was such a sound and constructive presentation that we are unable to add to or strengthen it. We sincerely endorse everything that he said on the subject and hope that this committee and the Congress will follow his recommendation.

There is one additional consideration, however, to which Mr. Ching did not allude and which we feel should be called to your attention. The administration has advocated, and this bill suggests, greater use of the machinery of arbitration for settling labor-managtment controversies growing out of interpretations on applications of labor contracts. With that proposal we are in full accord, particularly in view of the fact that we are public utilities and, as such, we serve the public 24 hours a day, every day; but we are definitely opposed to any form of compulsory arbitration, to which subject I shall subsequently allude.

Stoppages of our operations are costly and destructive, possibly more so to that substantial portion of the public that desires and requires our service than to the carriers and their employees themselves. In past years many of our labor contracts provided for the appointment of conciliators by the Conciliation Division of the Department of Labor. Our experience under these provisions during the time that the Service was a part of the Labor Department was not altogether a happy one, largely, as we think, because that Department is, by statute, a friend and protector of labor. As a consequence, such provisions in our contracts have decreased substantially in number, as our members were able by collective bargaining to accomplish that result.

Since the present statute was enacted, the effort to shy away from such contract provisions has materially subsided. It would stop altogether, we are sure, if we could be certain that the Conciliation Service is to remain impartial and independent, as it now is. The method of selection of arbitrators by that Service is an efficient and simple process. We should like to feel that we are safely in the hands of fair-minded men if we return to the method heretofore so widely used.

Title 2 of the present bill would not only place the Conciliation Service within and under the jurisdiction of the Department of Labor, but would also give that agency, by section 205 of the bill, a power which is tantamount to the imposition of compulsory arbitration. To that we are unalterably opposed. We think that it is completely unjustifiable, by any method of reason, to place arbitration or conciliation, or both, in the hands of an agency which is prejudiced by statutory mandate.

Separation of enforcement and judicial functions of the National Labor Relations Board: Section 3 (d) of the present statute, by creating the office of general counsel and defining his powers and duties, separates the investigatory and enforcement functions of the National Labor Relations Board from its quasi-judicial functions. This, in our judgment, is a salutary and healthy provision and should be retained.

The many and conclusive reasons why this is so appear not only in the hearings on the bill which became the Labor Management Relations Act of 1947, but more clearly and abundantly in the legislative history of the Administrative Procedure Act. Attention is invited to that history as it appears in Senate Document No. 248 of that session, particularly as it pertains to section 5 (c) of that statute.

The Administrative Procedure Act had the active support and endorsement of the American Bar Association and many other organizations of like caliber and impartiality, and was passed by the Congress by a very substantial majority in both Houses. We think that it states the policy of the United States in the particular mentioned, and that the principle should be adhered to in respect of the National Labor Relations Board as it must now be by other governmental agencies.

Free speech: The section of the present statute concerning free speech (section 8 (c)) would be repealed by the bill here under consideration. We have always felt, prior to the Wagner Act, that the first amendment to the Constitution of the United States was adequate to protect that most important right, but the decisions of the Board under the act, many of which were upheld by the courts, disabused our minds of that assumption. I should like to say, in all fairness to the Board, that this was particularly true in the more early days of the administration of the National Labor Relations Act, and there was a tendency before the enactment of the Taft-Hartley Act to step away from it, and more to recognize the right of free speech than had been true in the early days.

For that reason, and in order that there can be no doubt as to right of an employer to express himself within the limitations contained, we urge that section 8 (c) be retained in the law.

Right of employer to petition for representation: Under the Wagner Act, an employer had no standing to petition for a representation election unless two or more labor organizations made conflicting claims as to the right of representation. Section 101 (9) (c) (1) (B) of the present statute gives the right of petition to the employer even if only one union is involved. The reasons in support of that provision are cogent and convincing. As a matter of fact, an employer without the right is confronted with a far greater dilemma and is much more seriously handicapped when the question confronting him is solely one of a particular union or no union.

The ultimate question is still whether or not a majority of his employees desire representation by a given union, to determine whether an election is necessary. Where two or more unions make conflicting claims, satisfactory evidence as to the majority will is often available without a vote, which is not true as to a single-union situation. For these reasons we urge that the right be preserved.

That concludes my statement, Mr. Chairman, and I desire to express my appreciation for the privilege of having made it.

Mr. Kelley. We are glad to have you before us.

Mr. Scott, on the second page, you refer to the Labor Management Relations Act of 1947 in its present form, and you prefer to have it that way, primarily because it has worked out well in fact, both as to the carriers and their employees. How do you know it has worked to the perfect satisfaction of the employees?

Mr. Scott. The only way I can tell you that is the reports we get from the employers, and the fact there has been a very substantial decrease in labor difficulties in our industry.

Mr. Kelley. Of course, the argument that the present bill is a good bill because there are fewer strikes is not to me a very strong argument in favor of the retention of the bill, because when they make strikes so difficult, naturally, they cannot use that weapon, and you cannot determine—no one has yet determined to my satisfaction that the employees of the country are satisfied with it. There might be a lot of pent-up resentment in their hearts which they cannot express.

Mr. Scott. You might be quite right, because certainly I cannot speak for the employees or their organization; all I can do is take the facts given to me by the folks I represent, who are the employers.

Mr. Kelley. Do you not think it would be a good idea if the motorbus operators were incorporated in the Railway Labor Act?

Mr. Scott. It seems to me, by and large, the Labor Act has worked very well. We have had difficulties, of course, in recent years; we have had threatened stoppage of the railroads, but I think that it has worked rather well, and I do not think that our folks—although they have not expressed their opinion on that specific point—I do not think our folks would object at all to being subject to the Railway Labor Act.

Mr. Kelley. To become effective in the proper manner it would have to be an agreement between employees and employers, in your case, to request they be put under the Railway Labor Act?

Mr. SCOTT. I think that is probably so, and that is a possibility which I think would bear investigation. The railroads are under it, and the air transportation is under it, and it would seem to me it would add up to evenness of treatment of regulated transportation in industries if that came to pass.

Mr. KELLEY. Your employees of the Motor Bus Operators, are they members of the CIO or A. F. of L., separate?

Mr. SCOTT. Largely they are organized by the American Federation of Labor, the Amalgamated Association of Chauffeurs and Street Railway Workers. There are some of the companies that are organized by the Brotherhood of Railroad Trainmen. I think we only have one contract—not more than two—with the CIO union. Let me verify that just a moment.

Mr. KELLEY. You can supply it for the record, Mr. Scott.

Mr. SCOTT. I am sure there are not more than two. I know of only one, myself.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Mr. Scott, on page 2 of your formal presentation, you make this statement: "Generally speaking, the members of our industry favor the retention of the Labor-Management Relations Act of 1947 in its present form."

Am I to imply and is the committee to imply that you are endorsing the present Taft-Hartley Act with mental reservation; would you say, by "Generally speaking"?

Mr. SCOTT. No; I do not think that that puts it generally the way I meant to say it, Mr. Bailey.

Mr. BAILEY. You must have had some idea like that in mind.

Mr. SCOTT. I meant to say this. I hope I can say it more clearly this time than I did before, that we would prefer to have the Labor-Management Relations Act remain in force at the present time, but there are a lot of things in the Labor-Management Relations Act which are of no importance to us and which we do not care about.

Now, that is the reason for the "Generally speaking."

Mr. BAILEY. I notice, too, in your discussion of free speech, that you object to the fact that during the life of the Wagner Labor Relations Act the employer was forbidden the right to coerce his employees with propaganda, speeches, and so on and so forth. I take it that you are referring there to section 8 (c) of the present act?

Mr. SCOTT. Yes; that is right, sir.

Mr. BAILEY. I take it that you are doing that on the constitutional grounds of free speech? I would like to say to you in that connection that there are a couple of other provisions in the Taft-Hartley Act that involve the question of constitutional guaranties. Under the injunctive procedure, it is possible to send an American citizen to jail without a trial by jury; yet, you are throwing a blanket endorsement over that procedure, under the injunction procedure.

Mr. SCOTT. I have said nothing specific about it, Mr. Bailey.

Mr. BAILEY. Nevertheless, you endorsed the bill which does provide for it.

Mr. SCOTT. Yes.

Mr. BAILEY. I am wondering if that is one of your mental reservations.

Mr. SCOTT. No; I do not have any mental reservations. I tried to state here just exactly what we think about it.

Mr. BAILEY. There is also another constitutional question involved in the present Taft-Hartley Act, and that is the denial of the press owned by labor to print their names or to accept advertisements from candidates for public office. That is encroaching pretty much on the constitutional guaranty of free speech; is it not?

Mr. SCOTT. The Supreme Court said that that provision of the statute did not apply to publications of labor organizations in the Murray case.

Mr. BAILEY. Nevertheless, the boys who wrote the Taft-Hartley bill meant it to.

Mr. SCOTT. I do not know what they meant, sir.

Mr. BAILEY. You were discussing the question of unions and closed shops. With respect to the present provision for outlawing the closed shop and the institution of the union shop, what do you think of the recent decision of the labor board that employees that are in a class that are on strike are denied the facilities of the National Labor Relations Board?

Mr. SCOTT. Denied the right to participate in representation elections, you mean?

Mr. BAILEY. But anybody who is brought in there who is not a member of the union as a strikebreaker does have that right. Do you not think that that puts in the hands of the employer a pretty powerful weapon for the breaking of strikes?

Mr. SCOTT. I am very frank to say to you, Mr. Bailey, personally, that I am not too sympathetic with that provision. I do think there should be some kinds of safeguards.

Mr. BAILEY. I am glad we are in agreement on one point.

Mr. SCOTT. Sir?

Mr. BAILEY. I am glad we are in agreement on one point.

Mr. SCOTT. I would venture to say that we are in agreement on many points, if we would explore them all.

Mr. BAILEY. Now, right in that same connection there, you say you are opposed to compulsory arbitration.

Mr. SCOTT. Yes, sir.

Mr. BAILEY. I can understand why you would be opposed to that. If you have a method of breaking the strike, or even the union shop, you would not want to go ahead and arbitrate.

Mr. SCOTT. That is not the reason we are opposed to compulsory arbitration.

Mr. BAILEY. I have just one more question.

Mr. SCOTT. Yes, sir.

Mr. BAILEY. Justify, if you can why you say it was a salutory procedure for the Supreme Court to comment, I believe, one one of the decisions in one or two of the States that have legalized yellow-dog contracts. Will you explain that?

Mr. SCOTT. Yes, sir. I think it is absolutely unfair, unjust, and unconstitutional, as the Supreme Court did, to require a man before he was given employment or retained on employment, to agree not to join a union. I think that deprives him of a right which he should have.

I used that illustration to say that the converse should also be true.

Mr. BAILEY. In what way?

Mr. SCOTT. That he should be free not to join, if he so wishes.

Mr. BAILEY. That is all, Mr. Chairman.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. I have nothing.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. Mr. Scott, I am impressed by your apparent objectivity in approaching this matter. There are one or two matters that I would like to have clarified. Maybe you and I are not too far apart if we explore the thing far enough.

Mr. SCOTT. I hope not, sir.

Mr. JACOBS. You spoke of free speech. I hope that there is not anything that I have a greater ardor for than free speech and freedom of communications. But I wonder if you, as a lawyer, can point out to me any other type of case in our jurisprudence where the matter of what a man has said in hostility to an adversary cannot be used as evidence against him when his conduct toward his adversary comes in inquiry?

Mr. SCOTT. I do not recall any, offhand. But I do not know that that is analogous to this situation. I think there should be pointed out this distinction, which I wanted to make in answer to a question from Mr. Bailey, and neglected or forgot it. I think there is a lot of difference between free speech as we understand it under the first amendment, on the one hand, and coercion on the other. Now, when the use of speech amounts to coercion, then I do not think it should be protected by the constitutional guaranty, and I am certainly in favor of prohibitions against restrictions; I mean against coercion.

Mr. JACOBS. Let us forget the coercion. Let us forget the coercion entirely. Let us suppose that you never heard what I have said about you; therefore, it could not operate to coerce you to do or not to do anything, could it?

Mr. SCOTT. No.

Mr. JACOBS. But let us suppose that you are found dead in an alley somewhere——

Mr. KELLEY. God forbid.

Mr. SCOTT. I hope that does not happen soon.

Mr. JACOBS. But let us suppose that for the sake of the case, and in inquiring around, although you never heard about it, I have been expressing hostility toward you. Now, there is no coercion in that case, is there? But if I go on trial I am pretty apt to hear my words repeated in court; am I not? Is it not a rule of evidence?

Mr. SCOTT. Yes; that is right. I think that such evidence would be admissible as pertinent to the inquiry of a motive on your part, or something of that kind.

Mr. JACOBS. That is right. Now, we are getting down to the real question. Section 8 (c) of the Taft-Hartley law provides that what a man may say may not be evidence of an unfair labor practice; is that not what it provides?

Mr. SCOTT. I do not recall it that way.

Mr. JACOBS. It is very important that we understand what that statute provides before we decide whether we are going to continue it in effect or not.

Mr. SCOTT. I think we should. Section 8 (c) says:

> The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence.

Mr. JACOBS. There is a comma right after "constitute," is there not?

Mr. SCOTT. No. It is, "shall not constitute or be evidence."

Mr. JACOBS. Well, it is disjunctive, then. I will settle for a disjunctive.

Mr. SCOTT. Yes; of an unfair labor practice, and so forth.

Mr. JACOBS. All right. Then it shall not be evidence of an unfair labor practice. As a matter of fact, section 8 (c) is a rule of evidence, is it not?

Mr. SCOTT. I think that probably technically is true.

Mr. JACOBS. Practically, in its application, it is a rule of evidence; do you not as a lawyer agree with that?

Mr. SCOTT. It all depends. The applicability of this section depends, in my thinking, upon the unfair labor practice that you were talking about. Now, what are we talking about? They are talking about coercion of the employees by the employer as an unfair labor practice.

Mr. JACOBS. Does it not say that the expression of any view shall not be evidence of an unfair labor practice?

Mr. SCOTT. That is right.

Mr. JACOBS. Then it does lay down a rule of evidence, does it not?

Mr. SCOTT. That is right.

Mr. JACOBS. As a lawyer you agree to that, do you not?

Mr. SCOTT. That is right.

Mr. JACOBS. All right. Then, do you agree with the construction that has been given to that section by the Labor Board that it is a correct interpretation, that if an employer should say that he is against the union, that the union officers are bad men and should not be permitted to organize his craft, or should not organize his plant, and then the next day he goes down to the plant and he fires all the union officers; do you agree that in logic, the fact that he has expressed himself in opposition to those union officers would be some evidence of his motive in firing them?

Mr. SCOTT. I rather think so, Mr. Jacobs.

Mr. JACOBS. All right. Then as a lawyer, do you agree with me that under section 8 (c), if it is followed, that the court could not consider that evidence as long as there was no threat in it, but just merely an expression of animosity?

Mr. SCOTT. My objection to an elimination of this section was qualified very carefully in what I had to say, Mr. Jacobs. I said that I stand on the first amendment to the Constitution. I have always felt, as I said, that the first amendment to the Constitution was adequate to protect this thing. But what I do not like is some of the decisions of the National Labor Relations Board under the Wagner Act which almost prohibit an employer from saying anything about anything.

Mr. JACOBS. Did it prohibit him from saying anything?

Mr. SCOTT. Under the rulings.

Mr. JACOBS. Will you give me the citation?

Mr. SCOTT. It went to an absurd limit.

Mr. JACOBS. Will you give me the citation of the case that prohibited the employer from saying anything?

Mr. SCOTT. I said in practical purposes it prohibited him from saying anything.

Mr. Jacobs. I believe that you are a pretty objective fellow. I want to ask you if this is not just about what it amounts to—and this dovetails into what you said a moment ago—that when the Wagner Act was passed, the legislative attempt which had been made for 50 years to outlaw the "yellow dog" contract was finally approved in the Fansteel case, the employer woke up one day and found that something he had been doing, thinking it was legal for so long that he thought he had a prescription to continue to do it, caused a great deal of the difficulty that occurred after the validation of the Wagner Act. I think you and I can agree on that; can we not?

Mr. Scott. I think that is right.

Mr. Jacobs. It is substantially what you said. So that the employer continued to express himself rather vehemently, did he not, in many instances?

Mr. Scott. In many instances, yes.

Mr. Jacobs. And in a great many instances?

Mr. Scott. There is no question about it.

Mr. Jacobs. And there is no doubt that many of them thought they were within their rights about it when they did it?

Mr. Scott. That is right.

Mr. Jacobs. So that there were many expressions that did cast light on his motive, we will say, when he discharged men from employment; do you not think that follows?

Mr. Scott. I think that is right.

Mr. Jacobs. And, as a matter of fact, it was simply a matter of a prime common-law rule of evidence to say that what the man said in reference to a union man would characterize what he did in reference to the union man. Do you think that is fair?

Mr. Scott. I think that is probably true.

Mr. Jacobs. And do you not think it would still be fair that way today?

Mr. Scott. I think our situation has changed a good deal from 1935, Mr. Jacobs.

Mr. Jacobs. May I interrupt you to ask you this?

Mr. Scott. Yes.

Mr. Jacobs. I have only 5 minutes in which to question you, and I do want to close this one point. My question is this: Is there any reason for changing the rules of evidence that are time-honored in the common law, that have been the law since the memory of man runneth not to the contrary, in reference to the employer? Can you think of any reason?

Mr. Scott. If I could have any assurance that the administration of the existing labor act would permit the exercise of the right of free speech under the first amendment, I would say, "Throw this whole thing out."

Mr. Jacobs. Of course, you and I both.

Mr. Scott. But I say that this did not happen in the administration of the Wagner Act, particularly in its early years.

Mr. Jacobs. You and I both know that the courts, in applying the rules of evidence, frequently commit error. That is the reason we go up to the Supreme Court once in a while.

Mr. Scott. Yes.

Mr. Jacobs. And I have had an occasion or two where I thought the Supreme Court did not use the greatest wisdom in applying them, too.

Mr. Scott. I agree with you on that, thoroughly.

Mr. Jacobs. But on the other hand, I am talking about the rule. You have a rule which I think you had admitted in section 8 (c) that throws a mantle of protection by way of evidentiary rule around the employer, that builds a law up whereby his words may not be used against him, and I would like to ask you now to cite me any other example in the whole field of jurisprudence where a similar rule obtains.

Mr. Kelley. The gentleman has 1 minute left.

Mr. Burke. Mr. Chairman, I will wave 5 minutes of my time to Mr. Jacobs, so that Mr. Jacobs may complete his questioning.

Mr. Scott. I do not know offhand of any field of the law in which a rule of evidence on that particular point has been spelled out by statute.

Mr. Jacobs. Or by decision?

Mr. Scott. Or by decision. Offhand, I do not know that, either. However, I think we should not lose sight of the fact that this evidentiary rule as stated in section 8 (c) applies to unfair labor practices, and that unfair labor practices are specifically spelled out in other parts of the statute. Now, the unfair labor practice that this has to do with is coercion.

Mr. Jacobs. It is a matter of coercion.

Mr. Scott. That would be my judgment.

Mr. Jacobs. That is right. I agree with you on that.

Now, then, they are going to try to determine whether or not the employer has coerced the employee.

Mr. Scott. That is right.

Mr. Jacobs. All right. In determining that question, let us say that overt act was the discharge of the employee. That is the overt act.

Mr. Scott. Yes.

Mr. Jacobs. But now we are on trial. We are going into a judicial inquiry to determine one thing, and that is whether or not the employee was discharged because of his union affiliation. Can you conceive in logic of a court's being denied the right to consider what the employer may have said about the union?

Mr. Scott. Do not forget the last part of this section, which makes the rule of evidence conditional, and that is, if such expression contains no threat of reprisal or force or promise of benefit, which is tantamount to coercion. Now, if anything that the employer has said, or the employee, either, because it works both ways, amounts to that, then the rule of evidence does not apply.

Mr. Jacobs. All right. Then let us look at it this way: Suppose the section had said this, that the expression of my opinion shall not constitute an unfair labor practice unless it contains express threats, et cetera?

Mr. Scott. I would be in favor of that.

Mr. Jacobs. We would agree on that?

Mr. Scott. I would be in favor of that. The method by which that was written is not a thing that I am praticularly impressed by. My whole point is this: Let us have a safeguard so that the first amendment will really be followed.

Mr. Jacobs. Would you agree with me that under the law, as evidentiary rule, whatever one man says about another should be an evidence of his motive in his conduct toward the other man?

Mr. Scott. I think that is a fundamental rule that is generally recognized.

Mr. Jacobs. That would be a fundamental rule of evidence.

Now, will you agree with me also that section 8 (c) buries that rule in the labor relations field?

Mr. Scott. It probably restricts it.

Mr. Jacobs. We will say it restricts it, then. All right. And then I suppose that the conclusion would inevitably be that to that extent, you think it is unfair?

Mr. Scott. I would perfectly agree to your changing that provision so that you leave out the evidence business and say that whatever a man says will not constitute an unfair labor practice unless it amounts to coercion.

Mr. Jacobs. And leave out the words "or be evidence of"?

Mr. Scott. That woud suit me all right.

Mr. Jacobs. Just strike them out?

Mr. Scott. That is right.

Mr. Jacobs. All right. Now, while you and I are in agreement, let us just quit.

Mr. Scott. I believe that would be a good idea.

Mr. Kelley. Mr. Burke?

Mr. Burke. Very well.

On page 3, you say it is the duty of the union to bargain collectively in good faith with an employer whose employees it represents. To this, organized labor can have no sound objection, for if the employer is obligated to bargain, surely the same responsibility should be placed on the representative of the employees.

Basicially, can you concive of any other reason that a union would be organized other than for the purpose of collective bargaining?

Mr. Scott. No. That is the only real purpose of organizing and being selected as representative. But there have been occasions, after the selection has been made, in which the union would not bargain collectively.

Mr. Burke. Might not those examples be more a case of a disagreement? Is it not possible that the people involved in a certain situation might be at a disagreement rather than a break-down of collective bargaining, from the very fact that the union is there and is established solely for the purpose of collective bargaining? Then if there is any break-down in collective bargaining, might it not be because of disagreement rather than any refusal to bargain collectively?

Mr. Scott. That is not the type of situation which I have in mind in making this statement. What I have in mind is this: When a union has been organized and has been selected as the representative of the employees and certified, then it goes to the employer with a contract all written out and says, "Sign on the dotted line; take it or leave—the whole business."

If the employer says, "There are certain things in there that we cannot agree to, but we are willing to sit down and talk to you about it," and they say "No, take all as it is, or we strike," now, that has happened.

Mr. BURKE. Going to point No. 2, including "To abide by an existing labor contract which is a party," we have had in the House Committee on Education and Labor, since I have been a member, hearings on this act which is now in process of hearing, and on another labor act, and in those hearings—at least two cases—were brought to the attention of the committee, at which time both employer and union representatives pointed out that they had over a period of a great number of years in one case—I believe it was 25 or 35 years, and in another case for a larger number of years, certainly not since the adoption of the Taft-Hartley Act—been bargaining in good faith and had lived up to the terms of their agreement. In fact, that was the testimony that they gave to the committee. Is that not the usual situation?

Mr. SCOTT. I think it is. I think that the contrary is an exception to the rule. I was talking with the national head of an A. F. of L. union the other day who said that they had been doing business with their employers since 1886 and had never had a strike or anything of the kind which would lead up to a damage suit or anything of that sort. But that is not true of all unions. Insofar as it is true of unions I am certainly in favor of it, because I would like to make our position clear here on this whole business. We are in favor of collective bargaining.

Mr. KELLEY. Might I interrupt. You have 1 minute left, Mr. Burke.

Mr. SCOTT. We think that full and free collective bargaining offers the only reasonable, sound solution to labor-management strife. But we think it should be on the basis where each party occupies an equal position with the other in the matter of bargaining.

Now, where that has been made true because of the foresight and intelligence of the employer—which is not always true, I am sorry to say—and the foresight and intelligence of the union leaders—which I am also sorry to say is not always true—then the Government should lay down some rules to guide free and fair collective bargaining.

If those rules are fair to both people, that is the main thing that we are interested in. But we are heartily in accord with the processes of collective bargaining and we hope they can be made to work satisfactorily.

Mr. KELLEY. Your time has expired, Mr. Burke.

Mr. Wier?

Mr. WIER. Mr. Scott, your presentation here does not cover the interstate bus lines, like Greyhound and so forth?

Mr. SCOTT. That is the type that it does cover. Ours is the inter-city motor bus industry as distinguished from the local transportation industry, such as Capital Transit here in town, and so forth.

Mr. WIER. Then you are not covering both interstate and inter-city, are you?

Mr. SCOTT. Yes. I think that all of the members of our own industry are engaged in interstate commerce, although frequently they did not operate beyond the boundaries of a State. All of them, so far as I know, are subject to the Interstate Commerce Act.

Mr. WIER. Then you are representing, and these figures on the last page represent, your labor disputes involving over-the-road Greyhound busses?

Mr. SCOTT. It is not only Greyhound; it is——

Mr. WIER. I mean the over-the-road busses.

Mr. SCOTT. It is that type. It is those which operate between cities rather than those which operate within a city or within a municipal area.

Mr. WIER. I was interested in that, because I reviewed these figures, and I am a little concerned about them. I would like to check them so that I will not put myself in a position of not having the facts to question the figures with.

You made some reference in your presentation here to the divorcement of the mediation and conciliation services from the Labor Department.

Mr. SCOTT. Yes, sir.

Mr. WIER. I would like to have you elaborate on that, because I am concerned with that insofar as it has been made an issue in the Senate hearings, and you make it an issue here, as to whether it is a function of the Labor Department or whether it is beyond the bounds of the Labor Department, and the advantages that accrue from that, beyond the fact that the services of the Mediation and Conciliation Service are not determined by what particular department it is under, but by the servicing of the individual cases; is that not correct?

Mr. SCOTT. Theoretically it is correct; but to get back to the fundamentals, the Labor Department was created by statute. There is an enabling act which set it up in the first instance, and one of the statutory provisions is that the Labor Department's functions, among others, is to foster and protect the cause of labor.

It is quite right the Labor Department should do everything it can to carry out its statutory mandate. But it seems to me that conciliation and mediation are entirely different things from advocacy. I think the Labor Department should be an advocate of labor, but I do not think that the Conciliation and Mediation Service has any place within the organiaztion of a statutory advocate, any more than a court would have.

Mr. WIER. Again, I am trying to determine your position on the divorcement, as to what advantage you feel lies in the divorcement of the Department, and following that up with this question: Do you feel that there was any partiality shown as against management during the time it was under the Department of Labor, under the Wagner Act?

Mr. SCOTT. Yes, sir.

Mr. WIER. Then my answer to that is that we feel exactly the opposite, and not to where the Department is, but under whose direction.

Mr. SCOTT. That might make a lot of difference.

Mr. WIER. It makes a lot of difference.

Mr. SCOTT. But a Secretary of Labor who is trying to live up to his statutory duties is more apt to appoint somebody that sees eye-to-eye with him than otherwise.

Mr. WIER. Let me ask you this: You think the Department of Labor was set up for what purposes?

Mr. SCOTT. One of the purposes was to foster, protect, and promote the cause of labor. That is specifically stated in the statute.

Mr. WIER. I would hate to think that the Department of Labor was set up in the interests of management.

Mr. SCOTT. That is right. But I think it would be just as bad to have a Conciliation Service in the Department of Labor as it would be to have it in the Department of Commerce. I do not think it belongs in either place.

Mr. Wier. In the first place, many of the things that you make reference to here in your hopes of being retained in the new law have no relationship to the Conciliation and Mediation Department. That is the meat of the whole thing.

Mr. Scott. I certainly am in favor of a strong Conciliation and Mediation Department, but I am not in favor of having it in the Department of Labor. I would like to have it independent.

Mr. Wier. I am in agreement with the first part of your statement and in disagreement with the second part. I think that is going to be either the success or the failure of any set-up for the purpose of conciliation and mediation, that is, the type of service that it renders. It can either fail or succeed on the basis of the service that it renders, regardless of where it is located.

Mr. Scott. That is right; I agree with that, and I carry it one step further, as I did in my statement, that we are very much in favor of an arbitration system which will eliminate work stoppages and that sort of thing. We would like to have an arbitration system set up, however, whereby we can call upon somebody who is fair and impartial to appoint arbitrators to serve on our arbitration board.

Mr. Wier. I have had some experience with the Greyhound system in my part of the country and its dilatory tactics in the renewal of its agreements up there.

Mr. Scott. I should like to make the record clear by saying that Greyhound is only one of our members.

Mr. Wier. Well, it is a bad one.

Mr. Kelley. You have 1 minute, Mr. Wier.

Mr. Wier. That is all.

Mr. Scott. Thank you.

Mr. Kelley. Mr. Irving?

Mr. Irving. No questions.

Mr. Kelley. Mr. McConnell?

Mr. McConnell. Mr. Scott, you represent an industry which directly serves the public, and for that reason your testimony and opinions regarding certain types of strikes take on an added significance, because if there is one thing important to me in all legislation dealing with labor-management relationships, it is to see that the public interest is protected.

In view of that, is it your opinion that the provisions of the proposed bill, H. R. 2032, adequately protects the public in strikes dealing with national emergencies?

Mr. Scott. We do not.

Mr. McConnell. You think not, you say?

Mr. Scott. We think not, although I may say this, Mr. McConnell: We have never considered that our industry is such as to be subject to the provisions of the Taft-Hartley law concerning national emergencies, for the reason that we have no Nation-wide bargaining or contracts.

We have no regional bargaining or contracts, so far as I know. So whatever work stoppages there have been, have been in a limited area involving, say, one line at a time, so that we have never felt that we could call upon the provisions of the national emergency section of the present law under the circumstances. But we think that these things to which we have alluded are necessary in order to protect the public. We have to think of the public, because we live from the public's funds, and particularly the little fellow that does not have much money.

Mr. McConnell. That is one of the most difficult problems we have to deal with in our American life at the present time.

Mr. Scott. I know it is.

Mr. McConnell. There has never been a complete solution to it. We realized that in the passage of the Taft-Hartley Act. It was a compromise. It is always an open-end proposition, because we hesitate to bring it to compulsory arbitration conclusions, and therefore it has never been solved. It has been in the nature of a compromise.

Mr. Scott. And I must confess to you that we do not have any solution for it that we think would work. We oppose compulsory arbitration. We think that ultimately the only solution of it is successful collective bargaining by two parties on the same level, with equal rights and equal responsibilities.

Mr. McConnell. Now, it states here in the new bill that when the President finds that a national emergency is threatened, or exists, because a stoppage of work has resulted or threatens to result from a labor dispute, and so on, he shall issue a proclamation to that effect and call upon the parties to the dispute to refrain from a stoppage of work, or if such stoppage has occurred, to resume work and operations in the public interest.

Suppose they decide not to comply with that? There might be some type of arrogant person who would defy that idea or the request of the President, to continue to work. Then what happens?

Mr. Scott. Under this law, after the appointment of the board and its report, nothing happens—under this bill as it is written.

Mr. McConnell. Suppose they decide to defy the order to resume work, and to go on with their stoppage? Does the President have any inherent power, in your judgment?

Mr. Scott. I should like not to answer that question, Mr. McConnell, because I do not know. There are able lawyers who say that he does and there are other able lawyers who say that he does not, and I have made no independent investigation of it.

Mr. McConnell. What is your opinion of the injunctive idea at such a point?

Mr. Scott. I have not thought very much of that, either, because we had always considered that part of the present law inapplicable to our industry. It would be speaking just hypothetically if I spoke about it; or, rather, academically is perhaps the better word.

Mr. McConnell. In other words, you do not choose to commit yourself on a method by which work would be continued if they refused to comply with the order?

Mr. Scott. I think this: I think in such fields as transportation, where the main interest is the protection of the welfare and health of the public itself, some method must be found whereby those services can be continued where negotiations have reached a stalemate. Whether the injunction is the right way or not, I do not know. The last time that there was difficulty in the railroads, the President went back to an old statute of 1916 and took over possession and operation of the railroads. There might be something in that which would offer possibilities, but I do not throw it out as adequate. I throw it out merely as a suggestion and tell you that I do not have the answer. I wish I did.

Mr. McConnell. If there is no inherent right to cause them to abide by the proclamation, then for all practical purposes in the field of national emergencies this proposal of the administration in H. R. 2032 is just a powder-puff type of proposition?

Mr. Scott. That would be my judgment about it.

Mr. McConnell. You have nothing more to contribute regarding the strikes of a national emergency nature?

Mr. Scott. I think not, Mr. McConnell.

Mr. McConnell. Do you like the idea of emergency boards making recommendations?

Mr. Scott. The only thing that can be said in favor of that is that it might, by virtue of public opinion, be effective, but I do not know.

Mr. McConnell. Suppose they did not make any recommendations, but just published the facts, then what?

Mr. Scott. Then it is a worthless procedure.

Mr. McConnell. In other words, the present procedure would be worthless?

Mr. Scott. That would be my judgment about it.

Mr. McConnell. You feel that they should issue recommendations?

Mr. Scott. I would think so.

Mr. McConnell. Does it not become vital, if we are going to have voluntary arbitration, that the Conciliation Service and Arbitration Service be absolutely impartial?

Mr. Scott. That is our definite position, sir.

Mr. McConnell. In other words, if we are going to proceed to encourage voluntary arbitration, it is most essential that the parties involved—both sides—have absolute faith in the impartiality of the conciliators and arbitrators?

Mr. Scott. That is one of the most important points that we make in our statement, sir.

Mr. Kelley. You have 1 minute left, Mr. McConnell.

Mr. McConnell. That is all, Mr. Chairman.

Mr. Kelley. Mr. Smith?

Mr. Smith. No questions.

Mr. Kelley. Thank you very much, Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman and gentlemen.

Mr. Kelley. Is Mr. Jeffrey present?

(No response.)

Mr. Kelley. Is Mr. Steele present?

Mr. Steele. Yes, sir.

Mr. Kelley. Mr. Steele, you may proceed.

Do you have a long statement?

Mr. Steele. Not particularly, Mr. Chairman.

TESTIMONY OF HOYT P. STEELE, VICE PRESIDENT, THE BENJAMIN ELECTRIC MANUFACTURING CO., DES PLAINES, ILL., REPRESENTING THE CHAMBER OF COMMERCE OF THE UNITED STATES.

Mr. Chairman, my name is Hoyt P. Steele. I am executive vice president of the Benjamin Electric Manufacturing Co. of Des Plaines, Ill. I am also a member of the labor relations committee of the United States Chamber of Commerce, and I am here today to present the views of the United States Chamber of Commerce on changes in our labor laws.

By way of background——

Mr. Kelley. Mr. Steele, do you propose reading this statement?

Mr. Steele. No, sir.

Mr. Kelley. You are going to summarize it?

Mr. Steele. Yes, sir.

Mr. Kelley. Thank you.

Mr. Steele. By way of background, the Chamber of Commerce is a federation of over 3,000 local chambers of commerce and State chambers of commerce and other business groups, and includes over 1,250,000 American businessmen.

My own company, for background, is typical of the average American manufacturing concern, medium to small business, a single factory located on the rural edge of Chicago. We employ about 450 men and women in our factory and our products are industrial lighting fixtures, electrical specialties, signals, and washing machine tubs.

I would like to file for the record my complete statement.

Mr. Kelley. Without objection, it is so ordered.

Mr. Steele. It is a rather detailed statement of the chamber's view regarding the proposals under consideration for changes in the labor law.

Then I would like to summarize that statement and to speak also from my own experience. I hope that will help to show why so many American businessmen hold the views that are stated in the detailed brief.

The Chamber of Commerce of the United States has always maintained a policy of being interested in good employer-employee relations. The expression of its views on the subject is not based on what happened the last 2 years, but go back many years prior to the Wagner Act.

Accordingly, our policy today is one of endorsing the right of employees to organize and bargain collectively whenever such action is the result of their own free and uncoerced choice. Our concern in making representations before Congress is that we shall have a labor-management law which will in fact make possible the very best kind of collective bargaining. We believe that industrial peace can best be achieved by placing principal reliance on procedures to which the parties have voluntarily agreed. At the same time we believe it should impose the quality of obligation on both parties, employer and union, and should give paramount consideration to the public interest.

We believe legislation should be written for the good of all parties, the public, employees, and employers.

Our basic position is that the principles of the present laws should be retained. We see no reason for tossing them into the discard and returning to a statute passed 14 years ago designed to correct certain conditions of that period.

The Wagner Act standing alone would clearly be inadequate today. It nourished the weak and struggling labor movement of 1935 into the powerful movement of 1949, with 16,500,000 members. There is no little irony in the current act to protect that brawny giant from employers who are wondering how equal their position is at the bargaining table. For every large employer able to take care of himself against the weight of million-member unions, there are thousands of small ones who are not. The collective-bargaining process is exactly as complete, and the contract usually has as many paragraphs in it, for the company with 50 employees as for the company with 50,000.

A law should not be written for the benefit of special groups to give them a position over and above that granted other citizens. Law, regardless of what subject it touches, should seek to promote the public interest. It it does that, it will protect the general interest and the welfare of all the people.

A return to the Wagner Act under the changed conditions of 1949 would not promote the public interest because it would benefit special groups, the union, just as it has benefited them in the 1930's. Nor would the law be much improved by the modifications proposed in H. R. 2032. These modifications state in forthright manner some of the problems, but the remedies proposed are not adequate.

On page 2 of the filed statement, I would like to read the summary that is there.

We believe that the basis for a sound national labor policy is a law directed in the encouragement of free-voluntary collective bargaining.

We believe that any such law should also contain adequate provision for machinery to settle labor disputes when bargaining breaks down. Particularly should there be effective procedures for the settlement of national emergency strikes.

We believe that Congress should take effective steps to outlaw monopolistic practices, whether by unions or employers or both, in combination.

We believe that the law should require both unions and employers to bargain collectively in good faith, provided the union is the representative of the majority of the employees. We believe that the law should define the scope of this obligation to bargain so that the parties will be assured of certainty in their relationships.

We believe that unions should be subject to unfair labor practice charges for various well-known causes, such as forcing an employer to discriminate, or to violate the law, for secondary boycotts, for jurisdictional strikes, for forcing an employer to choose a bargaining representative, and for restraint and coercion of employees in their rights under the act.

We believe that Congress should encourage union attainment of responsibility.

We believe in the principles of free speech for both employers and unions, assured of no coercion, threats of reprisal, or promises of benefit.

We endorse the principle of a strong, independent Conciliation Service, with a definite statutory direction.

We believe that the foremen and supervisors are members of management and should be recognized and accepted as such.

We believe that the procedural reforms made in the NLRB, such as separation of the prosecution and judicial functions of the Board should be retained.

We believe that compulsory unionism should be prohibited.

We deplore the attempt to usurp State powers by the provision which destroys State laws regulating compulsory unionism.

I have myself negotiated six union contracts with one union in the past 5 years. Four of these were negotiated under the Wagner Act conditions, and two under the present law. Our experiences, I think, are typical of the collective bargaining process of most of American industry, and I hope that my discussion briefly of a few of the differences will be helpful.

When our union was not required to bargain in good faith, bargaining became a question of receiving from the union a list of their demands, answering them with counterproposals, and receiving back from the union the same list of primary demands. This process went on in 1947, in the April negotiations, until the union decided that by the application of an economic force, the company would give in substantially to the listed demands. A strike was effectuated, and after a week it was clear then to individual employees what the company's position was, and possibly how firm the company was in its beliefs, and they began to drift back to work. Shortly a contract was signed with almost identical provisions that were offered in the first place.

The contract that was signed could have been signed before and would have saved the loss to the community, which in a semirural area, at least, is of considerable importance, and certainly the loss to the individual employees.

We have negotiated two contracts since the present law was in effect. Under the free-speech clauses of the present law, we felt that we were able to keep our employees fully aware of the company's position and the company's reasoning, both by letters written after each negotiating section reporting exactly what took place, and stating further the company's position on every matter, reporting the company's concessions as they were made, and also in one situation that appeared to be approaching a crisis, by individual meetings, voluntary meetings, with all employees.

We have gone through both of these negotiations, once in January of 1948 and once in October of 1948, with no strike. The contracts have embraced a cost-of-living bonus plan which has been in the matter of wages, which has been very helpful to employees during this particular period of time.

Obviously, for the CIO union, the cost of living bonus plan was entirely unacceptable to them. Without the free speech clauses in the present law, we are certain that we would have had two strikes, one in January and again in October, and the provision in the present law for free speech on the part of the employers has eliminated the loss to the community and to the individual employees that would have been caused.

In our experience, if labor laws should encourage and promote labor-management peace, then free speech for employers should be retained, and this entirely apart from the aspect of fairness or the principle of equality before the law.

On compulsory unionism, our experience may be of some interest. We have always maintained in our company that no man need belong to the union in order to obtain or to hold his job. This of course is exactly the stated, published, policy of the chamber of commerce. It is a form of freedom that is near-sacred in this country. However, up to last October we had in our union contracts a form of union shop, maintenance of membership, originally ordered during war time by a War Labor Board against a union demand for a closed shop.

We have held that the union should be able to maintain its membership on its own merits and not by compulsion. The union has claimed that without compulsory unionism—and they have claimed this throughout negotiations, and the question has been up at every single negotiating session—without compulsory unionism in our contracts there will be free rides for those who derive the benefits without contribution.

In a free society, I believe, there will always be a few free rides in any association, in any combination of men; but only a few. There are also those who will honestly disagree with the union's definition of "benefits."

Since last October, when we negotiated a union contract without maintenance of membership, the union membership in our factory has actually increased. They have today about 85 percent of the total eligible wage earners in the factory, whereas under maintenance-of-membership conditions the best they ever had was 78 percent.

I feel that under the circumstances it hardly appears that the present law was busting this union or enslaving anyone.

On the matter of the Conciliation Service, in the course of the years, we have on occasion called upon the Conciliation Service and the predecessors of this present Service for assistance when contract negotiations reached crisis stages, and also an arbitration of the normal month-to-month grievances. Our experience since the Labor-Management Relations Act and the independent Conciliation Service has been that the commissioners of conciliation are neutral, are independent, and are of tremendous assistance, in the matter of settlement of grievances particularly.

The Conciliation Service is not a labor function, but a labor-management function, and I feel, as did the previous witness, that it belongs just as improperly in the Department of Commerce as in the Department of Labor. The Department of Labor is intended to promote the interests of wage-earners—of labor. We do not believe that commissioners of conciliation can remain entirely neutral if the Service is transferred to the Department of Labor.

On the subject of secondary boycotts, I appeared 2 years ago last month before this committee and testified solely on that point. I am vitally interested in the subject, because my company is the victim of the secondary boycott practiced in the electrical industry. I will be quite specific on this subject, because I think I am very well informed on it as I deal with it on a day-to-day basis.

As a matter of background and history, I will have to say that the union in our plant is the Electrical Workers Union of the CIO, the union that has almost complete representation, or contracts, with electrical contractors throughout the country. Those contractors who install lighting equipment almost to the conclusion, or I believe to the exclusion of any other union, have contracts with the International Electrical Workers of the A. F. of L.

In 1945, to go back to the history again, a policy meeting was held by the IBEW in Milwaukee, and it was reported, where a decision was made that no IBEW members as a matter of policy would hang or install or use or handle a fluorescent lighting fixture that did not bear the label of the IBEW indicating that it had been manufactured by a member of that union or in a factory where that union had a contract. The boycott operation that stemmed from that policy decision was, of course, somewhat slow in getting under way, because there are locals all over the country, many cities having two or three of them. Nevertheless, it made steady and persistent headway. By

1947 there were boycotts in operation, actually, against unlabeled fluorescent lighting fixtures in almost every major industrial area in the country, with the possible exception of some of the southeastern States, and it was apparent that it was going to go into those areas, too.

A package of the Labor-Management Relations Act with its prohibitions against secondary boycotts of this type, slowed down this boycott by the IBEW against CIO-made or nonunion-made fluorescent lighting fixures to a considerable extent. It has not eliminated it entirely, but actually at the moment a boycott is in effect of this sort in the cities of New York, Chicago, Minneapolis, St. Louis, Kansas City, and that is about all.

Even the present law does not make it simple to obtain a case to be presented to the Board of the type of boycott that I am speaking of. It goes further than that. I mean, obviously a lighting fixture or a group of them is ordered and delivered to a job site. The union electrician says, "We won't hang that fixture." So they send it back.

So you have a definite, positive evidence of the existence of concerted action, a refusal to handle the material. The boycott is more underground the way it is practiced at present. No one in the construction industries, no building contractor, no architect or specifying engineer, wants to have trouble on his job. Therefore, if he knows that the boycott situation exists in his area or the area in which a building is going up, he will inquire first before he writes specifications for lighting fixtures, and if the unit does bear the label of the IBEW, it is not specified. Even if it is specified because the engineer or architect makes a mistake, the electrical contractor, who knows very well whether the boycott exists or not, changes the specifications, since it is his very own employees who are involved.

Now, there are cases where errors have been made, and we have received, with our CIO-made products, orders for shipment and installation in an area where the boycott is in effect. What happens is that they start to say that if the unit is refused, they will not accept it. We agree, all right, if that is the case, there is not a thing we can do about it. We do not have an IBEW plant. We have a union contract in effect. It was originally certified in 1943, and there is nothing we can do about it. So we say, "Please send the material back."

There is one case where the present law actually works. It is a little detailed, but it works, because once we say "Send the material back," there and then they know, and we get evidence and we have a case. In two of the years of watching very carefully for cases we can present to the Board, we have never yet had them. However, the very existence of this secondary boycott situation, as we have it in this present law, has definitely slowed down that present law.

An interesting thing has happened since November. In anticipation of the change in the labor law, we have seen an increasing activity, or rather it is reported to us by our men in the field, our own salesmen, our wholesalers, and electrical contractors with whom we have done business for a long time, that in anticipation of the change in the law, the secondary boycott activity on the part of this one union against nonunion-made or CIO-made electrical lighting fixtures is increasing.

Now, in H. R. 2032, as I read it, the only prohibition, the only type of secondary boycott that is prohibited, is the type that stems from a representation situation or a jurisdictional situation. The kind that is covered here is provided for in the law, where there is actually a concerted action to refuse to handle goods by one union, and it actually is not a strike or a picketing, or anything of that sort; but actually it is a threat of strike. These electricians tell their contractors or employers "We will not hang the unit." So that there is a refusal to work, and carried to its final form, it would be a strike.

That sort of situation is not covered at all in H. R. 2032 and I am certain that if provisions at least as strong as those contained in the present law are not continued, this secondary boycott, against which an employer has absolutely no recourse whatever, will come into play again. We did violate the law by inviting the IBEW to our plant. We would be inviting considerable trouble on the part of the CIO union if we attempted such a thing. There is nothing that we can do about it, and without provisions at least as strong as in the present law, I am certain that this secondary boycott situation will grow and spread to many other lines beside fluorescent lighting fixtures. There is a tendency that is growing in that direction now.

Secondary boycotts, of course, as reported in the watch-dog committee report, take many, many forms and variations. I believe that all of them are unfair and that all of them should be prohibited. I can conceive of one single case—and it has been referred to before as possibly a justifiable type.

It was one where a plant which we call A has a dispute, or the employees have a dispute with their employer, and the employer, to circumvent directly the economic force of that strike, sends out tools, or leases or subcontracts work of great importance, and the secondary boycott must be applied to some other employer. Possibly that is a justifiable secondary boycott. If the employees of A company picket the plant of the subcontractor, that is justifiable. But in most cases it would seem that primary action, the application of economic force, should be limited to those cases where employees are acting directly against their own employer.

Mr. Kelley. Mr. Steele, on page 2, the "Summary of views", the second paragraph.

Mr. Steele. Yes, sir.

Mr. Kelley. You say:

> We believe that any such law should also contain adequate provision for machinery to settle labor disputes when bargaining breaks down. Particularly should there be effective procedures for the settlement of national emergency strikes.

When bargaining breaks down in settling labor disputes, that invites stalling on the part of one party or the other, or it invites the refusal to bargain, on the part of one party or the other. When the collective-bargaining machinery breaks down, then you weaken collective bargaining; and, when you surround collective bargaining with any provisions of law, then it is weakened, if not destroyed. Collective bargaining must be free, unhampered, and unrestricted. That has been my experience in negotiating contracts, as an employer, by the way, and I have always felt that, as long as you keep the parties sitting around the table talking, there are bound to be some results sometime, and you cannot put anything in front of them; because, if you do, it weakens them.

Mr. Steele. Mr. Kelley, I feel, to elaborate on this general statement of policy some, I agree with you completely that collective bargaining must be absolutely as free as possible. You say one of the things you must do—and I find this from my experience too—is to keep people talking, and to keep them around the table. It seems to me that is exactly what a free independent conciliation service helps to do, and I think it does the best when it has the confidence of both sides around the bargaining table. I think employers generally—and this gets into the point of the independent conciliation service granted—but I believe the employers will continue to have confidence in the Conciliation Service if it is not attached to the Department of Labor, which was established for the purpose of promoting the interest of labor.

As far as the national emergency strike situation, I feel H. R. 2032 recognizes the need for some positive action for machinery. I feel that if 30 days as a cooling-off period, as indicated in H. R. 2032, is good, then 80 days, as is in the existing law, is better. I feel the mere force of public opinion, which apparently is the only tool left to the President, is substantially no tool at all. The injunctive process in the present law has been used on six occasions as you know, and if the force of public opinion has been sufficient it does not seem reasonable the injunction would have been used in such case.

From my own experience—and I am obviously so small a manufacturer a strike in my plant will never be a national emergency—but certainly, as a consumer, I am interested in a telephone strike, or a coal strike.

Mr. Kelley. When you say "coal strike," you are looking at me.

The argument the Conciliation Service should be an independent agency is a question that sets up much doubt in many people's minds. The argument for having an independent agency is that the Labor Department is charged with the duty of looking after the welfare and the interests of the workers. To me, that is a paramount reason why it should be in the Department of Labor, because if the Conciliation Service is in the Department of Labor then they are looking after the interests of the employees, the workers, because certainly if anybody wants to go to work it is the workers.

Mr. Steele. Yes, sir, but is not conciliation, almost every matter that ever comes before a commissioner of conciliation, whether it be in the contract making or the collective-bargaining process, or whether it be the arbitration grievances, is that not an employee-employer function, a labor-management relationship; and, if commissioners of conciliation come under the Department of Labor, are they not already placed on one side of the table, rather than at the head of it?

Mr. Kelley. I do not believe so, because I think the weight given Conciliation Service in their interest for the employee is sufficient pressure upon the Conciliation Service to get the employees back to work as soon as possible, and to settle disputes as soon as possible, because the employees are the people who suffer a great deal during a strike.

Mr. Steele. But is it not the employer who is equally interested?

Mr. Kelley. He is.

Mr. Steele. The controversy is a labor-management controversy, and the purpose of conciliation is to keep people talking to line up a sensible agenda, and outline the issues and get them before you. We have done this several times in the cases of grievances, and it has worked since the Conciliation Service has been independent. It has worked remarkably satisfactorily, and we have only lost in arbitration five out of six cases. I am thrilled by the service of Conciliation Service.

Mr. KELLEY. One of the weaknesses of the policy in the past, instead of strengthening the Conciliation Service, even when it was in the Department of Labor, it was weakened by lack of proper appropriation.

Mr. Bailey?

Mr. BAILEY. Mr. Steele, you describe yourself as vice president of the Benjamin Electric Manufacturing Co. at Des Plaines, Ill. The fact of the matter is you are the official representative of the United States Chamber of Commerce?

Mr. STEELE. Yes, sir.

Mr. BAILEY. It is generally conceded, is it not, Mr. Steele, the United States Chamber of Commerce is composed of a group of rugged individualists who object vehemently to the Government regulating business, but are prone to suggest they regulate every other class of our society?

Mr. STEELE. I am not under that impression.

Mr. BAILEY. I would like to call your attention to a speech made by Mr. Earl Shreve, president of the United States Chamber of Commerce, in which he cried about the tendency to enlarge social-security activities, and to appropriate money for education, and about a national health program, and postwar airports and roads, and he referred to socialism; would you like to enlarge on that?

Mr. STEELE. I am afraid, Mr. Bailey, I am not qualified to do that. If you want my personal opinion, I would agree with Mr. Shreve, but I am a member of the Labor Relations Committee, and a member of the United States Chamber of Commerce, and an executive head of a small manufacturing enterprise, and I would rather confine my testimony to the subject of the current problems under the Labor Management Relations Act.

Mr. BAILEY. At the bottom of page 2 of your presentation, you set out 12 suggestions for the new labor legislation.

Mr. STEELE. Yes, sir.

Mr. BAILEY. On the whole, are they not blanket endorsements of the present law?

Mr. STEELE. Yes, sir. As I stated in my opening remarks, the basic policy of the United States Chamber of Commerce is to retain the principles of the present law; we think they should be retained.

Mr. BAILEY. I would like to call your attention to section 2, the same section that the chairman of the committee discussed with you.

Mr. STEELE. Yes, sir.

Mr. BAILEY (reading):

> Particularly should there be effective procedures for the settlement of national emergency strikes. We believe that any such law should also contain adequate provision for machinery to settle labor disputes when bargaining breaks down.

Would you advocate a compulsory arbitration, or would you resort to injunctive procedures, as in the present act?

Mr. Steele. I would not resort to compulsory arbitration. I feel from my exeprience and I know the policy of the Chamber of Commerce arbitration is a very useful tool. It should be entered into voluntarily, and the assistance of the Conciliation Service is immensely important as far as the national emergency strike. I feel there is no tool in the hands of the administration in H. R. 2032 to handle a national emergency strike. A strike situation has occurred six times since August 1947.

Mr. Bailey. Take, for instance, the coal strike: The final strike was settled around a bargaining table, and not by the injunctive action.

Mr. Steele. Yes, sir.

Mr. Bailey. In fact, can you point out to me one single instance where the injunctive procedure under the Taft-Hartley bill has settled a strike?

Mr. Steele. I feel the case is similar to the situation I described in the secondary boycott in the industry. The mere existence of it makes for the elimination of national emergency situations and the speedy settlement of them. I do not believe—and again this is entirely a personal opinion—I do not believe that the coal strike would have been settled 12 days or longer after the 80-day injunctive period without the injunctive procedure.

Mr. Bailey (reading):

> We believe in the principles of free speech for both employers and unions, short of coercion, threats of reprisal, or promises of benefit.

Am I to understand you would like to go back to the practice they indulged in prior to the National Labor Relations Act when they would stick a little slip of paper in the employee's pay envelope and advise him how to vote?

Mr. Steele. I do not.

Mr. Bailey. Do you consider that coercion?

Mr. Steele. I do.

Mr. Bailey. Just how far can the employer go under the provisions of the Taft-Hartley Act in that respect?

Mr. Steele. I think it would take the courts to say how far he can go. This is how far I think he should be allowed to go, short of coercion: I would like to be able to stand up before the people who work for me, and to write them a letter, and set forth in as clear use of the English language as I can, the issues that are at stake. My experience with collective-bargaining committees of unions is that, although there may be 5 or 10 members, there is very little that gets back to the employee in the shop. In the case of the strike situation that we had in April 1947, in our plant, the only single membership meeting of that union—and it was a very strong and militant union—they had only 50 percent of the union members present, and the only time they ever had that many at a membership meeting was at the time of the strike vote. Never yet since have they had a forum of 50. How can you expect, with all due credit for honesty on the part of the union representatives, and particularly the people who are employees on negotiating committees, how can you speak for the employee, as to how he is to make a decision, and whether he is to vote for a strike or not? How can he know it if the employer does not use the means at his disposal to tell him so, and to tell him why it is there, and to say, "If you do this, the company is going to go to pot in a year." That is, I think, a threat, and I do not think that would be necessarily allowed. I think an employer would be permitted to say he does not like such a union. I do not believe there is coercion in that.

Mr. Bailey. You would not want to go so far as to say to an employee that, if he does not vote so and so, it will cost him his job?

Mr. Steele. Absolutely not. I think that violates the basic principle we have been talking about.

Mr. Bailey. You refer to the transfer of the activities from the present independent to the labor commission. I presume you are aware of the fact that the Hoover Commission is making recommendations for combining wherever possible these various activities, and no doubt will recommend that be placed in the Department of Labor.

I cannot conceive of an organization like the one you represent disagreeing with Herbert Hoover on anything.

Mr. Steele. Of course, Mr. Bailey, I have not yet heard it is a fact that that recommendation has been made. I am simply saying it seems to me the conciliation function is a joint labor-management function, and the Conciliation Service which exists in the settlement of grievances and in the making of contracts, even at the crisis stage, it will do the job better and have the greater confidence of the employees.

Mr. Bailey. I will say, Mr. Steele, you are honest in your convictions, and stick to your point.

Mr. Steele. Thank you, Mr. Bailey.

Mr. Kelley. Mr. Irving?

Mr. Irving. Mr. Steele, I notice that you dwelled on the subject of public opinion. I am just wondering how that public opinion is created. Do you think that the members of the unions are equal to the members of the NAM and the USCC, of which you are a member, in the matter of creating public opinion in case of differences?

Mr. Steele. Considering the availability of free speech in the union newspapers, I would think they are substantially equal; yes, sir.

Mr. Irving. Of course, I would definitely have to disagree with you, because some mediums are not available to labor. I myself, personally, have tried to secure space for advertising in metropolitan newspapers, and have been told there was only so much space available, and so forth. Yet, in that same edition, a full-page ad would appear in an attempt to create public opinion in favor of the employer. There is no question about that. Also radio time is not available as freely and as equally to organized labor because you have to have a prepared script approved in advance of delivery, and labor does not have regular programs with commentators carrying that program on a regular schedule, so it is impossible. You speak of union newspapers. They reach only the union members. They do not reach the people we are talking about influencing in employer-employee controversies. I think that is very pertinent. Public opinion is usually created by the one who has the most economic power.

Mr. Steele. May I make one reply, please, Mr. Irving?

Mr. Irving. Yes, sure. I should like to have your views.

Mr. Steele. I do not think in terms of paid newspaper advertising because I myself have a very low opinion of the effect of the molding of public opinion that paid newspaper advertising has. In the second place, as far as radio time is concerned, from the situation that is present in one city that I know about, in Chicago, at the moment there is more regular scheduled labor commentation on the radio stations each day than there is telling the side of management or the employers.

Mr. IRVING. That is certainly the exception. I think you will agree with that.

Mr. STEELE. One of the reasons is because one of the strong electric unions runs a program by the commentator every day in the week over WGN.

Mr. IRVING. Generally speaking, that is not true. Just generally, all over the country, it does not exist.

Do you think that unions should be prohibited from assessing members, say, $15 or $20 or $25, for such purposes?

Mr. STEELE. Mr. Irving, I believe, when you speak of the matter of assessing, there are lots of problems wrapped up there. For instance, if you are speaking of a compulsory union situation—possibly even a closed shop, which would not be outlawed by H. R. 2032—if, by failure to pay the assessment, a man lost his job, yes, very definitely I am opposed to that. He should have a free right to determine whether he is supporting the program. If you do not agree with the assessment, you can quit; but under a compulsory union situation, of you do not agree with the assessment, you can quit and lose your job.

Furthermore, is the assessment the question of deduction from pay roll, or is the assessment to be deducted from pay roll; I understand that is a question not settled as yet.

Mr. IRVING. Do you not believe that would be very critical; I mean it would be open to considerable criticism by the public, and so forth, if the union did not adopt those methods, and did not assess those members in that manner? It seems to me there has been some criticism on that point.

Mr. STEELE. I think it depends entirely upon the purpose of the assessment.

Mr. IRVING. I was just referring to the AMA assessing their members $25 for the purpose of lobbying or creating public opinion. I presume—although I understand it is not compulsory—there is a possibility of a little displeasure on the part of some members of what you call an association, such as the NAM, or the Chamber of Commerce of the United States, or any business group, but which I refer to as a union because they represent their members in much the same manner as unions do for working people.

You mentioned about the membership of unions not being present and not being informed. I believe the officers usually accept it as an indication that the membership is satisfied with their leadership when they do not attend their meetings too regularly. There is no other assumption possible.

Mr. STEELE. I agree with you.

Mr. IRVING. They are satisfied with the officers and satisfied with the conduct of the business, but I am wondering if all of the corporations have all of their stockholders present when all the decisions are made in the various matters that would be of interest to stockholders.

Mr. STEELE. I understand that is not the case, Mr. Irving. I met the point in our own particular case, in our own company, because—and I am giving the union full credit, and honestly so, of telling the situation in contract negotiations exactly as it stands, and of even reflecting the company's position and the company's point of view accurately—but there is no medium of communication if they do not go to the meeting.

The confusion that existed under the Wagner Act was where there was question as to whether an employer could say the things I have said. The Wagner Act did not say definitely I could not say those things, but I have read a large number of the cases of the Board's actions in those days, and prior to August 22, 1947, I would not have dared to write the bulletins that I did, or to make the talks before a long series of employee meetings which I did. I welcomed that freedom of speech.

Mr. IRVING. I happen to know a case—and I am going to say I think the way you described your activities has been fair—but I do happen to know the case of the union where the employer used free speech as a means of coercion, saying that the company was going out of business, and so forth, if the union made a successful effort to negotiate an increase in wages.

As you say, the people start straggling back to work. In this particular case, I think it was a move to get 2½ cents after some employers had granted raises of 12½ cents. Those particular employees had been in the union for a number of years.

Mr. KELLEY. The gentleman has one minute left.

Mr. IRVING. Thank you. I am sure you and I have found that to be the case in a number of instances since this has been in effect. The effectiveness of the union collective bargaining has been very much lowered.

Mr. STEELE. Mr. Irving, the case you cited, it seems to me, would be an unfair labor practice under the present law, and would be and is contrary to the policy I have stated. That is coercion, and I think it is wrong, and I think it should be prohibited.

Mr. IRVING. I would like to ask one more question.

Mr. KELLEY. The gentleman's time has expired.

Mr. IRVING. Thank you, Mr. Chairman. Thank you, Mr. Steele.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. Mr. Steele, I notice you have recommended the injunction. What do you consider the office of injunction to be?

Mr. STEELE. This, I presume, is the answer: You have too many people who are unfortunate by not being lawyers. As I understand it, the injunction, as I have seen it in the newspapers in the national crisis, as used, I understand it as being a process that stops an illegal action.

Mr. PERKINS. From your experience in dealing with labor and labor unions, have you had any occasion to use the injunction?

Mr. STEELE. No, sir. Unfortunately, I want to have one under the IBEW secondary boycott.

Mr. PERKINS. Since the Norris-LaGuardia Act outlawed the injunction, has there ever been an occasion in this country where we have needed the injunction in labor disputes?

Mr. STEELE. As I say, I believe that the injunctive process as applied to the portion of the law, the present law, dealing with the secondary boycott, for example, has helped.

Mr. PERKINS. We won the war without the injunction provision being in the Wagner Act; did we not?

Mr. STEELE. Yes; and we won the war, also, however, at tremendous sacrifice in this country, and there was a terrific compulsion to not strike.

Mr. PERKINS. I will ask you if you are acquainted with the provisions of the Taft-Hartley law?

Mr. STEELE. Yes, sir; I believe so.

Mr. PERKINS. Turning to the provision that deals with the unfair labor practices, section 8 (c), which has been discussed here this morning, there is a provision that states:

> Any expressions or views of the employer, argument or opinion, or the dissemination thereof, whether written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act if such expressions contain no threat of reprisal or force or promise of benefit.

What do you understand that to be?

Mr. STEELE. I understand that to be, Mr. Perkins, in practice, a means of detailing to some extent, at least, what an employer can say in the course of collective-bargaining procedure to his employees, without suffering the penalties that accrued under the Wagner Act, by board order, where those were declared unfair labor practices.

Mr. PERKINS. Did you know that for hundreds of years we have had a rule of evidence recognized by Federal courts and the State courts that any statement made by a party could be used against that party for the purpose of contradicting him if he appeared as a witness, or as a declaration against interest, or to show his motive or intent on any litigation that may come in court, either criminal or civil, and do you recognize the fact that this provision right here changes a rule of evidence in favor of the employer to something that has never been practiced in the courts of this Nation? Do you recognize that provision to have that effect?

Mr. STEELE. No; I do not. It seems to me the law states it is not an unfair-labor practice.

Mr. PERKINS. I believe you have recommended the injunction here without knowing just what the true office of the injunction is; is that correct?

Mr. STEELE. No, sir; I do not believe that is correct. I have recommended the injunctive process, as I have said in my detailed statement, in the maintenance of the present law, at least, in respect to the secondary-boycott procedure, jurisdictional strikes, national emergency, and it looks to me like it works there, and has been working there. I would not know the first thing about getting an injunction because I am not a lawyer.

Mr. PERKINS. You do not recognize the fact that the court has an inherent right to issue the injunction, do you?

Mr. STEELE. I do not believe I understand the question.

Mr. PERKINS. In the instance that irreparable injury was facing the country, a national emergency situation affecting the health and welfare of the country——

Mr. STEELE. You mean with or without the existence of the present law?

Mr. PERKINS. Yes; I mean without a statute.

Mr. STEELE. I do not understand the circumstances. If that were the case, and if the injunctive process were so simple to apply in six national emergencies, why was it not in 1946, when they went out to seize the railroads instead of stopping it by the injunctive process?

Mr. PERKINS. They got the injunction then; did they not?

Mr. STEELE. Yes; the railroads were seized, and the strike was ordered.

Mr. PERKINS. And the Taft-Hartley law was not on the books; was it?

Mr. STEELE. Possibly so. However, it seems that with the force of public opinion, which is the one apparent tool that is available under H. R. 2032, in the case of national emergency situations, that, in my opinion, is not sufficient. I think the injunctive process, as I said before, assisted in the settlement.

Mr. PERKINS. Do you know under what law the restraining order was issued to the railroads?

Mr. STEELE. No, sir.

Mr. KELLEY. You have 1 minute left, Mr. Perkins.

Mr. PERKINS. That is all.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. Mr. Steele, I would like to explore your views in regard to another matter for a few minutes. You referred to your opposition to compulsory unionization, and in keeping with my understanding of that term, I think I would agree with you, but I am wondering what you meant by it. Do you mean by that you are opposed to the closed shop?

Mr. STEELE. Yes, sir; and, furthermore, I am opposed to the basic principle, to the basic situation where a man must belong to a union in order to obtain or to keep his job.

Mr. JACOBS.That is the closed-shop question, of course; is it not?

Mr. STEELE. Part of the closed shop, and part union shop.

Mr. JACOBS. Or union shop?

Mr. STEELE. Yes.

Mr. JACOBS. That is what I wanted to explore your thinking on. You are a business corporation?

Mr. STEELE. Yes, sir.

Mr. JACOBS. You have a number of stockholders, I suppose?

Mr. STEELE. Yes.

Mr. JACOBS. It is not a closed corporation?

Mr. STEELE. No. However, it is very small.

Mr. JACOBS. Whether it be yourself or somebody else, a corporation elects directors; do they not?

Mr. STEELE. Yes, sir.

Mr. JACOBS. And then the directors select executive officers?

Mr. STEELE. Yes, sir.

Mr. JACOBS. That is the usual pattern?

Mr. STEELE. Yes, sir.

Mr. JACOBS. The executive officers then, of course, transact the business of the company?

Mr. STEELE. Right.

Mr. JACOBS. Including the negotiating and execution of a collective-bargaining agreement with the employees, or whatever kind of agreement they have?

Mr. STEELE. Right.

Mr. JACOBS. Of course, those executive officers are not bothered by any dissident factions of stockholders at the bargaining table; are they?

Mr. STEELE. No, sir.

Mr. JACOBS. They present a single front; that is correct; is it not?

Mr. STEELE. Yes, sir.

Mr. JACOBS. Do you not sort of see where there is just a little advantage on the part of the employer so long as he can maintain the philosophy that a man that shows his independence by not joining the union, do you not think that creates a divided front on the other side of the table that is somewhat advantageous to the employer?

Mr. STEELE. Possibly, but largely because the number of people is generally smaller.

Mr. JACOBS. Will you pardon me a moment? I seem to remember some of the big employers saying they have more stockholders than they have employees.

Mr. STEELE. Of course, again I am speaking for my own company, and from my own experience, but actually in our process of collective bargaining, with a group of four or five people sitting for management, in conference, there is often a difference of opinion, but because it is four or five instead of possibly four or five groups of a hundred apiece——

Mr. JACOBS. You are speaking of four or five people in executive positions, are you not? And they would be comparable, would they not, to the bargaining committee from the union?

Mr. STEELE. That is right.

Mr. JACOBS. But I am talking about the stockholder. Can he come in and make a bargain with the union, or the employee? He cannot, can be?

Mr. STEELE. Oh, no.

Mr. JACOBS. So the employer comes to the bargaining table with a single front, and do you not think it is rather natural the employees would try to create a single front to bargain with the employer?

Mr. STEELE. It seems that is what they have tried to create in the first place.

Mr. JACOBS. Of course, I would not approve a law that said a man had to belong to a union, and I would not approve a law that said the employer had to sign a contract that was a closed-shop contract, but what your folks are asking is that we pass a law which says you may not sign a contract for a closed shop; in other words, is that not what it amounts to? As the law permits the directors of a corporation to represent all its stockholders, and the stockholders cannot interfere with the executive functions of the corporation, and then the same body of law turns around and says that it shall be unlawful for the contract between labor and management to say that all the workers shall join the single front; is that not about what it amounts to?

Mr. STEELE. Yes, but——

Mr. JACOBS. Do you agree with me?

Mr. STEELE. Actually, no. The stockholder has at least the opportunity to muster sufficient strength to do something about it.

Mr. JACOBS. Just what can he do about it?

Mr. STEELE. If he can obtain sufficient backing he can change the whole executive personnel of the employer.

Mr. JACOBS. As a lawyer myself, and having represented the labor unions, and also participated in a few interunion fights, I recognize there are some abuses within certain unions. Do you not sort of think it would be a good idea to try to make the unions decent by prescribing that they elect their officers rather than to try to divide them, as the Taft-Hartley Act does? What do you think about that as an objective approach to the question?

Mr. STEELE. As an objective approach to the question I think that is true. My opposition to the closed shop is not so much that the employer is not permitted to bargain on the issue of a closed shop, but because of the existence of the closed-shop arrangement promotes a closed union, for example.

Mr. JACOBS. Would you say that the union should not be closed? If the union were not closed would you object to the closed shop?

Mr. STEELE. If all of the monopolistic practices—and again I must speak only for myself—that might be fostered by the closed-shop contracts were eliminated, I personally would not object.

Mr. JACOBS. You are not speaking for the United States Chamber of Commerce?

Mr. STEELE. I do not know the policy of the chamber, and I doubt if they would agree with it.

Mr. JACOBS. Do you think the real object is to keep the workers somewhat separated so they will not present a unified front at the bargaining table?

Mr. STEELE. No, sir.

Mr. JACOBS. Let me ask you this: You have some 3,000 trade associations affiliated. Do you have these associations that denominate themselves as associated employers; are they members of the Chamber of Commerce?

Mr. STEELE. To my knowledge, no. The federated membership of the United States Chamber of Commerce is the local chamber of commerce.

Mr. JACOBS. I understand what you mean by that. I know of a certain employer association in a certain State, and they have said the same thing that you have said here today, that their object and purpose was to foster good peaceable labor relations between labor and management. There happened to fall into my hands, by chance, a bulletin that had been issued by that organization to its members, and I want to read you an excerpt from that bulletin.

Mr. KELLEY. You have 1 minute left.

Mr. BURKE. I will yield 5 minutes.

Mr. KELLEY. All right.

Mr. JACOBS. It was headed "Antiunion campaigns." The first sentence reads as follows:

> How far management can go to keep a union out of the plants is something more employers would like to know a great deal more about.

Do you believe that is true, that first statement?

Mr. STEELE. No, sir; I do not.

Mr. JACOBS. You think that most employers are of a mind that they accept the idea of complete unionization of their employer and employees?

Mr. STEELE. I think, by and large, employers in this country have awakened to the fact unions are here, and are here to stay, and employees deserve collective-bargaining arrangements, and their own free choice of representatives. I think very few employers would ever entertain a matter of that sort.

Mr. JACOBS. I wrote the man and asked him if he thought that was the view of all his membership, and he never answered me, but I did talk to a lot of the membership who said it was not their view.

I want to see if you will agree with me on this, and this is the last question: A few employers can drag down the wage scale and create unfair competition with which the fair employer cannot meet, is that correct; would you agree with that?

Mr. STEELE. I feel employers can drag the wage rate down?

Mr. JACOBS. Just a few employers could settle down a spiral——

Mr. STEELE. I do not think that is true.

Mr. JACOBS. Do you think it would be safe to leave the matter of wages to the altruistic attitude of the employer in this country?

Mr. STEELE. No, sir.

Mr. JACOBS. Do you think there has been strife on the other side of the bargaining table?

Mr. STEELE. I think the bargaining process has done a pretty thorough job of establishing wage levels as to the value of the work.

Mr. JACOBS. You live close to one city in my State, Indiana, and you know there are two big employers down there?

Mr. STEELE. Yes.

Mr. JACOBS. And you know one of the employers has scarcely had any difficulty with its labor?

Mr. STEELE. Yes, sir.

Mr. JACOBS. I think within the last 6 months they have lost a few hours by labor disputes, and I believe that is the first time they ever have in the history of their operation. You know there is another large employer in that city, do you not?

Mr. STEELE. Yes, sir.

Mr. JACOBS. They are constantly at each other's throats; that is correct, is it not?

Mr. STEELE. Yes, sir.

Mr. JACOBS. Does it not seem to you that perhaps that results from the attitude of the management?

Mr. STEELE. You would expect in a free labor area that they will tend to gravitate toward the employer who has the best labor relations.

Mr. JACOBS. Do you not think maybe a lot of our labor strife in this country results from the philosophy such as was put out in the bulletin we were speaking of?

Mr. STEELE. I personally do not believe there is a lot of that philosophy, and I do not believe there is a lot of strife.

Mr. JACOBS. Then you agree with me on this, that sometimes the heads of the employer association do not properly represent the views of their members?

Mr. STEELE. I very definitely will.

Mr. JACOBS. That is all.

Mr. KELLEY. Mr. Burke, you have 7 minutes.

Mr. BURKE. I will not need that much.

I would like to address myself on the subject of this Conciliation Service again. I recognize that you are out in the field, in the same manner that I have been, only on the other side of the table, and my experience has been that the personnel of the commissioners of conciliation has been largely the same under the new act, under the Taft-Hartley Act, as they were under the Wagner Act; is that not about right?

Mr. Steele. I realize to a large extent the same men stayed on. The change of law did not make any difference.

Mr. Burke. And they were drawn from practically all fields of endeavor. Some of them were retired ministers. In fact, I remember one retired corporation president, and some were from labor's ranks.

Mr. Steele. Yes, sir.

Mr. Burke. And largely they built up a pretty good reputation in the community in which they carried on their operations, is that not true?

Mr. Steele. That is right.

Mr. Burke. Now, for practical purposes, that is, practical day-to-day working out in the field, is it not true that they could work just as well under the Labor Department as they could under the Taft-Hartley Act?

Mr. Steele. As men, yes, sir; I think they probably could, but I think there are two differences; one is that in the attachment to the Labor Department there is a possibility of the trend being to the labor side; it seems logical. What experience I have had with organization work, of you want somebody to be in the middle you leave him completely unattached. And the other point, I do not think it should be mandatory for employers or unions, in the cases of grievances, or in approaching crises of situations, and in contract making. I believe the best function can be served if there is complete confidence in the Service. I think there is a greater confidence on the part of the employers to go to the Service for help if it is independent.

Mr. Burke. Has it not been the experience during some 34 years of the existence of the Conciliation Service, even before the Wagner Act, that they did receive the confidence of both sides when they came in on any given situation?

Mr. Steele. But the operation was certainly limited in those days, and so, as a general rule, employers certainly did not turn to the Conciliation Service. At least, I did not, as an employer, as I have in the last 2 years. We have gone to them for the appointment of arbitrators after the third step in grievance procedure, and we have told them we thought there was an approaching crisis situation, and we thought they should come out and sit with us in the collective bargaining. We have done that both times in the two negotiations in 1948, and I believe the confidence the employer has in the Conciliation Service is greater if the Service is independent than if it is attached as part of the Department of Labor. That does not necessarily say that possibly the labor side of the table has less confidence; I am speaking from the employers' side.

Mr. Burke. Of course, bearing in mind the distinction between the definition for conciliation, mediation, and arbitration, do you not think it is far better for the people on both sides of the table to strive to reach an agreement themselves before they resort to any of these various agencies?

Mr. Steele. Absolutely; yes, sir.

Mr. Burke. It should only be somewhat of a last resort.

Mr. Steele. Yes, sir.

Mr. BURKE. And prior to complete breaking off of negotiations in the operations?

Mr. STEELE. Particularly in respect to conciliation during collective-bargaining contracts, to go as far as you possibly can, and then have conciliation to keep you going further.

Mr. BURKE. But, as far as the prestige of the Service is concerned, there should be no difference out in the field, whether the Commissioner of Conciliation works for the Labor Department or for some independent agency?

Mr. STEELE. I would agree that the Commissioners of Conciliation have generally made their own standing, but I feel wholeheartedly that employers have greater confidence in the Service, and therefore use it with greater confidence, and possibly use it to the elimination of grievances, strikes, or proper settlement of grievances and strikes, which is in the public interest, if the Conciliation Service is independent, and possibly on that one point.

Mr. BURKE. That is all.

Mr. KELLEY. Mr. Wier?

Mr. WIER. Mr. Chairman and Mr. Steele, I have perused your presentation here to some extent; and there is one line on the second page, or two lines on the second page, I want to refresh your memory on; and it has to do with your experience during the 20 months of the Taft-Hartley Act, and I quote from the second paragraph:

> Accordingly, it is our position that legislation should impose that minimum of control which will encourage voluntary rather than Government-imposed settlement of labor disputes.

That is correct?

Mr. STEELE. Yes, sir.

Mr. WIER. During the sessions of the Eightieth Congress the word went out that this act was going to be enacted, under which labor and management both would strive for the continuance of friendly relations. That was broadcast from the time the act first made its appearance here in the Capital of our Nation. I have had some considerable experience with this act since it has been made the use of a medium in some labor disputes in my community, which happens to be Minneapolis.

From the inception of the idea of organization in a plant or institution, I have gone through it step by step, and I will give you my reaction to what the Taft-Hartley Act has done in the interest of management. Step by step it is a complicated piece of machinery. You can go from one stage to the next stage and finally wreck the union, but I will use one outstanding example, and that is the typographical strike in the city of Chicago. You are familiar with that?

Mr. STEELE. Yes, sir.

Mr. WIER. You have never had any disagreement in the chamber of commerce or in the National Association of Manufacturers, openly, at least, in the carrying on of collective bargaining between either industry or management?

Mr. STEELE. That is right.

Mr. WIER. And I think you are familiar with the fact that in this country over a long period, traditional period of time, some of our major industries—the printing industry, the building construction industries, the amusement industries, the movie and show business, and so forth—have always had a traditional policy of operating that business between management and labor under the so-called closed shop?

Mr. Steele. Yes, sir.

Mr. Wier. Are you familiar with the statement that Mr. O'Keefe made before the committee here in the Capitol——

Mr. Steele. No; I am not.

Mr. Wier. With regard to the causes of the printers' strike in Chicago, in which he said there would not have been a strike had not the Taft-Hartley law been invoked by the process of steps to prevent them from renewing their agreement with the Typographical Union of Chicago. You have read that, have you not?

Mr. Steele. I know some of the employers have stated that; yes.

Mr. Wier. And you and I have followed very closely the relations between labor and management, and you and I have followed the actual steps that management can take from the very inception of the idea that somebody is organizing his plant, and he has the right of very broad free speech and activity. In the case of the typographical union it is true that Mr. McCormick and his cohorts started to use the machinery that was laid out throughout the law.

Have you some knowledge of that? And what is your reaction to that situation?

Mr. Steele. My reaction to the Chicago typographical strike, the newspaper strike, is this: They traditionally, of course, had closed-shop agreements, and they expected to have them renewed. The employers had always agreed to that, and they had just as soon have continued that, except that it was against the law for them to sign such a contract.

As I stated before, undoubtedly in this case it was unfortunate because it was an old union, and it had undoubtedly contributed considerable to the art, but nevertheless the effect on the labor relations on public interest of other closed-shop arrangements and other closed-union arrangements are reason enough, in my opinion, to continue to prohibit the closed shop.

There is certainly another answer to the contract-making by the Chicago newspapers.

Mr. Wier. Let us follow that strike up as a direct result of forbidding the employer and union of arriving at a logical level in the contract, which formerly has always been legal in this country. Are you in accord with all of the weapons that the Congress put into the hands of management, as has been demonstrated in that particular strike, in carrying it through, which meant that when the union failed to reach an agreement and called a strike, because of their inability by law to get the closed shop they were faced with injunctive processes as the first means of impeaching; that is correct, is it not?

Mr. Steele. Yes, sir.

Mr. Wier. They were faced with injunctions from four States?

Mr. Steele. Yes, sir.

Mr. Wier. Then when that did not effectually cause a settlement and the return to the trade, they were further faced with suability on the basis—and the law is quite effective in that case—they were faced with suability and another injunction forbidding them or their membership from helping them in their dispute—that is correct, is it not—whether by process of a secondary boycott or by process of financial aid and relief and pickets other than those on strikes; do you remember those phrases?

Mr. STEELE. Yes, sir.

Mr. WIER. Do you believe that the law of collective bargaining adds anything to the bargaining by the eventual process of total destruction of the union?

Mr. STEELE. No, sir. I believe that the present law adds considerable to the collective-bargaining process by placing both sides of the table on a substantially equal basis, which they were not on before. I do not believe that the law was intended, nor is it being used, that way by employers, as I answered Mr. Jacobs, for the purpose of busting unions. I do not believe that employers generally want to bust unions, and I do not think that the law will serve them in that respect if they do.

Mr. WIER. Then I am assuming from that answer that you have in mind the typographical union of Chicago or any place else does not have to be busted or wrecked; they can go back to work under the open-shop provisions of the act; is that right?

Mr. STEELE. Now, after all, there is a union-shop provision even in the present act. I believe that the long-standing closed-shop arrangements between publishers and the typographical union of Chicago make this one strike distinctly an exception, with the strike having been going on for so long. It is distinctly outside, and an exception. There is certainly another way of providing the function under the present law that the unions were after. There was, as I understand it, no disagreement as to wages or any other part of the contract. It would have been signed except for the closed-shop provision, and the employers would have signed it. So they certainly would have a signed union-shop provision. And certainly the typographical union could obtain a union-shop election.

Mr. WIER. Do you believe that an organization of 5,000 or 6,000 men ought to be responsible for the action under the suability clause for what some individual member may do or may commit?

Mr. KELLEY. The gentleman has 1 minute remaining.

Mr. STEELE. The union as such is responsible under the suability clause, and not the individual members, as I understand it. And is not that the same position that a manufacturing concern is in, that the company can be sued for an action of its representative or officers? It seems to me again that is equality before the law.

Mr. WIER. That has been a most difficult case for us, and that is one of my reactions to the Taft-Hartley Act, that what the unions reserve is the right of protection of the contract is awfully difficult. When you say the employer has free speech to prevent the outgrowth of an organization, his free speech under this Taft-Hartley Act is unlimited.

Mr. KELLEY. Your time is up, Mr. Wier.

Mr. WIER. Thank you. That is all.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. Mr. Steele, you have brought in certain views, and I would like to ask one or two questions.

You believe that the basis for sound national labor policy is a law protecting and encouraging free, voluntary collective bargaining. Do you feel that the provisions of the present Taft-Hartley law encourage free collective bargaining, or do they restrict it by some of the provisions we have in the law?

Mr. Steele. Mr. McConnell, I feel that the present law does encourage free collective bargaining to a greater degree than was present, at least, under the old Wagner Act, or prior to the passage of this law, largely because for the first time management and labor are on substantially an equal basis, with the free-speech clauses, and so forth.

Mr. McConnell. How about a definition of collective bargaining? What constitutes collective bargaining? Originally, I was of the opinion that that would be helpful. I am now of the opinion that it impedes rather than helps.

Mr. Steele. You mean the existence of a definition?

Mr. McConnell. That is, to define what is collective bargaining. If so-and-so takes place, then so-and-so must occur, and then so-and-so. I think that is putting collective bargaining too much in a strait jacket.

Mr. Steele. I would rather not see the term defined, because we all know what it is, particularly those of us who have worked with it and are working with it. From my point of view, it covers the full range of relationships between employer and union, or employees' representatives.

Mr. McConnell. I think it is a little vague when you say the law should contain certain adequate provisions for machinery to settle labor disputes when bargaining breaks down.

Mr. Steele. This was intended, of course, here, as a summary, Mr. McConnell. I think the details are somewhat clearer in the body of the brief. The thought, of course, is that there should be mediation and conciliation measures, and there should be positive action available in the case of national emergency.

Mr. McConnell. We are dealing with voluntary arbitaration, of course.

Mr. Steele. The recommendation is for voluntary arbitration.

Mr. McConnell. You also feel that mediation and conciliation would be better served by having it an independent agency rather than in the Department of Labor?

Mr. Steele. Yes, sir.

Mr. McConnell. Now, I notice that the unfair labor practices in a substantial degree, as they apply to labor organizations, are removed in H. R. 2032. I am particularly concerned with one of them that has to do with restraint and coercion of employees in their rights to organize and bargain collectively. Would it not be true that coercion would have the same effect whether it is done by management or labor? Would that not be the fact?

Mr. Steele. Yes, sir; and of course, I have dwelt on the subject. But, you see, there is coercion even to the point of joining the union in an open-shop situation. Coercion is very subtle. But it is there. I have seen it work. Everyone knows that sort of thing goes on.

Mr. McConnell. In other words, a worker should not be coerced or restrained by either side? Would that not be a fair way to get at it?

Mr. Steele. Yes, sir. The basic principle, I think, is that he should be completely free in his selection of a collective-bargaining representative, which means whether he have one or whether he not have one.

As I understand the law, although some of the Board decisions obscured the fact, the Wagner Act actually embraced that very philosophy. The employee was free to join or not join, as he saw fit. That is the freedom that is the basic princpile of our whole collective-bargaining procedure.

Mr. McConnell. In recommendation No. 12, you say:

> We deplore the attempt to usurp State powers by the provision which destroys State laws regulating compulsory unionism.

I imagine the decision yesterday would have some effect on recommendation No. 12 in its relation to it. I think you are speaking of the same thing.

Mr. Steele. I think it has some relation to it. I am actually speaking in this brief of H. R. 2032, rather than of the State laws with regard to closed shops.

Mr. McConnell. You say here, "We believe that compulsory unionism should be prohibited."

You mean, the union shop set-up in the present Taft-Hartley law should also be stricken out?

Mr. Steele. As a matter of basic policy, I would say that the principle that no man should have to join or maintain membership in a union to hold his job should be followed. However, I believe and I feel personally that the union shop provisions, with the election procedure in the law, would, for instance, solve the Chicago typographical situation if they would only let it work.

Mr. McConnell. Have you covered some of the background of what you might call the compromise provision regarding the union shop in the Taft-Hartley Act? For instance, very few things we realize as we live in life are all good or all bad. We can argue for all ends, we might say, or on all sides of questions. There are advantages in the closed shop, and there are disadvantages in the closed shop. I think the thing that worried the committee most as we listened to testimony last year, was the power given to certain individuals in the closed shop. It virtually amounted to life or death, as far as the job of a worker was concerned, in certain types of industries. However, we recognized that there was an argument in connection with the free-rider idea. If you are going to have the advantages of a union operating, then you should pay some of the freight; you ought not to be a free rider. So the thought was that management would be given the right to hire their workers; they could use union's suggestions or hiring halls, if they wished, but fundamentally the right to hire the workers for their business was preserved. The committee, however, said that if you get a job with a concern, you will at least have to join the union to the extent of being willing to pay your freight and not being a free rider.

But we will also draw the teeth of the power over a worker's job and say that just because a worker might incur the wrath of some union leader and were suspended or fired from a union, not necessarily would he have to be fired from his job.

That was the general background of the compromise. Now, maybe we erred in that compromise; maybe we have gone astray in some part of the thinking of it. But that was the general background of the union-shop provision in the Taft-Hartley law.

In view of that, is it your thought that we should throw that out?

Mr. Steele. As a matter of basic principle, I think, yes, that compulsory unionism should not be permitted. Now, the question of free riders paying the freight went a long way to withdrawing the effect of the union-shop type of contract, since it was for nonpayment of dues only, and it was after initial hiring, of course. Actually, I do not know if anyone ever heard of the free-rider idea in connection with labor relations until after the union started charging a fare for the ride. But I can think of a parallel situation in local chambers of commerce. Many of them, in the smaller towns, in even the bigger towns, do a considerable amount for the advancement of the community. And there are some merchants, some manufacturers, who prefer not to join; yet they benefit as the community benefits, and they are not paying dues and they are not paying any of the freight.

I feel that that is exactly comparable to an employee. I think in the final analysis he may have an honest, sincere conviction that he just plain does not want to belong, whether he is deriving benefits or not. He may not believe what the union defines as benefits are benefits, and he should be free to make that choice. It does not do any good to say, "All right, if he does not like this arrangement, the union-shop area in general, say, all contracts being that kind, he will move to some other town."

I do not believe that the basic policy should be directed to the point where we expect a restriction of freedom in the right to work and where a man can work.

Mr. WIER. Will you yield to a question there, Mr. McConnell?

Mr. KELLEY. The gentleman's time has expired.

Mr. Nixon?

Mr. NIXON. I will yield my time to Mr. McConnell.

Mr. McCONNELL. I yield to Mr. Wier.

Mr. WIER. To either one, Mr. McConnell or Mr. Steel, I would like to make this observation or ask this question. I would not want it to be left here in the minds of anybody that only the free-rider idea is involved in the closed shop. I think what you have to realize in dealing with this question there of the closed shop is that in many of our old established trades there is a lot more in the minds of the employer in dealing with a closed-shop union than in just making the member pay his freight, because, for example, in many of these trades—the old trades, and not the wartime ones—the question of the apprenticeship comes up through the union, the fact that the union has within its membership all of the most competent mechanics in that field, and that makes it more necessary and perhaps better for the employer to deal with a closed-shop union.

Is that not true, Mr. Steele?

Mr. STEELE. I think, sir, that it depends upon where you enter the circle. Being historically a closed-shop union, then, of course, they have a monopoly of the best mechanics, and monopoly in all other parts of our society is considered evil.

Mr. WIER. That is right. We have to deal with monopolies, too.

Mr. McCONNELL. That is all, Mr. Chairman.

Mr. KELLEY. That is all. Thank you very much, Mr. Steele.

(The prepared statement of Mr. Steele is as follows:)

STATEMENT OF HOYT P. STEELE, VICE PRESIDENT OF THE BENJAMIN ELECTRIC MANUFACTURING CO., DES PLAINES, ILL., ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, REGARDING NATIONAL LABOR LAW REVISION

I am Hoyt P. Steele, vice president of the Benjamin Electric Manufacturing Co. at Des Plaines, Ill. I am a member of the labor relations committee of the Chamber of Commerce of the United States, and am appearing as a witness on behalf of that organization. I should like to discuss current problems under the Labor-Management Relations Act, and make reference to various proposals to revise our national labor law which have been laid before your committee.

At the outset, a bit of background is appropriate, I believe. The Chamber of Commerce is a federation of some 3,050 local chambers of commerce, and trade associations, and other business organizations. These organization members, in turn, collectively comprise over a million and a quarter American businessmen in all field of activity in every geographical section in the United States. They and the policies of our organization represent the views of a major cross-section of American business.

I appear before you to present the viewpoint of that membership in regard to desirable principles which should be adopted in writing labor law.

The Chamber of Commerce of the United States has always interested itself in good employer-employee relations. Thus, its expression of views on the subject at this time is not prompted entirely by what has happened in recent years, but goes back to chamber thinking long before the Wagner Act.

The chamber had a policy even before the 1920's which declared that "the right of workers to organize is as clearly recognized as that of any other element or part of the community."

Accordingly, our policy today endorsing "the right of employees to organize and bargain collectively whenever such action is the result of their own free and uncoerced choice," is the development of a principle which the chamber has supported for many years.

Our concern in making representations before the Congress is that we shall have a labor-management law which will in fact make possible the very best kind of collective bargaining. We believe that industrial peace can best be achieved by placing principal reliance on procedures to which the parties have voluntarily subscribed. We believe that Government-imposed regulations and decisions do not promote industrial peace and understanding as effectively as agreements freely arrived at by the parties on their own responsibility by the conference method.

Accordingly, it is our position that legislation should impose that minimum of control which will encourage voluntary, rather than Government-imposed settlement of labor disputes.

At the same time, we believe it should impose equality of obligation on both parties and should give paramount consideration to the public interest. We believe legislation should be written for the good of all parties—the general public, employers, and employees.

SUMMARY OF VIEWS

Let me summarize briefly the views I wish to express in my testimony:

1. We believe that the basis for a sound national labor policy is a law directed at the encouragement of free, voluntary, collective bargaining.
2. We believe that any such law should also contain adequate provision for machinery to settle labor disputes when bargaining breaks down. Particularly should there be effective procedures for the settlement of national emergency strikes.
3. We believe that Congress should take effective steps to outlaw monopolistic practices, whether by unions or employers or both in combination.
4. We believe that the law should require both unions and employers to bargain collectively in good faith, provided the union is the representative of a majority of the employees. We believe that the law should define the scope of this obligation to bargain so that the parties will be assured of certainty in their relationships.
5. We believe that unions should be subject to unfair labor practice charges for various well-known causes, such as forcing an employer to discriminate, or to violate the law, for secondary boycotts, for jurisdictional strikes, for forcing an employer to choose a bargaining representative, and for restraint and coercion of employees in their rights under the act.
6. We believe that Congress should encourage union attainment of responsibility.
7. We believe in the principles of free speech for both employers and unions, short of coercion, threats of reprisal, or promises of benefit.
8. We endorse the principle of a strong, independent Conciliation Service, with a definite statutory direction.
9. We believe that the foremen and supervisors are members of management and should be recognized and accepted as such.

10. We believe that the procedural reforms made in NLRB, such as separation of the prosecution and judicial functions of the Board, should be retained.

11. We believe that compulsory unionism should be prohibited.

12. We deplore the attempt to usurp State powers by the provision which destroys State laws regulating compulsory unionism.

PUBLIC INTEREST

Naturally, the public interest should receive paramount consideration in any legislation. We believe the best welfare of all employers should also be considered, both those who do and those who do not have unions. Similarly we believe the welfare of all employees should be considered, both those who do and those who do not belong to labor organizations.

We first should like to speak about those things which are of primary concern to the general public.

Our basic position is that the principles of the present law should be retained. We see no reason for tossing them into the discard and returning to a statute passed 14 years ago designed to correct certain alleged conditions of that period. The Wagner Act, standing alone, would clearly be inadequate today. It nourished the weak and struggling labor movement of 1935 into the powerful movement of 1949, with 16½ million members. There is no little irony in the current drive to protect that brawny giant from employers who are wondering how equal their bargaining powers are when stacked up against the powerful labor leaders of today. For every large employer able to take care of himself against the weight of million-member unions, there are thousands of small ones who are not.

Law should not be written for the benefits of special groups, to give them a position over and above that granted other citizens. Law, regardless of what subject it touches, should seek to promote the public interest. If it does that, it will in the long run protect the general interest of the people whom it affects.

Now you simply cannot say that a return to the Wagner Act, under the vastly changed conditions of 1949, would do that. Nor are the proposals before you in H. R. 2032 to modify the Wagner Act any better.

They merely mention certain problems which have shown themselves necessary of correction, without providing any effective remedies. They do not, in short, come to grips with the matter at all.

NATIONAL EMERGENCY STRIKES

Take the question of national emergency strikes. It has been recognized that there must be procedures laid down for dealing with them. H. R. 2032 recognizes this necessity.

But instead of courageously tackling the problem, the bill would permit the President to proclaim a national emergency when a strike threatens to occur in a "vital industry which affects the public interest." He may call on the parties not to strike, may appoint a board to find the facts and then report its recommendations. The parties are to preserve the status quo for 30 days.

And that's all.

How is the President to enforce this 30-day cooling-off period? According to Secretary Tobin, only by calling on the force of public opinion. According to Atttroney General Clark, by the use of the President's inherent powers. But the President has used neither of these methods exclusively in his previous efforts to settle such disputes. He usually has used either an injunction or plant seizures backed up by an injunction. In one situation, he actually asked Congress for authority to draft strikers.

It seems, therefore, that the argument over the possession of inherent powers is academic, to say the least. If the President does have such powers as are claimed for him, then they ought to be made clear and specific in law. The weapons at his command should be spelled out so that everyone will know what can and cannot be done. If he has no inherent power, then he ought to be given some, the nature of which is clearly and specifically spelled out in law, so that he can protect the public in such situations.

Public opinion alone has not stopped strikes in the past and it alone will not likely stop them in the future.

The existing provisions of the Labor-Management Relations Act are far superior in regard to this situation to the proposals in H. R. 2032. Present law, moreover, now leaves it to the discretion of the President as to whether he will invoke the injunction remedy provided in it. Thus, if, in any situation, it appears that the force of public opinion would be enough to obtain settlement of a labor dispute, the President may call upon it. If it appears that the use of Government power is necessary, he may use the injunction. He will not, as H. R. 2032 proposes, be left defenseless in situations where the force of public opinion is not enough.

However, the injunctive procedure should not be limited to a fixed period.

Use of an injunction, moreover, should make seizure proceedings unnecessary, since seizure itself is, under the doctrine of the Lewis case,[1] enforceable by injunction. We also think that there is no necessity for calling a board of inquiry to find the facts until after the injunction is granted.

But one thing is certain. There must be effective procedures for dealing with Nation-wide strikes. The arguments against the use of the injunction apply primarily to its indiscriminate use by private parties to crush legitimate union activities. They certainly do not apply to use of the injunction by the Government to stave off a national disaster. To discard such a procedure merely because of traditional opposition to it based on the practices of the 1920's bespeaks too much adherence to the theories of a bygone era.

COMPULSORY UNIONISM

Compulsory unionism is one of the most vital questions that confronts Congress. It is one on which we have positive views, based on the long observation and experience of our members with this device.

Ordinarily, I would discuss this matter of the closed and union shop under monopolistic practices. To say that a man must join the union in order to get or retain a job is but another way of saying that the control of job opportunities has been handed over exclusively to a union.

When anyone gets exclusive control of anything, that is monopoly, whether it is price fixing, restriction of supply, compulsory unionism, or union security. It is wrong in principle, it is harmful in practice, and it has certainly been contrary to the spirit of our laws to foster monopoly of any kind for almost 60 years.

The closed shop harms both the employer and the individual worker. It harms the employer by denying him, at times, access to qualified workers, or by forcing him to discharge them at the union's whim. It forces the employer to discriminate against employees on the basis of union membership, and not on their qualification for the job. It retards efficient production by fostering feather-bedding practices, jurisdictional strikes, and other labor abuses.

It is most harmful of all to the individual worker. It places his job at the mercy of the union. If he does not happen to sympathize with the union, or a particular union activity, he cannot dissent without fear of being deprived of his livelihood. It enhances the possibility of a dictatorship of the few. It encourages intraunion politics, it subjects the worker to arbitrary and capricious activities of union leaders, and it cuts off his job if he objects.

If a union is worth joining, it should be entirely possible to recruit members on the basis of the union's merit. But if the union cannot persuade a worker to maintain membership on that basis, it should not be permitted to force him to join by means of its control over the job. The mere fact of a closed shop indicates that a union feels its merits are too few or too weak to attract members.

We believe, therefore, that Congress should continue the prohibition on the closed shop, and, in fact, on all other forms of compulsory unionism.

It should be unfair-labor practice for either employers or unions to discriminate in regard to hire or tenure of employment because of union membership or activity, or lack of it. The alternative to such provisions can only be regulation of internal affairs of unions to prevent abuses of the closed union. We believe that the right to work should not be dependent on union membership. H. R. 2032 is quite inadequate to protect that right.

We believe that Federal law should continue the L. M. R. A. provision which gives full recognition to the desire of the States to enact such legislation. The fact that 16 States see fit to enact anticlosed shop laws indicates the widespread demand from the people for such legislation.

Policies of the Chamber of Commerce of the United States advocate maximum freedom for the States to enact the labor laws they deem advisable in their legislative discretion. This principle has proven its value from long experience, and we commend it to your attention.

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[1] *U. S.* v. *United Mine Workers* (330 U. S. 258 (1947)).

MONOPOLISTIC PRACTICES

The public has a vital interest in the prevention of monopolistic and other improper practices.

It has long been recognized under our American system that monopolistic and unfair-trade practices by employers should be banned by law. The Chamber of Commerce of the United States supports this principle. We believe, furthermore, that if we are going to have the best kind of employer-employee relations, regulations in restraint of monopolistic and other unfair practices should be applied to labor organizations, which today have in fact grown into enormous business enterprises. Among such practices which we would ban are:

1. *Misuse of economic power.*—Industry-wide bargaining which assumes such proportions that either employers or labor organizations can exercise monopolistic powers.

2. *Payments to labor organizations.*—Payments either by employers or employees to labor organizations, or their representatives, should be subject to legal restrictions in order to prohibit racketeering, extortion, or monopolistic practices, and to insure that, where such payments are made for benefit or welfare funds, they are used exclusively for such purposes.

3. *Interference with use or installation of materials.*—Refusal to handle, work on, or install products solely because they were made or handled in the first instance by unorganized workers or by members of another labor organization.

4. *Secondary boycotts.*—Secondary boycotts practiced against employers with respect to whom no grievances exist.

5. *Featherbedding practices.*—The use of economic power to require an employer to carry on the pay roll more workers than are needed and other featherbedding practices.

We believe these principles are sound. They have been tested by experience. We are greatly disappointed that they are recognized in H. R. 2032 to so limited an extent.

SECONDARY BOYCOTTS

The only recognition your pending bill gives to any of these principles is that section directed to secondary boycotts. We are glad the committee recognizes this problem. However, if the real evils of secondary boycotts are to be eliminated, the bill will have to be broadened. As it presently stands, the bill outlaws only those boycotts which are aimed at forcing an employer to disregard a National Labor Relations Board certification or an NLRB order to bargain, or to upset an existing contract with a union. But this practice is used in many other situations as well.

Secondary boycotts are often used to spread the power of the unions even into plants where a majority of the employees do not want union representation. That use of the boycott is the antithesis of industrial democracy. It is an indefensible use of one type of monopolistic power. We urge, therefore, that the treatment of the subject in H. R. 2032 be enlarged so as to prohibit this type of unjustifiable conduct.

We are concerned, moreover, about the length of time that will be required under the present bill to get action with respect to boycott practices. According to statistics the length of time it takes the NLRB to process an unfair labor practice case is 8 to 10 months. If the case goes to court that is going to take several additional months. Meanwhile, the boycott has done its harmful work. Employers who engage in monopolistic practices are, of course, subject to restraint by injunction. We believe that the few unions who engage in the pernicious practice of using boycotts should similarly be restrained by injunction so that irreparable harm will not be done while the matter is being processed by the Board and the courts.

The boycott is the easy way of organizing a nonunion plant, of upsetting NLRB certifications, and of raiding rival unions. It seeks to force workers into a union, often when they do not wish to join, by destroying their jobs on which they depend. We think it only fair that unions should be made to persuade employees to join the union by direct methods, and not by injuring innocent third parties and by the destruction of job opportunities.

H. R. 2032 has not covered one of the worst aspects of monopolistic secondary boycotts. In many instances, unions which have gained control of certain job opportunities of an entire area deny the entry into that area of any competing products or services, regardless of whether they are produced by union labor.

In some instances, the union forces the employer to assist it. The result is a tight, area-wide monopoly of certain products with exactly the same effect on the consumer as though the employers alone had banded together to do the job. Such a situation ought to be forbidden by the antitrust laws, yet the mere fact that a union is the instigator is enough to exempt it from the operation of such laws, unless the employers actually combine with the union to do the job. The courts, therefore, have sharply limited the Department of Justice in its efforts to unseat such monopolies for that reason alone.

But, since the object of the boycott in such a situation is not one of those proscribed by the proposed law, there would be no remedy for such an abuse. H. R. 2032 should certainly be expanded to cover that case.

INDUSTRY-WIDE BARGAINING

Industry-wide bargaining which assumes such proportions that either employers or unions can exercise monopolistic powers is another matter which Congress should consider further. Industry-wide emergency strikes are only one aspect of this situation. Monopolistic control of the labor supply, of labor costs, and of prices is equally harmful to the public.

We do not condemn all bargaining of this character. In certain instances, it has come about in order to protect a group of small employers from a big union. In others, the situation in an industry may be such that multiemployer bargaining is the only feasible way of effectuating the best employer-employee relations. But in others, the use of such bargaining has resulted in monopolistic powers at public expense. This type of situation should not be condoned.

Present law forbids a union to coerce an employer in the choice of his bargaining representative. Retention of this section would be of considerable assistance in preventing the spread of monopolistic industry-wide bargaining. It is in line with long-standing NLRB policy to refuse to set up a multiemployer unit for bargaining purposes unless the employer had actually authorized bargaining in that fashion.

It would not even appear necessary for Congress to legislate on such matters were it not for two Supreme Court decisions which have virtually exempted unions from the laws applicable to everyone else in this regard.[2] Surely no one can claim that racketeering, extortion, and monopoly are legitimate union activities. Surely it isn't necessary to point out that unions alone should not be permitted to commit what for everyone else would be a crime.

Provisions of present law relating to union financial reports and to individual authorization of the check-off are designed to provide such safeguards. Unions who are collecting check-offs honestly and legitimately, for legitimate purposes, have not found it difficult at all to secure the necessary authorizations. But this section has made it difficult for that small minority of unions to extort payments for illegal purposes from employers and employees.

As to welfare funds: We do not wish to prohibit their establishment. But we do feel that, if they are as important to employees as has been suggested, and since employers contribute much of the money for them, safeguards to prevent their diversion into other channels should be provided in the law. Present law appears adequate for this purpose.

THE REQUIREMENT TO BARGAIN

The cornerstone of both the Wagner Act and the L. M. R. A. is the policy laid down by each to encourage the development of free collective bargaining as the primary method of settling labor disputes.

The Wagner Act sought to remove obstacles placed in the path of this policy by employers. The L. M. R. A. while retaining these Wagner Act curbs, sought to remove further obstacles placed in the path of collective bargaining by unions as well as employers.

Under H. R. 2032, the only means of implementing this policy of furthering collective bargaining is the provision which requires employers to bargain in good faith. But this is not adequate.

The bill contains no requirement that a union bargain in good faith, no definition of what constitutes good faith bargaining for purposes of the act, and no specifications as to how far the Government would go in requiring employers to bargain. It does not define the scope that will be given to this requirement or what specific subjects will be encompassed.

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[2] *U. S.* v. *Carbon* (327 U. S. 633 (1946)), involving anti-kick-back on Copeland Act (48 Stat. 948, 40 U. S. C. A. 276 (C)). *U. S.* v. *Local 807* (315 U. S. 521 (1942)), involving Anti-Racketeering Act (18 U. S. C. A. 4200).

Any statute should provide adequate guidance to the agency which administers it, and merely to reenact the Wagner Act provision mentioned above simply will not do the job. It would leave so many questions open as to encourage confusion rather than clarity in our labor policy.

If Government intrudes at all into the bargaining process, it should do so only to bring collective bargaining to its fullest and most mature development. We do not think that has been done in H. R. 2032. All that is done is to require employers to bargain. Bargain over what? Bargain how? And with whom? These questions have not been answered in the bill. Unless the law is specific, the matter will be left to the NLRB. But why turn the function of Congress over to an administrative agency. If collective bargaining is desirable, why not spell out what that means? Why not require mutuality of bargaining by imposing responsibility on the unions who engage in that process? It cannot be assumed in the face of the record of recent years that unions will automatically embrace the responsibility that goes with their tremendously increased power.

We recommend, therefore, that, in order to give fullest effect to the stated national policy of encouraging free collective bargaining, the law must contain a requirement that unions bargain in good faith. Likewise the law should say how far it is willing to go in enforcing that requirement, and what, for its purposes, collective bargaining means. Otherwise we have a statute which imposes compulsory collective bargaining, the meaning and scope of which is totally obscure, and which impinges on only one side of the bargaining process.

The conclusion is inescapable that either both sides should be left free to do as they wish, or the law should set up a clear, specific, enforceable statutory requirement that will establish adequate standards for the administrative agency to follow.

Such a course is not at all antiunion. It is only common sense to let both employers and unions know in advance what the law will require of them and not force them to guess at what they must do.

UNION UNFAIR LABOR PRACTICES

Congress has seen fit to enact statutory provisions setting forth certain employer unfair labor practices which impede union organizational efforts and collective bargaining functions. These restrictions were spelled out in the Wagner Act, continued in the L. M. R. A., and undoubtedly will be in any new labor law that is written. They are recognized features of our national labor policy.

The administration proposals, the statements of many union spokesmen, and others, do not, in principle, argue against the listing of union unfair labor practices as such. Thus in the provisions of H. R. 2032, which have received general labor acquiescence, there are three union unfair labor practices—use of the secondary boycott for certain purposes, failure to abide by an NLRB jurisdictional dispute award, failure to give 30-day notice of contract termination.

I think, therefore, that we can say that the principle of subjecting unions to charge for practices deemed to be unfair is objectionable to no one. The real question comes on the actual content of the charges to what unfair labor practices should unions be subjected. What are those union abuses which need correction through this medium?

The L. M. R. A., as you know, lists six: coercion and restraint of employees in the exercise of their rights under the act; forcing an employer to discriminate against an employee; refusal to bargain; strikes and boycotts for certain purposes (i. e., to force an employer to cease doing business with another, foster a jurisdictional dispute, upset an NLRB certification); charging excessive or discriminatory initiation fees; and feather-bedding demands of a limited character. We are unable to perceive why most of these cannot be retained in the law which is being framed.

UNION RESTRAINT AND COERCION

The union restraint and coercion forbidden under NLRB decision, encompasses violence, threats of violence, use of force, mass picketing or other intimidation against employees in the exercise of their guaranteed rights under the law. Unions do practice such abuses, and the records of congressional hearings are replete with instances of this character.

Those employees who want to join a union need not be inflicted with restraint and coercion to do so; those who don't, should be protected against anything but persuasion. If the union cannot persuade such employees to accept its views, it shouldn't be allowed to force them to agree. Use of force and coercion is not an inherent union right; it does abuse collective bargaining; and it violates the rights of individual employees.

Since this section, as interpreted by NLRB and the courts, does not affect legitimate union rights—a strike, for example, is not the restraint and coercion contemplated by the act—there is every reason for retaining it in the law as a protection to the individual employee, if he needs it, and to the public which should not be subjected either to union or employer use of restraint and coercion.

UNION DISCRIMINATION

The case for retaining the unfair labor practice of causing the employer to discriminate against an employee in violation of the act rests on equally sound grounds. It simply means that a union cannot require an employer to discharge an employee on the ground that he is or is not a union member, except under a valid union-shop contract, and then only if the employee fails to pay his dues and fees.

The NLRB, under the old Wagner Act, regularly recognized the impropriety of a union requiring an employer to discharge an employee for rival-union activity under a closed-shop contract. The courts have generally recognized the right of employees not to be expelled from the union, or from their job at union behest for arbitrary or discriminatory reasons. Union discrimination against certain types of employees has but recently been recognized by the NLRB as ground for withdrawing NLRB certification of a union.

With this backlog of NLRB and court rulings against union discrimination, it would seem that there could be no objection to requiring a union not to discriminate against an employee or prospective employee. If practices of this character have been recognized as wrong even under the Wagner Act, there would seem to be ample justification for Congress to eliminate union discrimination against employees.

I have already discussed refusal to bargain, and secondary boycotts. The Administration bill itself recognizes the desirability of forbidding a union to strike or boycott to upset another union's certification.

The question of jurisdictional disputes also has been recognized by the Administration bill as warranting legislative attention. We agree with the principle of such a provision but question whether, as drafted, it will be as effective in stopping jurisdictional strikes as present law. H. R. 2032 would make it a union unfair labor practice only to violate an NLRB award.

Congress should do more. It should make any jurisdictional strike an unfair labor practice and permit NLRB to enjoin it temporarily, pending NLRB decision. If the law is to deal at all with this matter, it should do so effectively, so as to stop such totally unjustifiable strikes. There should be no loopholes in its procedures which may well tend to negate their value.

The record of L. M. R. A. in stopping jurisdictional strikes is exemplary. The action of labor and management in the construction industry in setting up a joint board to settle such disputes under the aegis of that act was something that had never been achieved in 50 years of futile union effort. With such a record of achievement, it would be surprising if Congress changed the rule merely because it is in the Taft-Hartley Act.

The present unfair labor practice charge outlawing a limited type of featherbedding is inadequate. It covers only services not performed or not to be performed. It does not cover situations where the employer is forced to pay for only slight services a wage far beyond their actual value.

This whole problem is bound up with the closed shop. By and large, it is those unions which have strong closed-shop contracts, or equivalent arrangements, that are able to enforce featherbedding demands. Retain the prohibition on the closed shop, therefore, and much of this featherbedding problem may well be solved.

UNION RESPONSIBILITY

The whole question of union unfair labor practices is but one aspect of the question of union responsibility. We think that the unions also should be responsible to their members and to employers as well. They cannot, in fact, be otherwise and continue to demand an appropriate place in our national economy.

Now, most unions have achieved such responsibility. Legislation designed to assist the rest of them attain such maturity surely would benefit this majority by protecting them from the "unfair competition" of those unions that do not wish to assume responsibility commensurate with their power.

By admitting that unions can commit unfair labor practices, the pending bill implies that certain union responsibility can be attained only through the help of legislation. But, here again, it is necessary to do the job effectively and not half-heartedly.

An essential part of assisting unions to attain a desired maturity is to insure that they will be judicially answerable for those wrongs for which every other person or institution in the country is liable. They should be permitted to sue, or be subject to suit for breach of contract, for damage to the person and property of others and for those other wrongs which, if committed by an individual, would bring him into court. The unions complain that this would harass and bankrupt them. They can, of course, avoid this by refraining from committing wrongs that are cognizable in court actions. But to permit them to escape liability in such situations because of defects in the law cannot be justified.

The law should continue to have provisions similar to those of the present statute which prescribe uniform rules for suits by and against unions. The law should continue present provisions which protect individual union members' assets against liability for any judgment against the union. Repeal of the provisions of present law would remove this statutory protection.

FREE SPEECH

The effect of H. R. 2032 would be to repeal the present provisions of the law relating to free speech. We think this one of the most unfortunate provisions in the bill.

The Constitution of the United States has always embodied protection for free speech which does not present a "clear and present" danger to the community. Until the passage of the Wagner Act, freedom of speech on any subject was considered too precious a right lightly to discard.

Acting, perhaps, in an excess of zeal, early NLRB rulings under the Wagner Act placed a virtually complete gag on the employer when speaking of matters pertaining to unions. He was to maintain strict neutrality; he was not to speak out either for or against the union. The Supreme Court eventually modified that rule to state that an employer may express his views on labor policies or problems. It said, however, that speech could amount to coercion, viewed "in connection with other circumstances."

The loophole left open by this decision was quickly seized on by the old NLRB to impose virtually the same rule as before. All they had to do was find some evidence of employer coercion, "set the speech in that context" and forbid the speech as before. In many cases, on slight pretext, this was done.

This abuse of a constitutional freedom was what led to present law which forbids NLRB to enjoin free speech if it does not contain threats of reprisal or promises of benefit. The purpose was to protect free speech which was innocent in itself and which committed no "verbal act" of threat or bribery. The genesis for this provision may be found in opinions of various Supreme Court Justices in *Thomas* v. *Collins* (323 U. S. 60 (1945)). Justice Jackson said, in concurring:

"Free speech on both sides and for every faction on any side of the labor relation is to me a constitutional and useful right. * * * If the employer's speech is associated with discriminatory discharge or intimidation, the constitutional remedy would be to stop the evil, but permit the speech, if the two are inseparable."

Justice Rutledge said, in rendering the majority opinion:

"Decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the first amendment's guaranty."

Safeguards to assure free speech should be written into law to insure no repetition of the previous situation.

This is particularly true when Congress is, at the same time, seeking to remove all Federal bans on union picketing, which has been judicially likened to free speech. Present law permits peaceful picketing for legitimate objectives on the part of unions as a matter of free speech and outlaws violence or coercive picketing. Present law also permits employer free speech which does not go beyond the mere expression of views, opinion or argument and descend into coercion or bribery. The balance achieved thereby is a just one and one that Congress ought not to disturb in the interest of fairness to all.

SETTLEMENT OF DISPUTES: THE CONCILIATION SERVICE

The original Wagner Act was directed at a very limited objective; the prevention of alleged employer obstacles to union organization of employees. It provided machinery for the settlement only of disputes over whether employers should recognize unions. At the same time, it announced, as has been often said, a broad policy of encouragement to collective bargaining as the best method of conducting employer-employee relationships.

The Wagner Act was found to be too limited a vehicle for the full expression of such a national labor policy, so it was amended and modernized to meet changed conditions of labor-management relationships.

The L. M. R. A. went one step further in its attempt to foster good employer-employee relations. It sought to provide an answer to the question: What happens when collective bargaining breaks down?

It set up procedures for the protection of the public in national emergency disputes. And it provided for the first time a statutory basis for a Federal conciliation agency, independent of any partisan agency of government, for the resolution of disputes with the aid of conciliation and mediation. Its independence was intended to, and has, ensured that its impartiality would be unquestioned.

The record of its first year of operation shows clearly how much greater has been the public confidence in this agency than when it operated as an arm of the Department of Labor. We urge that you retain this independence.

The Labor Department is an agency created by law to promote the welfare of the wage-earner. Rightly or wrongly, in recent years, the Department has interpreted that to mean the organized wage-earner. We do not make an issue of that policy as such at this point. But we do oppose the return of an agency, designed to help resolve conflicts between the wage-earner and his employer, to a Department whose representatives have time and again gone on record as partisan to the former.

The Conciliation Service is not a labor agency It is a labor-management agency. It must have the confidence of both sides. It will almost certainly lose the confidence of many employers if it is returned to the Labor Department as proposed.

We urge that Congress continue the independence of the Conciliation Service in the interests of promoting the national labor policy of encouraging free, voluntary collective bargaining.

SUPERVISORS

H. R. 2032 contains no provision which would exempt supervisors from the law. This is a serious defect which ought to be remedied.

To give governmental encouragement to organization of supervisors is to encourage union encroachment on management. This is not equality before the law since mangement is forbidden to interfere with or to encroach upon unions in any way.

Supervisors—foremen—are members of management and should be recognized and accepted as such. This recognition should be and is being granted by employers all over the country.

We urge, in the interests of fairness, that Congress continue the exemption of supervisors from the term "employees" who are covered by this law.

PROSECUTION AND JUDICIAL FUNCTIONS

The L. M. R. A. made many desirable procedural reforms in the Wagner Act. These changes were based on long experience with and operation under that law, and we think that the net effect has been greatly to strengthen public confidence in the operation of the NLRB.

We do not wish to dwell on such matters as the 1-year election rule; the preponderance of evidence rule; abolition of the review section; expansion of NLRB to five members; and other desirable changes in Board procedure. Their value has been amply demonstrated.

However, we do wish to discuss the separation of the prosecution and judicial functions of NLRB. Opposition to this separation of functions does not look realistically, we fear, at the nature of NLRB functioning.

The National Labor Relations Board is an administrative agency with powers of deciding cases that are judicial in character. When charges are brought before the Board, there must be a complaint issued, preliminary investigation and/or attempted adjustment, a hearing in the nature of a trial, a decision by the trial examiner, and an appeal to the full Board for final adjudication by any aggrieved party. The processes are akin to those of police, prosecutor, jury, judge, and appeals court.

Under the Wagner Act, all these functions were under the control of the three-man NLRB itself. It combined all these functions into one, at variance wtih our system of court justice. Many people felt that such an agency could not possibly render an impartial decision, and the records of the old NLRB proved their contentions.

The present separation of powers has promoted public confidence in the NLRB, since it now in fact functions in a judicial capacity. An agency possessing its powers should not be permitted to sit on both sides of the argument. Under the L. M. R. A. it has not, and the experience under this operation has been highly beneficial. The separation of powers has been effected with a minimum of friction. We recommend that Congress continue the separation of NLRB's prosecution and judicial functions in the public interest.

ENCOURAGEMENT TO COORDINATING STATE LAWS

H. R. 2032 omits any provision which would expressly authorize the National Labor Relations Board to conclude jurisdiction agreements with State labor relations boards. Such agreements would do much to encourage a sound relationship between the Federal Government and the State governments in the field of labor relations. A highly important effect of such a provision would be to encourage the State to enact labor laws at the State level which would coordinate and implement the Federal labor policy. The failure to enact a provision to carry out this objective effectively would mean a return to the familiar Federal policy of overriding State labor laws through constantly broadening the exercise of the interstate commerce power and the consequent preempting of fields in which many States now have sound and useful labor laws.

This objective was actually contemplated in section 10 (a) of the L. M. R. A., which authorized jurisdiction agreements with State boards, ceding to them control within the State over certain types of labor disputes, even though these were in the area of interstate commerce.

Careful consideration should be given to the practical benefits which would derive from such a provision. In addition to a strong encouragement to State governments to adopt and administer labor laws consistent with the Federal labor law, there would result (1) the handling of local disputes by local authorities and (2) a substantial lessening of the case load now borne by the National Labor Relations Board.

The language of such a provision should make clear that the Board has authority to cede jurisdiction to each State board which enforces a State labor relations act with the following basic elements: It should guarantee to workers the right to organize and to bargain collectively and it should specify unfair labor practices for both employers and unions similar in general purpose and scope to those enumerated in the Federal law. If the NLRB is not required to observe too restrictive a measure of consistency between the Federal and State laws, and if it actually uses its powers either to cede or withdraw jurisdiction, there should result a strong incentive to the establishment of coordinating laws and Government agencies at the State level.

Let me conclude by saying that we believe H. R. 2032 fails to meet the test of any good labor law—fairness to both sides and equality of obligation and treatment under the law. The bill seeks to restrict employers in the conduct of their employee relations in every way devised by the Wagner Act, while leaving unions largely free to perpetrate many abusive practices that should be regulated. We urge that Congress retain in the law those many provisions that have proven of substantial public benefit; that Congress modify it only as the necessity for change in the public interest has been clearly demonstrated.

Mr. KELLEY. Is Mr. Jeffrey here?

Mr. JACOBS. Mr. Chairman, at this point I would like to ask the unanimous consent of the committee to insert in the record the correspondence between myself and Charles E. Wilson, president of General Electric Co., including his letter of January 21 to me and my first reply on January 26, stating that I would like to have him as a witness; my letter of February 9, answering the questions in the widely publicized GE questionnaire; his reply of February 26, in which he did not answer the questions that I propounded; and my reply of February 28 to that letter.

Mr. KELLEY. Without objection, it is so ordered.

(The correspondence above referred to will be found in the appendix following the close of testimony in today's hearing. See p. 211.)

Mr. KELLEY. Gentlemen, you may proceed and tell who you are. Who is Mr. Wilson?

Mr. WILSON. Right here.

Mr. KELLEY. I am glad to see you. You are from my district.

Mr. WILSON. That is right, sir.

Mr. JEFFREY. Thank you, Mr. Chairman.

TESTIMONY OF HARRY P. JEFFREY, SECRETARY AND GENERAL COUNSEL, FOREMEN'S LEAGUE FOR EDUCATION AND ASSOCIATION, DAYTON, OHIO, ACCOMPANIED BY GEORGE DRIESKE, DEPARTMENT SUPERVISOR, MURRAY CORP. OF AMERICA, DETROIT, MICH., AND ALEXANDER H. WILSON, FOREMAN, ROBERTSHAW THERMOSTAT CO., YOUNGWOOD, PA.

Mr. JEFFREY. Mr. Chairman, my name is Harry P. Jeffrey. I am a lawyer practicing in the city of Dayton, Ohio, and am secretary and general counsel of the Foremen's League for Education and Association. The league is a nonprofit corporation organized for the purpose of promoting educational work among foremen and supervisors.

Its office is in Dayton, Ohio, and its work is financed by more than 250 industrial concerns, both large and small, located throughout the country. The league advocates retention of the sections relating to foremen and supervisors contained in the Labor-Management Relations Act of 1947. We believe this a realistic and common-sense approach to a problem that vitally concerns both labor and management.

Both the original Wagner Act and its amendment by the Taft-Hartley Act recognized labor as an entity and management as an entity. There has to be a practical dividing line. In this sense, therefore, where does labor and management begin? We believe that both history and common sense reveal that management begins with the foremen.

Throughout the life of American industry, the foreman has been a part of management and the direct representative of management at its initial point of contact with the rank and file, or production, workers. This has been the traditional position of the foreman; it is his position today. He is the first link in the management chain, and this is true whether he is employed in a small or a great mass-production enterprise.

In the Packard Motor Car Co. case, Mr. Justice Douglas in his dissenting opinion states:

> It [the Wagner Act] put in the employer category all those who acted for management not only in formulating but also in executing its labor policies. Foremost among the latter were foremen. Trade-union history shows that foremen were the arms and legs of management in executing labor policies.

The Foremen's League believes that foremen themselves are the best witnesses as to their own status. For many years, foremen have associated themselves together for self-help through education and association, while opposing the principle of collective bargaining.

There are two national associations, or organizations, of foremen and supervisors in the country, with memberships of approximately 75,000, and literally scores of scattered clubs made up of foremen not identified with any national group which operates on this principle today.

While we are aware that opinion polls are not in the best standing, I believe we all realize that intelligently conducted research can be both informative and helpful. In 1948 the highly respected Opinion Research Corp., of New Jersey, conducted the latest of a series of national polls among foremen, and found that only 13 percent of those contacted either belonged to or were interested in joining a union. In other words, 87 percent of all supervisors were not interested in organizing for collective-bargaining purposes, but preferred for their own selfish interests to remain a part of management and to deal individually with higher levels of management.

Since we believe foremen are the best witnesses as to their own status, the league has brought to Washington at its expense two foremen to tell their story in their own way, from first-hand, day-by-day experience. These foremen represent different types of industry in different parts of the country. I shall only take time to summarize the reasons why we believe employers should not be required to bargain collectively with supervisors, a complete statement having already been filed with this committee.

We believe the provisions of the Labor-Management Relations Act of 1947, that is, the Taft-Hartley Act relating to supervisors should be retained and made a part of any amendment to the National Labor Relations Act for the following reasons:

First. The foreman is a part of management and is the initial point of management contact with the rank and file worker.

Second. As a part of management, the foreman must be responsible only to higher levels of management.

Third. When organized for collective-bargaining purposes, the foreman must follow his union officers rather than company officers, particularly in a closed shop.

Fourth. A foreman's union is a dependent one, dependent upon the cooperation and support of the workers' union for effective collective bargaining, and the unionized foreman therefore cannot properly direct the men working under him.

Fifth. The foreman, as a part of management, advances on merit rather than seniority, and the organized foreman is denied this right.

Sixth. In a shop employing unionized foremen, an extra layer of supervision must be added to represent management with the workers, thereby decreasing the foreman's value and increasing the cost of production of the company's product.

Seventh. When the National Labor Relations Board recognized foremen's unions, strikes were rampant, tying up production workers as well as the foremen themselves. Since the effective date of the Labor-Management Relations Act of 1947, only one strike of foremen is of record in the Nation.

Eighth. The effort to organize foremen for collective-bargaining purposes resulted from maladjustments incident to abnormal production for war. It is reliably estimated that today 87 percent of supervision in American industry neither belongs nor desires to belong to a union.

Again, as stated by Justice Douglas:

> If foremen are "employees" within the meaning of the National Labor Relations Act, so are vice presidents, managers, assistant managers, superintendents, assistant superintendents and, indeed, all who are on the pay roll of the company, including the president.

In the interest of peaceful industrial relations and a prosperous national economy, both of which will be so greatly influenced by legislation to be enacted by this Congress, we respectfully urge that this fundamental distinction between the worker and management be recognized and that management not be legally obligated to bargain collectively with a large segment of itself.

Gentlemen, I shall be happy to attempt to answer your questions, and I hope you may invite remarks from these two gentlemen who have accompanied me, both of whom are foremen.

Mr. KELLEY. Do you not believe that the foremen should have their own organization?

Mr. JEFFREY. I do not believe that any part of supervision should be organized for collective-bargaining purposes. When a man voluntarily leaves the production workers' ranks and steps up to management as a part of management, he cannot effectively serve if he is organized for collective-bargaining purposes. That has been the experience of this Nation for the past 5 years.

Mr. KELLEY. How are they going to protect their own interests?

Mr. JEFFREY. How shall——

Mr. KELLEY. How are they going to protect their own interests if they do not have some organization to look after them?

Mr. JEFFREY. Just exactly the same, Mr. Chairman, as all of the other elements of management do, by their individual initiative and by their individual approach to higher levels of management.

Mr. KELLEY. I do not see how without some organization to work for their betterment, they are going to obtain any better wages or better working conditions. Certainly the individual foreman cannot do it. If he goes to management and asks as an individual, he is handicapped to start with. They do not necessarily have to interfere with management to do that, I believe, to have an organization. I am after information now, of course.

Mr. JEFFREY. Yes, sir; and I shall do my best to try to reply, and supply whatever information I may be able to supply.

Prior to the enactment of the Wagner Act in 1935, for all practical purposes, there was no such thing as a union of foremen or supervisors, and foremen or supervisors, I think, by and large, as history shows, were pretty well able to take care of themselves. And as proof of that, I refer, Mr. Chairman, to the hearings before both Houses of Congress when the Wagner Act was enacted. That record is absolutely bare, both in committee and on the floors of both Houses, of any reference to foremen's difficulties obstructing the free growth of commerce, and when the Packard Motor Car case, which was determinative to the United States Supreme Court as to whether the original Wagner Act covered foremen and supervisors, reached the Court, both the majority opinion of Mr. Justice Roberts and the minority opinion of Mr. Justice Douglas refer to the fact—I think it is both; I am sure it is one, and I think it is in both—that obstruction of commerce through collective bargaining action on the part of foremen was unknown, and that there was no indication in the hearings in the Congress that foremen were either held back or that their progress was retarded or that they were not receiving the proper consideration. It was almost 7 years after the Wagner Act was in effect before any case came before the NLRB which even suggested that foremen were covered by the act.

So I think history shows that foremen were not handicapped by not being organized.

Now, from 1942 through 1945, there was a series of foremen's strikes, and I think, as again was commented upon in that opinion, those arose largely, and the effort to organize foremen arose largely, by reason of factors growing out of the war. The Wage-and-Hour Act did not permit higher levels of management to elevate the foremen's wages promptly as overtime incident to production for war, made the men's wages increase under him. The demand for a large number of additional foremen and supervisors, because of the expansion of plant, made it impossible for either proper selection of material or proper training.

Take those elements out of our national economy, as has been the case, roughly from 1946, and you have not had it. Again, I point out to you the experience of foremen as free bargaining agents. I shall not bore the committee with all of this, but I have a study here that has been made from time to time—since 1942 on through March of 1948—wherein foremen were interviewed, and the vast majority of foremen had responded to that, "We do not want a union; we do not need a union to advance our own individual efforts."

Mr. Kelley. Do I understand you, then, to say that the law should prohibit the unionization of foremen?

Mr. Jeffrey. Just as emphatically, I say "No." The law should read——

Mr. Kelley. You mean, leave it alone?

Mr. Jeffrey. Leave it as it is, because section 14 of the present law says:

> Nothing herein contained shall prevent a foreman from becoming or remaining—

so his constitutional rights are protected.

Mr. Kelley. Mr. Bailey?

Mr. Bailey. Mr. Jeffrey, you have already testified that the Foremen's League is a nonprofit corporation organized for the purpose of furthering educational work among the foremen and supervisors. Its work is financed by more than 250 industrial concerns, both large and small, located throughout the country.

Just what do you mean by that term "nonprofit"?

Mr. Jeffrey. Just the same as any other nonprofit corporation, Mr. Bailey. No profit can result from its operations to any member. If a corporation subscribes for membership in the league and there is any money left over, after its purposes have been accomplished, the money cannot go back. There is no profit accruing to any individual or any subscriber.

Mr. Bailey. You also make this statement, that more than 250 industrial concerns are in it. How many more than 250?

Mr. Jeffrey. I would be glad to give you a definite figure, and the reason that I cannot is that the figure changes from day to day. That is, the X-Y-Z Corp. will subscribe $100 for membership for a year, and on March 8, that membership expires. So unless the corporation renews it, it is automatically out. The last count, as I remember it, was 266, I believe. But I am speaking from recollection. That is a varying figure.

Mr. BAILEY. Now, Mr. Jeffrey, is it true that your Foremen's League pays the sum of $1,000 a month plus $5,000 annual retainer to William Ingalls?

Mr. JEFFREY. It is not, sir.

Mr. BAILEY. It is not true?

Mr. JEFFREY. Mr. William Ingalls was retained as a lobbyist, or legislative representative, for the league last year, but he has not been retained by the league since December 31, 1948.

Mr. BAILEY. I would like to say in that connection that Mr. Ingalls' lobbying registration statement filed last year showed that he received $1,000 a month from the league.

Mr. JEFFREY. I think that is in error. I am sorry. That is not my end of it. I am the attorney for the league, but as I remember it, Mr. Ingalls received either $500 or $600 a month. I could be wrong, but I am pretty sure that is correct.

Mr. BAILEY. Were you aware at the time he was serving your league that he was also a registered lobbyist for the Inland Steel Co., the Allis-Chalmers Co., the Fruehauf Trailer Co., the J. I. Case Co., and the Falk Corp.?

Mr. JEFFREY. I do not think I could answer. I do not know——

Mr. BAILEY. And the lobbying registration certificate showed that he received $1,700 a month from those corporations.

Mr. JEFFREY. I know nothing about the other representation; no. He represented the league as legislative representative or lobbyist, as I remember it, for about a year, and I believe his compensation was $500 a month. We do have a legislative representative in Washington today, but it is not Mr. Ingalls.

Mr. BAILEY. What services did Mr. Ingalls perform as your representative?

Mr. JEFFREY. He represented us as a lobbyist in the interests of legislation relating to foremen.

The Foremen's League takes no interest in any single question other that the compulsory recognition by management of foremen's unions. We have no part of and take no interest in any other type of legislation. Mr. Ingalls was employed to inform the officers of the league as to proposed legislation with respect to the unionization of foremen and to carry out such other duties down here as a lobbyist performs, I presume.

Mr. BAILEY. Do you know whether or not Mr. Ingalls appeared before the committees of the Senate and House last year in connection with the labor legislation?

Mr. JEFFREY. Last year?

Mr. BAILEY. 1948.

Mr. JEFFREY. I am sure he did not. I am sure that the league had witnesses, but I am certain that he did not testify.

Mr. BAILEY. Has your organization a constitution and bylaws?

Mr. JEFFREY. Yes, sir.

Mr. BAILEY. You do not have a copy of that accessible to the committee?

Mr. JEFFREY. I should be glad to provide it, if you desire.

Mr. BAILEY. I think it would be in order.

Mr. Jeffrey. A copy of the constitution———

Mr. Bailey. And bylaws.

Mr. Jeffrey. Yes, sir; we would be very happy to provide it.

(The constitution and bylaws referred to were subsequently received and were filed for reference.)

Mr. Bailey. And how many members do you have? I believe you testified you had 266.

Mr. Jeffrey. No; that is not correct. The league is supported by membership subscriptions of industries. Each industry which subscribes for membership is entitled to name a member on the basis of $100 per year per member. I cannot out of my head give you the membership, but it is something in the neighborhood of 500. It is more than 500. I am afraid to guess on the number.

Mr. Bailey. What rights do these members have?

Mr. Jeffrey. The members of the league vote for trustees and the trustees in turn vote for the officers, as is true in any corporate structure.

Mr. Bailey. That is all, Mr. Chairman.

Mr. Kelley. Mr. Irving?

Mr. Irving. Mr. Jeffrey, I would like to contradict, in a way, some of the testimony you have given, since I am familiar with the building trades. I know historically that the foremen of all the various trades, the 19 or 20 that are in the building trades, belong to their unions. That is historical, I believe. That has been true for years and years. There are many hundreds of thousands of mechanics, semiskilled workers and unskilled workers, working in the construction and building industries. I have heard no complaint that they did not want to be represented. I would feel more favorable to any testimony here if I was sure that this was an organization of the foremen themselves requesting that they do not want legislation enabling them to bargain with their employers or requiring their employers to bargain with them.

That is all. I just wanted to make that statement.

Mr. Jeffrey. May I comment on what Mr. Irving has stated?

Mr. Irving. Certainly.

Mr. Jeffrey. I believe, Mr. Irving, there is no difference between what I have stated and what you have stated. It is certainly historically true that over a long period of time in some of the building-trade crafts, in the printing industry, and, I believe, some branches of the maritime industry, some levels of supervision have been affiliated as union members with the rank-and-file production workers. But I believe it is not true that either in any of those industries that have been named or any other industries over a long period of time there has been an organization of foremen or supervisors, by whatever name.

Yes; it is true that in those three branches of industry, some foremen have been affiliated with the production workers' unions, but not as an independent union of supervisors and foremen. I understand, for example, that in the carpenters' union a member may be assigned on a job that week as a workman with a hammer, and tools, and so forth, and 2 weeks later he may be functioning as the foreman on that job. I think that in large part explains the experience of that union.

Mr. Irving. That is substantially true. However, if a man qualifies as a foreman, he usually follows that line of work pretty steadily.

I would like to qualify your remarks with my experience, that not only some but the majority of foremen in those trades are members of their respective unions.

That is all.

Mr. Kelley. Mr. Perkins?

Mr. Perkins. No questions.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. Mr. Jeffrey, I would like to clear up one matter here that has rather got me puzzled. You say that you have industries as sustaining members. I suppose there are some 250 industries; is that correct?

Mr. Jeffrey. Yes, sir.

Mr. Jacobs. And they pay $100. But as I understand it, for each $100 that each industry contributes, it can name one foreman in your organization. Did I understand you correctly?

Mr. Jeffrey. No; that is not true.

Mr. Jacobs. Will you explain that to me, please?

Mr. Jeffrey. Yes; I will be happy to. The Foremen's League exercises no voice or control over whom the individual companies name. If the X-Y-Z Company gives $100 to the league for the year 1949 for a membership, it may name its president; it may name its vice president or its director of personnel. We make no claim, Mr. Congressman, that the Foremen's League has members who are not foremen. That is not true. The Foremen's League was organized to promote work among foremen. Now, there are organizations in this country such as the National Association of Foremen, which has a membership of some 14,000, the National Council of Industrial Management Clubs, which is affiliated with the YMCA——

Mr. Jacobs. That goes beyond what I am trying to find out. You have 35,000 members. Do each of those members pay dues?

Mr. Jeffrey. No. I am sorry; I have confused you.

The National Association of Foremen, which is a foremen's organization, has some 40,000 members. This organization of which I am speaking this morning has somewhere between 500 and 600 members. It has not numbers.

Mr. Jacobs. That clears it up.

Mr. Jeffrey. Yes, sir.

Mr. Jacobs. Now, as I understand it, your view is that the foreman is an adjunct to management, and should not have the benefit of the National Labor Relations Board to protect him if he does organize and bargain collectively? Is that about your position?

Mr. Jeffrey. No, sir; that is not my position.

Mr. Jacobs. What is your position?

Mr. Jeffrey. A foreman is not an adjunct to management. A foreman is a part of management. In many respects, he is the most important part of management.

Mr. Jacobs. Regardless of the time, what I wanted to know is, is it your position that foremen should be forbidden to organize or that they should not have the benefits of being in collective bargaining?

Mr. Jeffrey. The latter.

Mr. Jacobs. The latter.

Mr. Jeffrey. I think that would be unconstitutional—the former.

Mr. Jacobs. That is what I understood it to be.

Mr. Jeffrey. Yes, sir.

Mr. Jacobs. Do you know how many foremen there are in the General Electric Co., for example?

Mr. Jeffrey. Sir, I think in my office at home I may have some figures on that. I have some figures on various industries.

Mr. Jacobs. Can you give us any notion, from your memory, as to how many there are?

Mr. Jeffrey. I cannot as to that particular company.

Mr. Jacobs. How about General Motors?

Mr. Jeffrey. You can get all kinds of figures. The most recent figures made available to me were that there were perhaps 2,000,000 men and women, foremen and supervisors. Of course, that takes in the higher grade of supervision.

Mr. Jacobs. What would be the fewest number of foremen you would think would be in General Motors? That is what I want to know.

Mr. Jeffrey. Mr. Chairman, I would not have any intelligent answer on that. I simply do not know.

Mr. Jacobs. You are testifying as an expert in regard to the matter of foremen. Do you not have any notion at all? I am not going to hold you to it, but within a thousand?

Mr. Jeffrey. I am sorry; I am a very poor expert; but I simply would not know.

Mr. Jacobs. You would agree that General Motors would not have less than 4,000 or 5,000; would you?

Mr. Jeffrey. I would think that would be a very reasonable figure.

Mr. Jacobs. All right. Let us take that as the place to start off.

Mr. Jeffrey. Yes, sir.

Mr. Jacobs. Do you think that the individual foreman is able to stand up and bargain with General Motors for his salary?

Mr. Jeffrey. Very definitely. Experience has proven that to be true, in fact.

Mr. Jacobs. I thought you mentioned a moment ago that the workers' wages even outstripped the foremen's during the war; is that not right, for a while?

Mr. Jeffrey. There were incidents during the war when the Wage and Hour Act did not permit companies to raise the wages of any employees without getting authority. And when they had to get that authority it sometimes slowed down.

Mr. Jacobs. Now, just a moment. My time is limited; so I want to cover the point.

Mr. Jeffrey. Yes, sir.

Mr. Jacobs It is a fact that there were times when the workers' wages actually advanced beyond the foremen's wages; is it not?

Mr. Jeffrey. There were isolated instances of that during the war period.

Mr. Jacobs. All right.

Now, what I want to get at is this: Do you put it upon the ground that the foreman represents the employer and therefore he could not have his own union and remain loyal to the employer? Is that your position?

Mr. Jeffrey. That is only one. I think that is a very good reason, but that is only one of the reasons.

Mr. Jacobs And what are the other reasons?

Mr. JEFFREY. Well sir, I shall not trespass on your time. I have filed a written brief here in which I have tried to state those concisely in the conclusion on page 8. If you care to, I will read them.

Mr. JACOBS. I am referring particularly to the General Electric questionnaire, which I think you are familiar with. Are you familiar with the General Electric questionnaire?

Mr. JEFFREY. The General Electric questionnaire?

Mr. JACOBS. Yes; the questionnaire that General Electric has prepared and disseminated, for answering 18 questions. You are not familiar with that?

Mr. JEFFREY. I am not; no.

Mr. JACOBS. That was placed upon the ground that the foreman could not retain his loyalty to the company, and that is one of your grounds?

Mr. JEFFREY. I think that is very definitely true, and it has been shown in experience at that Ford plant and various other places.

Mr. JACOBS. Well, I do not know. I am still trying to figure this out. You are a lawyer; are you not?

Mr. JEFFREY. Yes, sir.

Mr. JACOBS. And I suppose that you and I have both had the experience of accepting a fee from a client and putting on our hat and coat and going over to court with him, and when we got there, we owe that client every bit of loyalty and all the powers of adequacy that we have; do we not?

Mr. JEFFREY. I have not felt the slightest that way in this case, Mr. Jacobs.

Mr. JACOBS. I do not mean that. We do, do we not, for our client, when we go to court? Do you agree with that?

Mr. JEFFREY. It all depends on the individual, of course.

Mr. JACOBS. Well, I want to lead up to something else.

Mr. JEFFREY. Go right ahead.

Mr. JACOBS. After we get through with that, maybe we did not get our fee before we went to court. We come back to our office and we sit down behind our desk and the client takes the easy chair, and we put a fishy eye on him. You know what I mean; do you not? We are leading up to something.

Now, understand, we owe considerable loyalty to him. But when we start telling him what our fee is the relation of an attorney to client ceases to exist. It is an arm's-length proposition; is it not? Do you agree to that?

Mr. JEFFREY. It all depends on our relationships. If you are on a retainer fee with the man, that is something else.

Mr. JACOBS. No. I never got at that point in my practice. I just had to take them as they came. In fact, I always sort of liked it that way.

But when you start asking your client for a fee, it is not a question of his loyalty to you or your loyalty to him; it is a question of an arm's-length deal; is it not?

Mr. JEFFREY. Yes. I expect in every case to be properly paid for the work that I do.

Mr. JACOBS. All right. Then do you not think that is about the case with the foremen, where they have a lot of them, that they owe their loyalty to the employer, and the employer owes loyalty to them, but when it comes to fixing the employment contract, it is an arms-length deal; is it not?

Mr. JEFFREY. I fail to see any analogy between that and collective bargaining. Maybe you can point it out. I do not know.

Mr. JACOBS. Well, do you think that if 5,000 foremen work for General Motors, they should each make their individual bargain with General Motors? Is that correct?

Mr. JEFFREY. Yes. But 5,000 foremen do not work in any one plant of General Motors, as I understand it.

Mr. JACOBS. Well, let us suppose there are 1,000 in one plant.

Mr. JEFFREY. Yes, sir.

Mr. JACOBS. Do you think that each one of those 1,000 should make his own individual bargain with General Motors?

Mr. JEFFREY. I do. And I think experience has demonstrated that he has selfishly promoted his own best interests in that fashion over a long period of time.

Mr. JACOBS. And that he has the economic power to make a fair bargain.

Mr. JEFFREY. Oh, definitely; that has been proven.

Mr. JACOBS. That is all.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. I would like to sketch for a moment the organizational structure of a typical factory.

Now, this is intrafactory; that is, not taking in the board of directors, of the company, or anything of that sort. It starts purely at the factory level, from the office door out. It is usually headed up by a shop superintendent; is that not correct?

Mr. JEFFREY. I think in many instances; yes, sir.

Mr. BURKE. If the factory is a large one, and has a number of divisions—we will say it is an automobile factory, so that it has a forge division; it has a motor division; it has an axle division; it has a trim divison; a parts division, and so forth and so on, and each of those has a division superintendent?

Mr. JEFFREY. Yes, sir.

Mr. BURKE. And each of those divisions has departments and those departments are usually headed up by a foreman.

Mr. JEFFREY. We have one such man at the table today; yes, sir.

Mr. BURKE. And from that foreman, then, there are people with various duties, such as group leaders, set-up men——

Mr. JEFFREY. Lead men.

Mr. BURKE. They used to call them straw bosses in the old days.

Now, where in that organizational set-up of that typical factory would you suggest that the law become operative, prohibiting the organization for purposes of collective bargaining?

Mr. JEFFREY. I think that is a very important question, and I think it is one that this committee, and the committee, of course, on the other side of Congress must think about. I think, if I may suggest, the test is where the man begins to speak for management. I do not say that the definition of the Tart-Hartley Act is perfect, but in this respect I think it is good, where he does not exercise duties of a simply clerical nature, but exercises responsibility in the direction of the worker, where he speaks for management as a whole. I think that is the breaking-off point. I think that is what Mr. Justice Douglas suggested in his famous dissenting opinion in the Packard Motor Car case.

Mr. BURKE. We will take the case of the group leader, for instance. You might say he assists the foreman in scheduling the work out

Mr. JEFFREY. Yes, sir.

Mr. BURKE. And the foreman tells him in the morning, "We will run part No. so-and-so through the line today, because that is what the production schedule calls for." So he goes down and gets the set-up, and they set up the machines and they start that particular part down through the line.

Now, would you say that that group leader is a foreman? Bear in mind, he has no power to tell anyone, "You are fired because you did not get out enough production."

Mr. JEFFREY. No, sir; based on the premises you have stipulated, I think he belongs in the production workers' group with full rights to organize and with compulsory recognition of collective-bargaining rights. I think that is one thing the working of the Taft-Hartley Act with respect to foremen has done; it has clarified that division line in many industries. It has forced management where they were negligent about it, to define sharply, or at least more sharply, and they have made this man a part of management and this man definitely a part of labor. The man you have defined, I think, should be classified as a worker with full rights of compulsory bargaining.

Mr. BURKE. Now, I would like to go from the hard and practical to a little on the philosophical side.

Mr. JEFFREY. Yes, sir.

Mr. BURKE. Prior to the enactment of the Wagner Act, and particularly mass production, which I know best, in mass-production factories, there was a time when the fellow below the level of division superintendent or shop superintendent, whether he was a department foremen or not, was not very well treated by management. And has it not been since the introduction of unions in the mass-production industry, largely, that management has taken a little more vital interest in that?

Mr. JEFFREY. I think that is a very fair statement. I think just as all labor leaders are not good, so is all management not good. In many cases management is far-sighted and sees the value, of course, of treating the supervisor correctly. Others have been driven to it by the necessity of keeping their foremen loyal, by the necessity of distinguishing them from the mass-production worker. I think your statement is very correct and very well put. It has had a salutary effect both ways.

Mr. BURKE. I think, then, that really puts the finger on the reason for describing some places for a foreman to work and bargain collectively with his employer, feeling that he has a right as an American worker—and that is all the company ever treated him as, a worker—to say to that company, or to say collectively to that company, "Well, these are our terms of employment, and we want this type of pay, this many hours," and so on.

Is that not true?

Mr. JEFFREY. Of course, under the Taft-Hartley Act they had the legal right. They simply do not have recognition or standing before the National Labor Relations Board. Higher levels of management are not legally bound to recognize them. I appreciate that.

Mr. **Burke**. That was the reason, basically, for the foremen's strike that you referred to.

Mr. **Jeffrey**. Oh, no. I think the foremen's strikes, particularly in the Detroit area, grew out of the war, the necessity to pick up 100 foremen overnight without adequate screening to see that they had the qualities demanded in a foreman for leadership, without adequate training and without the ability under the wage-and-hour restrictions to increase their wages promptly.

No. I think that is in very large part an outgrowth of the war, and it subsided since. Again, the best proof of the pudding is in the eating.

Mr. **Burke**. There was a time when management treated their foremen just about as ruggedly as they treated the fellow on the line, too.

Mr. **Jeffrey**. I do not think you can generalize that way at all. I do not want to take your time, but I could point out to you instances in this country where foremen have occupied a very fine place in the management group over a large period of years; and, equally, there are others where they have been neglected. I would be the last one to claim anything else.

Mr. **Burke**. That is all, Mr. Chairman.

Mr. **Kelley**. Mr. Wier?

Mr. **Wier**. I see by your outline here that you have clubs throughout the United States.

Mr. **Jeffrey**. No. The Foremen's League does not have clubs throughout the United States. The Foremen's Leagues gives financial support to other organizations which do have foremen's clubs throughout the United States. The National Association of Foremen has received financial support from the league. It has some 40,000 members. The National Council of Industrial Management Clubs, affiliated with the YMCA, has some 35,000 members of foremen. They have received financial assistance; yes, sir.

Mr. **Wier**. It is a little different from your outline here. I would gather from it that you are somewhat organized around the Nation. At any rate——

Mr. **Jeffrey**. I am sorry; I did not mean it to be misleading.

Mr. **Wier**. At any rate, is there a club in existence in Minneapolis, Minn.?

Mr. **Jeffrey**. You mean, does the National Association of Foremen have——

Mr. **Wier**. Are you representing a Minneapolis club here today?

Mr. **Jeffrey**. No, sir; definitely I do not represent any club here today.

Mr. **Wier**. That takes care of that, then, because I know something about the club up there. That takes care of them.

But the thing that I am amazed at is that you take the position, if you take the position you do take, that there must be some engineers, or foremen, as you call them, or supervisors who feel that they have a place in the organization movement; is that correct?

Mr. **Jeffrey**. The latest information which I have shows that 4 percent of the foremen in the country belong to unions; that another 9 percent say they would be interested in belonging to a union, and that 87 percent say just as definitely that they neither belong to nor are interested in becoming a member of a union.

Mr. WIER. Isn't the only requirement that is necessary for your group what you point to in this presentation, that those are affiliated with your group shall not participate in collective bargaining?

Mr. JEFFREY. With respect to the National Association of Foremen, yes; its members do not participate in collective bargaining; and that is true of a number of other organizations.

Mr. WIER. Then why do you want to deny that privilege to the organizations who want to try it?

Mr. JEFFREY. The Taft-Hartley Act does not deny that, as I understand it. It is suggested the provisions of the Taft-Hartley Act be retained. And it means that foremen's unions do not have to be recognized by management and that management is not legally obligated to bargain with them, and management cannot be cited before the National Labor Relations Board.

Mr. WIER. Are you sure of the language you are using now; are you sure it is the language in the law?

Mr. JEFFREY. I will be happy to read it to you. I have it in front of me, if you have any doubt.

Mr. WIER. I have some doubt.

Mr. JEFFREY. May I read it to you?

Mr. WIER. Never mind reading it.

Then you are not here asking that foremen be not recognized under the Taft-Hartley Act for collective-bargaining purposes, is that it?

Mr. JEFFREY. Would you repeat that?

Mr. WIER. Then you are not here asking that foremen's organizations, or foremen, as such, shall not have recognition under the labor law?

Mr. JEFFREY. I am here asking that the present provisions shall be retained, and that foremen, foremen's unions, or supervisors' unions be not recognized by the National Labor Relations Board, and that complaints not be taken to them, and that employers not be legally obligated to bargain with unions or foremen.

Mr. WIER. That is what I asked you a few minutes ago. Your position was positive that you do not wish to have foremen and supervisors in the field of collective bargaining?

Mr. JEFFREY. That is correct.

Mr. WIER. Only the language of an attorney makes it sound different.

Mr. JEFFREY. I think there is a very basic distinction. It would be bad to deny them the right, and the law does not do that.

Mr. WIER. That is all.

Mr. KELLEY. Mr. Howell?

Mr. HOWELL. I have no questions.

(The prepared statement of Mr. Jeffrey is as follows:)

STATEMENT OF HARRY P. JEFFREY, SECRETARY, ON BEHALF OF FOREMEN'S LEAGUE FOR EDUCATION AND ASSOCIATION

The Foremen's League for Education and Association is a nonprofit corporation organized and existing under the laws of the State of Ohio, with its offices located at 512–520 Harries Building, Dayton 2, Ohio. The purpose of the organization is to foster and promote educational work among foremen and supervisors throughout American industry. Its work is financed by membership subscriptions received from more than 250 industrial concerns, both large and small, located throughout the United States.

RELATIONSHIP OF FOREMEN TO MANAGEMENT

Throughout the life of American industry, the foreman has been a part of management and the direct representative of management at its initial point of contact with the rank and file or production worker. This has been the traditional position of the foreman. It is his position today. He is the first link in the management chain and this is true whether he is employed in a small or a great mass production enterprise.

The opinion of the National Labor Relations Board in the Maryland Dry Dock case (49 NLRB 733) contains the following:

"We are now persuaded that the benefits which supervisory employees might achieve through being certified as collective-bargaining units, would be outweighed not only by the dangers inherent in the commingling of management and employees' functions, but also in its possible restrictive effect upon the organizational freedom of rank-and-file employees."

Again, in the case of *Packard Motor Car Company* v. *National Labor Relations Board* (330 U. S. 485), Justice Douglas in his dissenting opinion, at page 496, states:

"It [the Wagner Act] put in the employer category all those who acted for management not only in formulating but also in executing its labor policies. Foremost among the latter were foremen. Trade-union history shows that foremen were the arms and legs of management in executing labor policies. In industrial conflicts, they were allied with management. Management indeed commonly acted through them in the unfair labor practices which the act condemns. When we upheld the imposition of the sanctions of the act against management, we frequently relied on the acts of foremen through whom management expressed its hostility to trade-unionism."

FOREMEN'S ASSOCIATIONS AS UNITS OF MANAGEMENT

For many years, foremen have associated themselves together for self-help through education and association while opposing the principle of collective bargaining.

The National Association of Foremen was originally organized in 1922 and today has approximately 40,000 members in either industry-wide or city-wide clubs scattered over 34 States. The constitution of this organization specifically forbids its members as such or its affiliated clubs to engage in collective bargaining for its membership.

There is attached hereto as exhibit A a copy of a letter dated February 16, 1949, signed by B. A. Hodapp, president of this organization, which was mailed to all of its members. This letter contains the following statement:

"It is to insure a continuance of the opportunity to further this voluntary cooperation within management without such outside interference that we urge continuance of the supervisory provision."

The National Council of Industrial Management Clubs Affiliated With YMCA's of the United States likewise has been in existence for many years and has approximately 35,000 members scattered throughout the industrial cities of the country. These clubs likewise do not and cannot engage in collective bargaining on behalf of their membership.

In addition to these two national organizations, there are literally scores of scattered clubs made up of foremen and men and women from the lower ranks of supervision which are not affiliated with either of the large national organizations.

The principle upon which all of these organizations proceed is that their membership is a part of management and that the best interests of their membership is served by management affiliation rather than through collective bargaining with higher levels of management.

In 1948 a national poll was conducted among foremen by Dr. Claude Robinson, of Opinion Research Corp., Princeton, N. J. This poll revealed that only 13 percent of the foremen contacted either belonged to a union or were interested in joining a union.

HISTORY OF EFFORT TO ORGANIZE FOREMEN FOR COLLECTIVE-BARGAINING PURPOSES

Prior to the enactment of the National Labor Relations Act (Wagner Act), efforts to organize foremen as such for collective-bargaining purposes were unknown. Indeed, this condition prevailed for a period of almost 7 years after the passage of this act. The National Labor Relations Board functioned under the act from 1935 until late in 1941 before any case was brought before it claiming that foremen were employees within the meaning of the act and as such were entitled to the protection and benefits which it conferred.

The industrial unrest incident to production for war during the period from 1941 to 1945 did give rise to efforts to organize foremen for collective-bargaining purposes. There were many contributing factors, among which were restrictions on wage and salary increases and the need for vastly increasing the number of foremen without opportunity for proper selection or training. This effort was concentrated largely in and around the Detroit area and was carried on principally by an organization which had no official connection with any of the great international unions. The largest number of foremen claimed to have been organized for collective-bargaining purposes during this period was about 100,000 and probably never exceeded 75,000. At the present time, it is estimated that the number of foremen organized for collective-bargaining purposes and operating under collective-bargaining contracts is less than 5,000.

LEGAL HISTORY OF FOREMEN'S UNIONS

The National Labor Relations Board was first called upon to decide whether foremen were employees under the terms of the Wagner Act, as previously stated, after the act had been in existence for about 7 years. By a split decision, the Board first held that foremen were "employees" within the meaning of the act and later reversed this decision. In subsequent cases the Board completed another about-face and finally ruled that foremen and supervisors, regardless of the amount of authority which they exercised, were "employees" within the meaning of the act. The United States Supreme Court, by a 5 to 4 decision, in the case of *Packard Motor Car Company* v. *National Labor Relations Board* (330 U. S. 485) affirmed this decision.

After the passage of the Taft-Hartley Act, the constitutionality of the section of the act relating to supervisory employees and excluding them from the coverage under the National Labor Relations Act (Wagner Act) was tested in the case of *National Labor Relations Board* v. *Edward G. Budd Manufacturing Company*. The United States circuit court of appeals upheld the constitutionality of the act in August 1948 in case No. 10259 on the docket of this court in the sixth circuit, and in case No. 415, styled "*Foremen's Association of America* v. *Edward G. Budd Manufacturing Company*," the Supreme Court of the United States refused to review this decision on January 10, 1949.

It has been finally determined, therefore, that the provisions of the Taft-Hartley Act relating to foremen and supervisory employees are constitutional.

PROVISIONS OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, RELATING TO FOREMEN

The Labor Management Relations Act, 1947, popularly known as the Taft-Hartley Act, so far as its sections are pertinent to this discussion, became effective August 22, 1947.

Section 2 (3) defines the word "employee" and provides that the term "shall not include * * * any individual employed as a supervisor." Section 2 (11) defines the term supervisor in the following language:

"The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section 14 of the act provides as follows:

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

It is to be noted that the act does not forbid the unionization of foremen for collective-bargaining purposes. This is carefully spelled out in section 14 quoted above. What the act does do is to distinguish supervisors as therein defined as a part of management in contrast to production workers and to provide that management shall not be required to bargain collectively with organizations of supervisors.

This legislative action is a recognition by the Congress of the important basic principles set forth by Justice Douglas in his dissenting opinion in the Packard case, supra, and the performance of the invitation for legislative action on this question as suggested in the majority opinion of Justice Roberts in the same case.

EXPERIENCE OF FOREMEN UNDER THE NATIONAL LABOR RELATIONS ACT AND THE LABOR-MANAGEMENT RELATIONS ACT, 1947

The attempt to organize foremen for collective-bargaining purposes was the source of much industrial strife during the important war production years of 1942–45. The testimony of General H. H. Arnold before a House appropriation subcommittee in 1944 contained a severe indictment of this organizational effort as it affected our production of materials for war. Since the enactment of the Labor-Management Relations Act, 1947, and over a period of almost 18 months, there is only one strike of record involving a foremen's union.

The first report of the Joint Committee on Labor-Management Relations of the Congress of the United States was issued on March 15, 1948, some 7 months after the act had been in effect. The following appears on pages 29 and 30 of that report:

"The committee has observed a growing trend of employer attempts to make their foremen a part of management. In many of the plants visited, we found new programs designed to give more responsibilities to the lower ranks of supervision and to acquaint them not only with the policies of management but the reasons therefor. Not only has the exclusion of supervisory employees from the benefits of the act failed to produce the work stoppages predicted by opponents of the provision, but it has served to promote the establishment by employers of plans creating many new benefits for supervisory employees."

CONCLUSION

The provisions of the Labor Management Relations Act, 1947 (Taft-Hartley Act), relating to supervisors, should be retained and made a part of any amendments to the National Labor Relations Act (Wagner Act) for the following reasons:

1. The foreman is a part of management and is the initial point of management contact with the rank-and-file worker.
2. As a part of management, the foreman must be responsible only to higher levels of management.
3. When organized for collective-bargaining purposes, the foreman must follow his union officers rather than company officers, particularly in a closed shop.
4. A foremen's union is dependent upon the cooperation and support of the workers' union for effective collective bargaining, and the unionized foremen therefore cannot properly direct the men working under him.
5. The foreman, as a part of management, advances on merit rather than seniority, and the unionized foreman is denied this right.
6. In a shop employing unionized foremen, an extra layer of supervision must be added to represent management with the worker, thereby decreasing the foremen's value and increasing the cost of production of the company's product.
7. When the NLRB recognized foremen's unions, strikes were rampant, tying up production workers as well as the foremen themselves. Since the effective date of the Labor-Management Relations Act, 1947, only one strike of foremen is of record in the Nation.
8. The effort to organize foremen for collective-bargaining purposes resulted from maladjustments incident to abnormal production for war. It is reliably estimated that today 87 percent of supervision in American industry neither belongs nor desires to belong to a union.

Again, as stated by Justice Douglas, "if foremen are 'employees' within the meaning of the National Labor Relations Act, so are vice presidents, managers, assistant managers, superintendents, assistant superintendents, and indeed, all who are on the pay roll of the company, including the president."

In the interest of peaceful industrial relations and a prosperous national economy, both of which will be so greatly influenced by legislation to be enacted by this Congress, we respectfully urge that this fundamental distinction between the worker and management be recognized and that management not be legally obligated to bargain collectively with a large segment of itself.

EXHIBIT A

THE NATIONAL ASSOCIATION OF FOREMEN,
Dayton, Ohio, February 16, 1949.

DEAR FELLOW MEMBER: Only a matter of utmost concern to you and me—as members of NAF and as responsible managers upon whose decision rests much of the fate of our American industrial system—warrants this personal communication with every member of our association.

What should be done about continuing, as a law, the supervisory provision of the Taft-Hartley Act?

The position which NAF takes, as stated in the attached editorial which will appear in Manage magazine for March, is not new. Rather it expresses publicly, for the first time, a stand which NAF has gradually adopted in recent years.

Good progress toward management unity has been made while the supervisory provision has held in check the outside interferences which tend to divide. It is to insure a continuance of the opportunity to further this voluntary cooperation within management without such outside interference that we urge continuance of the supervisory provision.

Any other stand foreshadows a tragic future for foremen. A leading authority, in presenting the case for foreman unionization, today acknowledges that the only workable future for it (except in a few nontypical industries as printing, for example) is on a basis wholly independent and isolated from the big rank and file unions. Therefore, if the foreman is alone and wedged between the big unions and management, then in truth and in fact he will be neither fish nor fowl, because those forces which divide would lower the status of the very job itself and would totally destroy his future opportunities as a management man.

If this letter and the editorial express your individual position, you may wish to write or telegraph Senator Elbert Thomas, chairman of the Senate Committee on Labor, Senator Robert A. Taft, ranking minority member of the committee, and your own Senators and Representatives. It is entirely proper and our duty, as citizens and men of management, that we express ourselves to our governmental servants on subjects which concern us, just as others are doing.

Sincerely yours,

B. A. HODAPP, *President.*

Mr. JEFFREY. Might I suggest you let the two working foremen read a short statement to you? I think you might be interested in the experience of these men.

STATEMENT OF GEORGE DRIESKE, DEPARTMENT SUPERVISOR, MURRAY CORP. OF AMERICA, DETROIT, MICH.

Mr. DRIESKE. My name is George Drieske. I live at 8490 St. Clements Street, Centerline, which is right outside of Detroit, Mich. I am a department supervisor or foreman at the Detroit plant of the Murray Corp. of America. Murray makes automobile-body stampings, frames, and fenders for big automobile companies. I believe that Murray generally hires about 10,000 people in all its plants.

My department makes body assemblies. As department supervisor, I have charge of about 300 people. There are seven section and shift supervisors under me.

I am against a foremen's union because I firmly believe that a supervisor is a direct part of management. He is the connecting link between the workingman and the executive.

I came up the hard way through the ranks. I am not 36 years of age. I was born in Detroit, Mich., and went to school part of my time in Detroit and part in country schools. I had 2 years of high school. In order to obtain the education for the job I now hold, I attended night technical schools while working in the daytime.

I started at Murray in March 1934 as a student assembler at the rate of 40 cents an hour, or $16 for a 40-hour week. After 8 years, in 1942, I became a section supervisor, and in 1947, a department supervisor. Today I am earning $525 a month for a 40-hour week, plus more for overtime. I hope to keep on going higher by hard work. While I was working as an hourly worker, I belonged to the UAW-CIO Local No. 2. I believe that unions for the rank and file are a good thing. But a union for supervision is different. A union is no good for foremen.

A supervisors' union would not help any supervisor who has the necessary qualities and the determination to advance. In fact, he would be held back because of seniority provisions. I want to get ahead by hard work and ability and not be held back by some other man only because he has a longer service record.

We have supervisors who have been with Murray for over 20 years. They did not need organizing to help them retain their jobs and get ahead. I feel I can do the same.

To do his job properly, a supervisor must operate on the theory that he is paying the costs of labor, maintenance, and equipment from his own bank account, just like he was running his own business. He is entirely responsible for the production costs, maintaining quality, production schedules, maintaining discipline, and settling labor disputes in his own department.

All supervisors are a part of management and must think and act as a part of management.

At Murray's, supervisors participate in management. We supervisors are consulted by top management on many management problems. We are consulted about questions raised during the negotiating of the contract with the workers' union. We are asked about production, quality, and efficiency. Many suggestions given by supervision become Murray policy.

I know that the Foremen's Association of America takes in foremen of different levels of authority. One thing I would like to know about is, How could I act for the company and maintain discipline from seven supervisors working for me if I belonged to the same foremen's union with them?

I feel that if supervision belonged to a form of organized labor there would be deals between workers and supervisors. How could I, as a supervisor, maintain discipline for the company over workers under such conditions? If there was a workers' union and a different supervisors' union, I am afraid that the workers' union would soon control.

In my opinion, a union of foremen or supervisors will not work.

Mr. KELLEY. Does Mr. Wilson have a statement?

Mr. JEFFREY. Yes.

STATEMENT OF ALEXANDER H. WILSON, FOREMAN, ROBERTSHAW THERMOSTAT CO., YOUNGWOOD, PA.

Mr. WILSON. My name is Alexander H. Wilson, and I live near Youngwood, Pa., with my wife and three children. I am employed as a foreman at the Robertshaw Thermostat Co., which is a division of the Robertshaw-Fulton Controls Co. This division of the company is located at Youngwood, Pa., and employs normally about 1,200 to 1,400 people. We manufacture thermostatic controls.

I completed high school and went to work for this company when I was 20 years old. I worked for 9 years as a machine operator and was a member of the Steel Workers of America, CIO, from 1937 until I became a supervisor.

I was promoted to a working supervisor in 1942 and was again promoted in 1943 to a foreman in charge of a department. I have been a foreman for more than 5 years. Since becoming a supervisor, I have not been a member of a union. I believe the production worker needs a union, but I also believe a foreman is a part of management and should not belong to a union.

I have about 50 employees working under me. It is my job to schedule production, direct the labor force in getting out production and administer company policy. It is up to me to make recommendations for additional workers when needed and to pass on their work after they have been sent to my department. As foreman I have the right to qualify or disqualify men who are sent to my department to work. It is also my duty to recommend disciplinary measures for the workers and I take care of the first steps in the grievance procedure with the shop stewards.

There are two assistant foremen working under me, one on each shift. These men are on salary and are not members of the union. Grievances are reported first to them and through them to me.

I do not see how my assistant foreman and I could carry out our work and belong to a union. In my case I must control both my assistant foremen and the workers.

We have good labor relations at our plant. If I have any complaint or question I take it up directly with my supervisor. I can go independently to the boss and don't have to have someone go for me or get his permission. This system allows a foreman the greatest freedom and in my judgment is better than attempting to operate through a foreman's union.

When I left the production ranks I was chosen on merit and not by seniority. This is the way I want to continue to work and advance. If I belonged to a union, I could not do this. As a foreman I am a part of management and this is the position I want to keep.

The foremen at our plant have a club called the Robertshaw Foremen's Association. I am a past president of this club and we are affiliated with the National Association of Foremen. Our club meets once a month and we have speakers on educational subjects for foremen. This club and its members do not engage in collective bargaining. I believe the club's greatest value is the chance it gives to associate with other foremen.

Mr Kelley. Are there any questions?

Mr. Perkins. I have no questions.

Mr. Burke. There are a couple of questions I would like to address to the gentleman—Mr. Drieske, first.

You are not opposed to the organization of foremen, as such; that is. in a club, or anything of that sort. so long as the organization does not participate in collective bargaining; is that how I understand your opposition?

Mr. Drieske. I am sorry, sir. I am having a little trouble hearing you.

Mr. Burke. I said that you stated opposition to foremen's organizations, and what you mean by that is organizations of foremen which participate in collective bargaining?

Mr. Drieske. That is what I mean.

Mr. Burke. You work for a company that has a pretty good record of labor relations, is that not true?

Mr. Drieske. I believe they have.

Mr. Burke. So, if they handle their foremen all right the chances are their foremen will not want to become a part of an organization for the purpose of collective bargaining. However, would you oppose the idea of foremen of some other shop, maybe, down the street, whose management is not quite as good, organizing for their own protection and for the purposes of collective bargaining?

Mr. Drieske. I can only speak from my own personal opinion. I am not in position to quote someone else's troubles or their ideas. I know that I am satisfied with conditions as they are where I work, and I do not know of anybody, and I have not run into anyone in my building, or number of buildings there, who has any desire for a union for the purpose of collective bargaining.

Mr. Burke. I would like to ask Mr. Wilson some questions.

You used the term in your statement that has caused quite a bit of discussion in labor relations generally throughout the country for some few years now, and that was working supervisors. Do you believe that a working supervisor should come under the terms of a collective bargaining agreement of the plant of the production and maintenance employees, generally?

Mr. Wilson. Not as we used working supervisors; no sir. I do not think they should enter into collective bargaining.

Mr. Burke. A working supervisor, as is generally known, is an individual who may schedule parts through a line, or schedule work at times, and at other times actually operate a machine and turn out the product, is that not true?

Mr. Wilson. Yes, sir, to some extent that is how we operate, except that a working supervisor, in my experience, has had the supervision and direction of people.

Mr. Burke. But when an individual is called upon as part of his daily work to do work that is under the terms of collective bargaining, say, for instance, that work has piece rates on it, when you come within the purview of collective bargaining, is not that right; if that work has piece rates on it is it not right for the union to expect that the individual who does that work, even though it may be only part-time, be under the terms of the collective-bargaining agreement?

Mr. Wilson. I should think so, as you describe it.

Mr. Jeffrey. May I answer that, too? I think you put your finger on a very important problem, and I think both in the small shop of this gentleman, and the large shop of the other gentleman, that effort has got to be made to make a hard and fast line there between management and the worker and, I think, the man you describe should be a part of the production worker's union, and should bargain collectively for that group.

Mr. Burke. That is all, Mr. Chairman.

Mr. Kelley. Mr. Wier?

Mr. Wier. I have no questions.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I am going to address my questions to either one of them. I do not care particularly which one answers.

Do you men pay any dues or contribute to this organization at all?

Mr. WILSON. Do you mean the National Association of Foremen?

Mr. IRVING. Whatever one you belong to.

Mr. WILSON. Yes, sir, we pay dues to our club, which is called the Robertshaw Foremen's Association. and those dues are $1 per month. Our dues to the National Association of Foremen, however, from our club for each individual member is, I think, $4 per year. It is in that neighborhood.

Mr. IRVING. And does your club pay dues into the league?

Mr. WILSON. No, sir.

Mr. IRVING. Do you know of any members who might want to belong to a foreman's union, or do you know they all do not want to belong?

Mr. WILSON. I hesitate to speak for them. I do not know any foremen who would like to join a union. I would not speak for them as a whole.

Mr. IRVING. It seems to me it would be a little more solid if the men themselves formed the organization. I have grave doubts as to the general set-up. I cannot see why, if it becomes very active, such organizations could not be financed by employers and industries to work the same way for other employees to slant down the wage scale.

That is all I have to say, Mr. Chairman.

Mr. KELLEY. Mr. Howell?

Mr. HOWELL. I have no questions.

Mr. KELLEY. Thank you very much.

Mr. JEFFREY. Thank you, sir, and members of the committee.

Mr. KELLEY. Mr. Richter, you may proceed when you are ready.

TESTIMONY OF WALTER C. RICHTER, MANAGER, PATERSON PARCHMENT PAPER CO., BRISTOL, PA.

Mr. RICHTER. Mr. Chairman and gentlemen of the committee, my company, the Paterson Parchment Paper Co. of Bristol, Pa., greatly appreciates the opportunity of being heard before this body.

The Paterson Parchment Paper Co. was founded in 1885 and has been continuously in business from that date. From 1885 to 1945, 60 years, this company never had a strike or work stoppage.

This company is a small company employing approximately 500 people and is engaged in the manufacture and sale in interstate commerce of parchment paper, principally for packaging food products. The company requested the privilege of appearing before your committee so that it might place before the committee members its experiences during the last six months of the Labor-Management Relations Act of 1947, three of which were consumed by a strike resulting in a loss to the company of $336,500 and to its employees of approximately $225,000.

In 1945 the National Labor Relations Board certified the International Brotherhood of Papermakers, A. F. of L., and Bristol Local 500 as the exclusive bargaining unit for the production and maintenance workers of the plant. Following this certification by the National Labor Relations Board, the company entered into a written contract with the union. That contract was changed by mutual agreement from year to year until August 15, 1947, at which time a contract was executed by both parties which remained in full force and effect up to and including the incidents to be referred to hereinafter.

The company recommends labor legislation that amply provides for protection of the public, employees, union and employer. This request is based upon the experience of the company, under the contract entered into on August 15, 1947, pursuant to Federal labor law then in force and which law is now before you for consideration and/or total repeal.

We urge that there be retained in the law a guarantee of full freedom of speech for all and that the rights of the public be at all times protected in connection therewith. With respect to the rights of the public, we include within the definition of that term persons who constitute personnel as employees, employers and representatives of the Union and that much larger segment so generally spoken of as the public.

The company further believes that there should be inserted in any labor law the right of any employee to demand a secret ballot as to whether or not a substantial number of employees wish to return to work during a work stoppage.

A Federal law is now in force which for all practical purposes forces an employer to enter into a contract with a union. This company entered into such a contract in good faith in 1947 when the Labor Management Relations Act of 1947 was in effect. At the time this contract was negotiated the Labor-Management Relations Act provided that suits for violation of contracts between employer and a labor organization representing employees could be brought in a Federal district court. The company, therefore, is in a situation where Congress enacted a law compelling the company to enter into a contract presumably the same as any other business contract. When the company entered into this contract it felt that it was fully protected by the laws enacted by Congress in the enforcement of this contract, the same as it might enforce any of its other business contracts.

It has been publicized that it is the intention of this Congress to repeal in toto the Labor-Management Relations Act of 1947 including the right to sue for damages for breach of contract and the right of freedom of speech.

We are not here to discuss the desirability or nondesirability of all of the various sections of the Labor-Management Relations Act of 1947. We intend to discuss briefly only those phases of the act which have affected the company's dealings with the union during the 3 months' work stoppage last summer.

It is the company's feeling that the sanctity of a contract, and the realization by the parties to it that all obligations thereunder must be performed, is the foundation of every constitutional government and the very foundation of American free enterprise. Our Constitution recognizes and provides that no law shall abridge such a contract. Every constitution in the various States contains a similar provision. The Constitution itself is a contract by which the people among themselves, through the colonies, agreed they would abide. It is from that constitutional agreement by the people that the Congress receives its authority. The fundamentals of constitutional government should not now be undermined in the promulgation of a doctrine of irresponsibility in fulfilling contractual obligations. Inadequate provision for the complete enforcement of contractual obligations in labor contracts is producing one of the greatest difficulties facing the American public today. The nonfulfillment of contractual obligations is the cause of one of the greatest difficulties in the world today.

We feel that Congress should not saddle an employer with a contract whereby he is subjected to suits and at the same time permits labor organizations and their top-ranking representatives to escape the corresponding obligations imposed upon them by such a contract. An employer should know for a definite period of time his cost of labor, for without this he cannot project his activities and commitments. This is equally true with respect to the employee, because he has the right to know in advance what his rate of pay will be in the immediate future, and that contractual right should not be taken from him without redress against those who caused the breach of the contract, depriving him of his right to work.

The company also urges the right of full freedom of speech to employee and employer. In this connection the company also believes that the employer should have a right to know, once a strike is in progress, whether or not his employees wish to return to work under such terms as he has offered.

The foregoing recommendations are based upon the experience of this company during a strike at its plant from August 20 to November 20, 1948, the application of which follows:

In June of 1948 the company and the union began meetings for the purpose of attempting to agree upon changes in the then existing contract. There were seven meetings held, during which time the union indicated that, unless the company met its demands, it would call a strike. The company directed the attention of the union to the provisions of the contract then in force, reading:

> This agreement shall be in effect from August 15, 1947, to August 15, 1948, and thereafter from year to year, provided, however, that either party may terminate the same on not less than 60 days' written notice given to the other prior to the anniversary date.
>
> However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed.

No notice of termination was given by either the company or the union.

On Friday, August 20, at or about 4 o'clock, the union notified the company that its members had voted to begin a strike on Monday, August 23, at 7 a. m. Within 2 hours thereafter, the union had thrown a picket line around the plant.

The company, believing that a majority of its employees desired to return to work, inserted advertisements in a local newspaper inviting them to do so. The company had reason to believe that a majority of its employees desired to return to work.

Four weeks after the strike started, the company and also the union met with a Federal conciliator. The company requested the union, through the conciliator, to have a secret-ballot vote at a membership meeting to determine whether or not a majority of the employees wanted to return to work on the basis of the offers made by the company. The union refused such a request on the basis that it was not bound to place before the employees the question of reconsideration, or the question of whether or not a majority of the employees wanted to return to work on the basis of a previous offer made by the company.

The company was so strong in its belief that the strike was not the desire of the majority of the employees that it obtained the services of an independent agency to mail a secret ballot to each of its employees. The company advertized this fact in the paper. The company also advised all of its employees by letter of its offers prior to the strike.

Of the replies received by the agency, the vote was 11 to 1 for returning to work.

The union promptly filed with the National Labor Relations Board a charge of unfair labor practice against the company, assigning as one of its grounds the fact that the company had attempted to determine the real attitude of its employees on the question of returning to work. The company was convinced then, and is still convinced, that the full situation was not adequately presented to its employees before the strike.

The company persisted in trying to talk to its employees through newspaper advertisements. As the employees read these advertisements, it became more evident day by day that they were receiving the benefit of the right of the company of free speech, as provided for in the Labor Management Relations Act. Had not this right of free speech been granted the company in the act, it is doubtful if this strike would have been settled even today.

This is an example where freedom of speech, permitted by the Labor Management Relations Act, ultimately benefited the employees as well as the employer.

In addition, the company resorted to a Pennsylvania court of equity to enforce its rights and those of its employees by injunctive proceedings. This right, however, did not extend to an adequate suit for damages, which was begun in the Federal District Court under the Labor Management Relations Act.

During the strike, the company lost as fixed charges $336,500, exclusive of loss of profits.

The employees lost in wages approximately $225,000, although the officers and representatives of the international received their regular salaries and expenses during this period of time.

That the law should provide the employer or the employee the right, upon written demand to the union, a secret ballot as to whether or not the employees wish to return to work, is made apparent by the circumstances in this case. The company had an agency mail a secret ballot to determine whether or not the employees wished to return to work. Of the replies received by the agency, the ratio was 11 to 1 in favor of returning to work, on the basis of offers made by the company.

The employees themselves circulated an open petition for signature. In this petition, almost 40 percent of the entire union membership requested a secret ballot on the question of returning to work. This was steadfastly refused by the union until after the court of equity had permitted the petition to be offered in evidence and issued a preliminary order permitting those employees who wanted to work to do so unmolested.

If freedom of speech or exchange of viewpoint in ideas between the employer and employee is denied, then there is placed in the hands of a few individuals an opportunity to suppress facts and to continue a strike to the detriment of the majority for an indefinite period of time, without having the true facts presented to the employees.

The company in this instance cannot, of course, recover for its employees the financial loss they suffered, but the company may, unless the right is frustrated by Congress, recover some of its loss.

We wish to impress upon the committee that for permanent long-range legislation affecting the relationship of employer and employee, each must be treated equally and fairly. No union organization should be placed above the rights of the employee and employer by exempting it alone from suit for violation of a contractual obligation.

There is no equitable, legal, or moral precedent to be found whereby a union organization ought to be exempt from damages for its breach of a contract with which the union expects everybody else to comply.

We believe that our labor law should provide for strict adherence to contractual obligations on the part of employers, employees, and unions, with the right of full freedom of speech in connection with all labor-management relations. We also believe in the right of a secret ballot at any time, at the request of an employer or employee, on any question affecting the right of either party.

Mr. KELLEY. You say that strike was called without due notice?

Mr. RICHTER. The strike was called, Mr. Kelley, on Friday, August 20. We had a series of seven meetings. At the fifth meeting, the committee, in discussion, suggested the possibility of a strike, but on August 20, the union had a membership meeting at about 2 o'clock. The committee came back to us about 4 o'clock and said that unless they got their demands they were going to strike on Monday. We had patiently explained to them that we had made our best and final offer. That same day, about 5 o'clock, they had placed a picket line around our plant.

Mr. KELLEY. How long was it from the time you first knew of the termination of the contract until they did strike? In the provision it says not less than 60 days.

Mr. RICHTER. The contract was never terminated. Neither the company nor the union terminated the contract, and the final clause in the contract provided it would continue in full force and effect until any change had been agreed upon.

Mr. KELLEY. Then you say they did not do that?

Mr. RICHTER. No termination notice was given; that is correct.

Mr. KELLEY. What was the purpose of striking?

Mr. RICHTER. The question of wages.

Mr. KELLEY. You had no organization before 1945?

Mr. RICHTER. In 1945 the National Labor Relations Board conducted an election, and after the election the International Brotherhood of Papermakers was certified.

Mr. KELLEY. Before that, it was an open shop?

Mr. RICHTER. It was an open shop; that is correct.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Not having had the pleasure of hearing the gentleman's testimony, I most certainly will refrain from asking him any questions.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I am going to refer to the phrase in the contract, the phrase that you made a part of your testimony here, which says:

> However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement, is completed.

Mr. RICHTER. That is correct.

Mr. IRVING. Actually, I cannot see anything definite about that. I mean, it could be a delay for a period of weeks or many months. Did you have any arbitration clauses in your contract?

Mr. RICHTER. There is no arbitration clause, sir, covering negotiations. There is an arbitration clause under the grievance procedure.

Mr. IRVING. For settling grievances?

Mr. RICHTER. That is correct.

Mr. IRVING. So, of course, from your point and from the union's standpoint, I would say it was a very weak clause.

Mr. RICHTER. That clause, I might add, was in the contract from the first contract in 1945, and was placed in there at the insistence of the union. It is a union clause but not a clause of the company.

Mr. IRVING. In my opinion, it is still not a good clause, whoever put it in.

I want to say I believe in sanctity of contracts, and that they should be lived up to once they are entered into, but I think this testimony here proves almost conclusively that under the present law it would be possible for a company to more or less promote a dispute or a strike which could break the local union. If that was the procedure in a number of instances affecting local unions, it could break the international union. I am not insinuating in any way that that was the purpose or intent of your company. I heartily believe it was not.

Mr. RICHTER. May I assure you that was not the case. In 1945, when the Board ordered the election, the union was chosen as the bargaining agent. Out of 370 votes cast, the union was chosen by a majority of only 12 votes. The company, hoping good labor relations would result, immediately entered into a union-shop contract and a check-off of dues, and we still today are operating under the same contract. It has been a union shop since 1945, including a check-off of dues. That would certainly indicate the company did not have any intention of placing any logs, as you might call it, in the way of the union.

Mr. IRVING. I thought I made myself clear that my opinion was your company did not have any intention of doing that.

Mr. RICHTER. That is correct, sir.

Mr. IRVING. Would you care to expose anything about what your offer was?

Mr. RICHTER. I would be very glad to, sir. The company's offer was 5 cents across the board, with time and a half for all Saturday's work, as such, and double time for all Sunday work, as such, with an earnest plea to the negotiating committee that in the face of business conditions last summer they accept the 5 cents, and when business conditions warranted we would talk to them again about wages just the same as we had done before.

Mr. IRVING. The pattern, you know, was 9 cents; was it not, Mr. Burke?

Mr. RICHTER. When you speak of pattern, are you speaking of our industry?

Mr. IRVING. National.

Mr. RICHTER. In our industry the pattern was not 9 cents.

Mr. Irving. The reason I ask that is that I happen to know that the best offer of industry was 2½ cents, and that finally it was settled on the basis of 15 cents.

Mr. Richter. In the paper industry, there were a number of contracts that were settled for 2 cents, and some of them without any increases at all.

Mr. Irving. I bring that out because there is a great difference between a final offer of 2½ cents and a final settlement of 15 cents. I just wanted to bring that out.

I think that is all the questions I have.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. Mr. Richter, what was the outcome of the charge filed against your company before the National Labor Relations Board?

Mr. Richter. When the strike was settled and the committee of the union agreed to return all employees to work, the union agreed to withdraw the unfair labor-practice charge, and it never went to a hearing.

Mr. Jacobs. You started your negotiations in June?

Mr. Richter. We started in June of 1948.

Mr. Jacobs. And were there any written demands served upon you, or were they oral?

Mr. Richter. I did not hear that question.

Mr. Jacobs. Were the demands written or oral?

Mr. Richter. There was a written contract presented by the union, including their demands.

Mr. Jacobs. So at any rate you had notice in June that there was a demand for a change in your contract?

Mr. Richter. That is right, which was in keeping with our past practice with the anniversary date of the contract approaching.

Mr. Jacobs. I suppose there was a number of final figures given back and forth?

Mr. Richter. That is right. There was an exchange of proposals.

Mr. Jacobs. And threats to strike, and saying, "This is as far as we go," and so forth?

Mr. Richter. That is correct.

Mr. Jacobs. Just a good old American horse-trading custom, I suppose, that has found its way into the bargain?

Mr. Richter. That is right.

Mr. Jacobs. You would not have the committee believe when the strike occurred in August it was a complete surprise to you? You had been jawing around about the thing for about 3 months, then?

Mr. Richter. It was a complete surprise from the standpoint of knowing our employees and knowing the happy labor relations as they had been going on for a period of many years. We did not think that the employees would strike over the question.

Mr. Jacobs. That is what I am getting at. There is something here I do not understand. Was there something that happened somewhere?

Mr. Richter. I think, sir, the strike was called and promoted by a very small group, most of whom were on the negotiating committee, and the strike was not the desire of the majority of the employees. That is the best answer I have for the situation and is the opinion of all of the management members of our company.

Mr. Jacobs. Prior to the time the negotiations commenced in June had your labor relations deteriorated to any extent?

Mr. Richter. They had not, sir.

Mr. Jacobs. So far as you could tell, they were good?

Mr. Richter. That is right.

Mr. Jacobs. Of course, that occurred under the Taft-Hartley law. And you got no solace under the Taft-Hartley law.

Mr. Richter. Except the right of responsibility and contractual obligations on the part of the union.

Mr. Jacobs. I assume you have read considerably about the history of the negotiations between management and labor, and I think you and I will both agree when they get to fighting there are lots of law suits and they are dismissed when the strike is settled, generally?

Mr. Richter. I would not want to say "generally."

Mr. Jacobs. Generally speaking, when they go back to work, the same thing happens to the law suit that happened to the charges against your company before the Board; they dismiss them and forget it?

Mr. Richter. I have had no previous experience with suits against unions, so I cannot say that is correct.

Mr. Jacobs. Incidentally, that brings us to another subject.

Mr. Richter. I say again, I have had no previous experience with suits.

Mr. Jacobs. You seem to be under the impression that the union could not be sued until after the Taft-Hartley Law was passed.

Mr. Richter. The union, under the laws of the Commonwealth of Pennsylvania, could be sued for a breach of contract, but it would be very difficult, because the international union, as the name implies, is a union from coast to coast, and also outside of the country, it would be difficult to sue all individuals involved. It would have to be on an individual basis.

Mr. Kelley. Would you yield?

Mr. Jacobs. Yes.

Mr. Kelley. Have you heard of any corporations being sued by a union in Pennsylvania?

Mr. Richter. Not in Pennsylvania, I have not, sir.

Mr. Kelley. I have not either.

Mr. Jacobs. If you will have your lawyer get in touch with me I will be glad to tell him how he can sue in Pennsylvania without suing all the unions in Pennsylvania.

Mr. Richter. We have legal counsel, but as you well know, I am not a lawyer.

Mr. Jacobs. I want to get to the subject of freedom of speech now, for a minute.

Do you know of any case—I did not mean to be discourteous about that, but you will find out what I say is true about bringing law suits against the union.

This freedom of speech thing, are you not aware of the fact that under the Wagner Act the employer can insert advertisements in the paper and talk to his employees and try to get them to go back to work? Did you ever know of them being restrained from doing that under the Wagner Act?

Mr. Richter. No; but I think under the present labor-management relations act an employer can say what he feels and believes with more confidence than he could under the Wagner Act.

Mr. Jacobs. The question I put to you is this: Did you ever know of a case where an employer was held guilty of an unfair practice for issuing a call to return to work, as you said you did, by mailing notices to workers, and putting notices in the paper inviting them to return to work? Did you ever hear of an employer being held guilty of an unfair labor practice for doing such a thing?

Mr. RICHTER. I know from experience that employers have been cited for many things.

Mr. JACOBS. Were they ever cited for saying anything like that; can you cite me any case of that kind?

Mr. RICHTER. Offhand, I cannot, sir.

Mr. JACOBS You are not a lawyer, I take it?

Mr. RICHTER. I have said that I am not.

Mr. JACOBS. I think what you mean is this—were you in here this morning when the first witness testified?

Mr. RICHTER. I was, sir.

Mr. JACOBS. He was an attorney for the bus association.

Mr. RICHTER. Yes, that is right.

Mr. JACOBS. Did you hear his answers to the questions I put to him?

Mr. RICHTER. I did.

Mr. JACOBS. Does that clarify it in your mind to any extent?

Mr. RICHTER. I do not recall the exact testimony. I have been here all day and have heard a great deal of testimony.

Mr. JACOBS. Do you realize that the Taft-Hartley Law not only provides that what the employer says will not constitute unfair labor practice, but it also provides that it shall not be evidence of an unfair labor practice?

Mr. RICHTER. I heard that testimony by you this morning; yes.

Mr. JACOBS. Do you believe if a man says something about another man, and then a court, or a judicial body in inquiring into the conduct of the one who made the statement, that what he said should be heard in evidence in order to cast light upon his motive, or have I made it too involved?

Mr. RICHTER. You are getting a little involved.

Mr. JACOBS. Let us suppose that I have said regarding someone that I think he is a rascal.

Mr. RICHTER. Yes, sir.

Mr. JACOBS. And has generally evidenced it by hostility towards him, and let us suppose, for example, that that appears in a newspaper, and I am accused of being the author of that libel; do you understand that?

Mr. RICHTER. That is correct.

Mr. JACOBS. Do you not think that when the trial comes up that it would be evidence, some evidence that I was the author of the libel, to prove that I had been saying that he was a rascal?

Mr. RICHTER. I would say so, sir; yes.

Mr. JACOBS. Then, do you think there should be a different rule made in the labor law to protect the employer?

Mr. KELLEY. The gentleman has 1 minute left.

Mr. RICHTER. I think an employer should have the right to communicate with his employees at any time, just the same as I have a right to communicate with Members of our Congress, and go just so far.

Mr. JACOBS. I agree with you on that, and I do not think the law has been any different, but that does not answer the question. Do you think, as a rule of evidence, my attitude towards you, as expressed by my words, should be provable in court if you claim I have abused you or violated the law against you in any way?

Mr. RICHTER. I think it should be provable in court.

Mr. JACOBS. Then you do not think a different rule of evidence should apply in a trial of an unfair labor practice, do you?

Mr. RICHTER. I do not think so.

Mr. JACOBS. I do not either. I say this to you, and I think that you want to be a fair man——

Mr. RICHTER. That is our intention, sir, at all times.

Mr. JACOBS. You investigate for your own benefit—I am just suggesting this investigation for your own benefit—all this propaganda that has been going around about the freedom of speech thing, and you talk to a lawyer about it and ask him if it is not a different rule of evidence than obtains in any other field of jurisprudence, and satisfy your own mind, and see if your employers have not been victimized by a propaganda campaign on that one question.

That is all.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. I have no questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. No questions.

Mr. KELLEY. Mr. Howell?

Mr. HOWELL. I just wanted to ask Mr. Richter on these questionnaires that you had mailed out by this agency, you said they turned out about 11 to 1 to return to work. What proportion of the workers answered this?

Mr. RICHTER. There were 360 questionnaires sent out, and 117 were returned to the agency, which was about one-third, and the ratio of the one-third returned was 11 to 1. We also learned that when they were delivered in the mails the committee was aware of the fact that we had sent these questionnaires, and they gathered up as many as they could so they would not be returned to the agency. On the one-third that was returned the ratio was 11 to 1 to return to work.

Mr. HOWELL. On this petition that was circulated you say about 40 percent of them signed it?

Mr. RICHTER. That is correct, an open petition.

Mr. JACOBS. How long had the strike been going on at that time?

Mr. RICHTER. When the petition was circulated?

Mr. KELLEY. Do you yield?

Mr. HOWELL. Yes, sir.

Mr. RICHTER. I think the petition was circulated at about the end of the sixth or seventh week of the strike.

Mr. KELLEY. Have you finished, Mr. Howell?

Mr. HOWELL. That is all.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. I have no questions.

Mr. KELLEY. That is all.

Mr. RICHTER. Thank you for the privilege of appearing today, gentlemen.

Mr. KELLEY. The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 3 p. m., the subcommittee adjourned until 10 a. m., Wednesday, March 9, 1949.)

(Due to an all-day executive session on Wednesday, resumption of the hearing was postponed until 10 a. m., Thursday, March 10, 1949.)

APPENDIX

The correspondence and questionnaire referred to by Mr. Jacobs are as follows:

General Electric Co.,
New York 22, N. Y., January 21, 1949.

Representative Andrew Jacobs,
House Office Building, Washington, D. C.

Dear Representative Jacobs: Enclosed for your information and possible interest is a copy of a letter which I have today sent to Senator Thomas, chairman of the Senate Labor Committee, and Representative Lesinski, chairman of the House Labor Committee.

Also enclosed is a copy of a message which has been included in our employee newspapers and in daily newspapers in communities where the General Electric Co. has plants.

This message is simply an attempt in the public interest to get some of the more important basic questions of labor law calmly before our employees and their neighbors, and possibly thereby to encourage individual citizens to give thoughtful and temperate consideration to this matter.

Very truly yours,

Charles E. Wilson, *President.*

Congress of the United States,
House of Representatives,
Washington, D. C., January 26, 1949.

Mr. Charles E. Wilson,
President, General Electric Co.,
New York 22, N. Y.

Dear Mr. Wilson: I have your kind letter of January 21, 1949. As a member of the Committee on Education and Labor I will favor permitting your representative to appear before our committee to testify regarding labor legislation.

This was a courtesy not extended to me, and to a number of people, by the architects of the Taft-Hartley law.

Very truly yours,

Andrew Jacobs,
Member of Congress, Eleventh Indiana District.

Congress of the United States,
House of Representatives,
Washington, D. C., February 9, 1949.

Subject: Labor legislation.

Mr. Charles E. Wilson,
President, General Electric Co..
New York 22, N. Y.

Dear Mr. Wilson: I received your questionnaire, entitled "How Would You Revise Our Labor Laws?", containing 18 questions, in ballot form, requesting a straight "yes" or "no" answer.

My response must be by more extended statements than categorical "yes" or "no" answers. The questions will be repeated verbatim and marked with the answer obviously expected. They disclose the inadequacy of a "yes" or "no" answer.

Interrelated questions will be grouped. I shall ask you to comment upon my views. I trust you will respond, and I assure you respectful consideration of your opinions. We can use all the help and wisdom available to enact a fair labor law.

I—THE EMERGENCY STRIKE

(Your questions No. 1 and 2)

"1. Do you believe that labor laws should, in general, preserve the employee's right to strike? Yes ☒ No ☐"

"2. Do you believe labor laws should give the President of the United States the right to seek, through courts of law, to delay a strike that would cause a national emergency endangering the health and safety of the entire country? Yes ☒ No ☐"

A labor questionnaire put question No. 1 to me as a candidate, but not No. 2. My response was as follows:

"The right to strike is necessary in a free economy, which I would defend for reasons presently stated herein. However, one limitation is necessary to avoid destruction of free economy and that is the closing down of an entire vital industry, whether by strike or lock-out.

"Industry-wide strikes will bring irresistible public demand for Government control over such industry, which in turn results in wage, and ultimately price fixing; hence, a controlled economy.

"A controlled economy inevitably results in socialism, communism, fascism, or some form of state monopoly, under which the government exercises all the power inherent in mass wealth. Again the inevitable final results of such concentrated power would be forfeiture of personal liberty to entrenched officials.

"Curtailment of labor's right to strike is proper only to the extent of preventing industry-wide cessation of production which would create the pressure indicated above, and curtailment of any combination of industry, or any governmental action having like effect, should be likewise treated."

This response illustrates how a categorical answer would not clearly disclose one's honest opinion to the single question. And I believe, Mr. Wilson, that your position in industry, and mine in Government, demands our being rather specific upo this dangerous problem.

In order to help me, would you please give me the benefit of your views upon the following questions:

1. An emergency strike (or lock-out) is unsettled after the period of legal delay expires. How would you deal with the problem then?
2. Specifically, would you favor compulsory settlement?
3. If wages were fixed, would not prices also be ultimately fixed?
4. What, if any, other approach is there to this problem?
5. The Taft-Hartley law provided a union membership vote on the employers', but not a stockholders' vote, on the union's last offer. Do you think this ommission discloses any basic lack of objective and unbiased thinking in the construction of the law?

II. TWO EXAMPLES OF BIAS IN LEGISLATION ON LABOR DISPUTES

(Your questions No. 18 and 12)

"18. Should labor laws provide that a striker who has been replaced in the course of an economic strike—not involving any unfair labor practice—be permitted to vote in an election to choose a bargaining agent at the conclusion of the strike? Yes ☐ No ☒"

While this is your last question, it goes to the heart of the Taft-Hartley law. Therefore, I discuss it early in this letter.

You refer to section 9 (c) (1) (A), and 9 (c) (3), permitting an election for decertification of a union during, not merely "* * * at the conclusion of the strike," as your question implies. The Taft-Hartley law provides:

"Employees *on strike* who are not entitled to reinstatement shall not be eligible to vote." Section 9 (c) (3). [Italics added.]

This makes quite a difference. This is but the first step in requiring the Government to use its full power as a strikebreaking force; without regard to the merits of the dispute. Here is how it works:

1. Union A strikes for higher wages.
2. Company A employs "replacements," or "strikebreakers"; term depending upon one's bias.

On this subject Business Week, December 18, 1948, had this to say:

"Given a few million unemployed in America, given an administration in Washington which was not prounion—and *the Taft-Hartley Act conceivably could wreck the labor movement.*

"These are the provisions that could do it: (1) Picketing can be restrained by injunction; (2) employers can petition for a collective bargaining election; (3) strikers can be held ineligible to vote—while the strike replacements cast the only ballot; and (4) if the outcome of this is a 'no union' vote, the Government must certify and enforce it. (And this is the point where the mandatory injunction against all union efforts is prescribed.)

"*Any time there is a surplus labor pool from which an employer can hire at least token strike replacements, these four provisions, linked together, presumably can destroy a union.*" [Italics and parenthetical comment added.]

(Passing strange indeed that Business Week, and others, Fortune and Life included, should, after the election, tell the people what I had claimed throughout the campaign.)

3. Replacements can petition for election to obtain decertification of union A and probably succeed since they, by working are already in disagreement with union A.

4. Strike by union A becomes an unfair labor practice by virtue of Taft-Hartley law, section 8 (b) (4) (B) and (C), which provides:

"(b) It shall be an unfair labor practice for a labor organization or its agents * * *

"(4) *to engage in, or to induce or encourage the employees of any employer* (including their own erstwhile employer) *to engage in, a strike or a concerted refusal* in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, material, or commodities or *to perform any services, where an object thereof is*: * * *

"(B) forcing or requiring any other employer to recognize or bargain with a labor organization (the decertified union) as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

"(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees *if another labor organization has been certified* (by decertification election, at the petition *of a new union formed by* strikebreakers, or replacements, during a strike) as the representative of such employees under the provisions of section 9;" (italics and parenthetical comment added).

The precise effect of the Taft-Hartley law up to this point is to permit the struck employer (company A) to manipulate the decertification of the union of his old employees (union A). Thus a condition is created whereby the old union and its members commit an unfair labor practice if they even try peaceably to induce the strikebreakers to join them to hold up the wage scale.

The right to picket, take note of nonunion workers in order "to seek their acquaintance * * * visit them at their homes * * * and at all other suitable places, discuss with them the mutual benefits of the union, and the importance of their quitting work" was a nonenjoinable right recognized by the courts 44 years ago. *Karges Furniture Company* v. *Amalgamated Wood Workers Local 131* (1905) 165 Ind. 421.

Thus the old employees are forbidden to exercise this early right, now outlawed by Taft-Hartley, but which was recognized even in the days when the yellow-dog contract was upheld as sacred.

But this is only a relatively minor and preliminary application of the Taft-Hartley law. It provides that (1) the exercise of this early right is an unfair labor practice after such decertification; and (2) that a complaint on such case "Shall be made forthwith and given priority over all other cases" and "the regional attorney * * * shall, on behalf of the Board, petition * * * for appropriate injunctive relief * * *," immediately. Thus without regard to merit, if the employer can procure pliant replacements, he can force the Government to enjoin even peaceful persuasion, picketing, boycotting, etc.

Now, there is the whole story involved in the subject posed by your Question No. 18. In short, by simply employing unemployed people, the employer can enlist the whole power of the Federal Government as a strikebreaking force. Perhaps, Mr. Wilson, you would never consent to do such a thing. But could you meet the competition of a concern who did employ this "gimmick" on a trend of rising unemployment? With the national debt we have today we must expand, not palsy our economy. You, as an enlightened businessman, know that purchasing power for your product comes from the earnings of the people at large, and the lack of that purchasing power will stagnate business. I fear, now, the effect on purchasing power the unreasonably high prices of the last 3 years may have.

I have three questions to ask you regarding this point:

1. Do you agree with my analysis?
2. If you do not, give me your analysis of all the provisions discussed.
3. Do you think the Taft-Hartley law is fair in this regard?

Your question No. 12

"12. Do you believe labor laws should make it unlawful for a union to compel an employer to engage in featherbedding; that is, to pay money for work which hasn't been done or won't be done? Yes. ☒ No. ☐"

Had you asked if I opposed featherbedding I would say "Yes." But I oppose a law forbidding such.

I oppose whisky. But I don't favor prohibition. We tried it.

But if I did favor outlawing featherbedding by labor, I'd have to favor similar restrictions on business.

Featherbedding means, as you indicate, the acquisition of pay for doing nothing. The laborer asks extra help or stand-by men, usually to spread the work and hence the pay.

Let me give you an example of featherbedding in industry and business. I am a stockholder (somewhat substantial for me, although really a comparatively small one) in one of your competitor corporations. It has never paid a dividend. I wrote, as a stockholder, (without disclosing my office) and asked to purchase a television set at factory price. I was advised that the retailer was entitled to his profit, hence, I must pay the full retail price. There is quite a difference, too.

I use considerable dictating equipment, purchased from the manufacturer, a representative of which admitted a mark-up of at least 600 percent. There must be some featherbedding in this, over and above a fair profit, especially in such a well-established business.

Last year I bought a radiophonograph. This year, with labor costs no less, I saw it advertised for less than 50 percent of what I paid.

1. Are these things not in the nature of getting pay for nothing?
2. What is your opinion as to whether or not, if featherbedding is to be outlawed, you would favor price fixing, at least, in cases of unconscionable profits by a well-established business?
3. Do you believe the problem is simple enough to regulate fairly in a free economy?

III—SECONDARY BOYCOTTS AND JURISDICTIONAL STRIKES

(Your questions No. 3 and 4)

"3. When two or more unions are fighting each other over who shall do a job or who shall represent the employees, and a strike is called to compel an employer to give to the members of one union the work or recognition being given to the other union—that is a jurisdictional strike. Should labor laws prohibit such strikes? Yes ☒ No ☐"

"4. Should labor laws prohibit secondary boycotts—that is, prevent an employer and his employees, where there is no labor dispute, from being damaged by a union seeking to coerce another employer having a labor dispute? Yes ☒ No ☐"

Jurisdictional strikes, where the employer is taking no sides in the primary dispute, should be prohibited. Jurisdictional disputes should be made subject to an appropriate election (in cases of plant or department representation; i. e., where permanent employees are selecting a union to represent them.

In case of different work of an intermittent nature for the same employer, as in craft trades, and particularly in construction, a far more serious and complicated question is presented.

Here, decisions, to be effective, must be reached with dispatch; else the question becomes moot, the work having been stopped or finished.

Nor does this type of dispute lend itself to a fair settlement by election among interested workers. Usually the employer is dealing with several crafts who belong to unions laying general claims to the disputed work. If craft A outnumbers craft B the election results would be a foregone conclusion and without much regard to the competence or skill of the parties in dispute.

The problem of skill might, standing alone, warrant the conclusion that the employer be the sole arbiter, but the opportunity to use this power to favor or destroy one union is a factor we cannot disregard if you ask us to legislate upon the subject. Stated otherwise, can you honestly ask us to say to the carpenters and the machinists, "Your historical jurisdictional dispute is handed to the employers for their decision."

Do you not see the tremendous bargaining power the employer would be thus handed by the law? Each group would be tempted to underbid the other in its bid for the employer's decision.

Nor does this mean that I do not appreciate the plight of the employer who desires to complete his work without being caught in the crossfire between two competing unions.

But over-all, this points up the pressure of conflicting interests in any legislation. Every man who comes before our Labor Subcommittee proclaims his undying faith in "free enterprise." I, for one, believe they all mean it, but most of them have blind spots when they view the prospects of free enterprise for the other fellow.

For example, let us take two measures. First, the Fair Labor Standards Act on which we are now holding hearings. Almost every witness agrees that a minimum wage is desirable in our economy. But it should not apply to the special circumstances of his own case. When we are impressed with those special circumstances (as we often are) and try to phrase the act to avoid his special case, we complicate the law almost beyond understanding. The employer complains that the regulations go too far. They protest in the name of the eighteenth century interpretation of the commerce clause. They say regulation is bad for the country. But the workers think these regulations are necessary.

Now, let's see the reaction of the parties to Taft-Hartley regulations. The positions change. Business has forgotten all about the commerce clause. Labor thinks the Government is going too far with regulations.

Naturally, but perhaps both are partly right and both partly wrong. We in Congress are supposed to be right.

I read this essential difference between the Taft-Hartley provisions and the administration proposals.

Under Taft-Hartley, the jurisdictional disputants were forbidden to strike, regardless of whether or not the Board had, or even could possibly, hear and make a decision in time to be applicable to the job in question.

Under the administration proposal, the jurisdictional strike is forbidden if the Board (or legal arbitrators) have decided the jurisdictional dispute. Until there has been a decision or award, the parties are not restrained by legal inhibition. This is not a complete remedy. However, some situations defy remedy. Is this such a situation? Let's test it by an example.

Take the case where crafts A and B contend for assignment of 10 days' work on building construction. Neither A nor B will yield. A hearing and determination within 10 (perhaps 30 or 60) days is impossible. Employer C awards the work to B. A either acquiesces or strikes, if the law permits. He has his day in court; true, a rugged court, the court of economic endurance.

But suppose the law forbids. A awaits the decision. Suppose A wins. Who should pay? Suppose further, both B and C were in good faith. Would they stand to be penalized? Or would it be fair to penalize either of them?

Remembering that the very purpose of the remedy is to avoid work stoppage, will you tell me how to fairly meet this problem?

True, we could avoid the entire stoppage, and the dispute, too, by simply making the employer the sole judge. In fact, all labor disputes could be thus stopped. But I don't believe either you or I want that sort of settlement. At least, it indicates the question is not as easy as the question itself suggests.

Do you agree?

A secondary boycott, where the second employer is not participating in the primary dispute, should be prohibited as an unfair labor practice.

1. What do you think should be the case where the employer is participating in the dispute?

As an example to illustrate: Employer A is struck. Employer B manufactures the same goods or furnishes the same service. Employer B takes over A's struck work. Taft-Hartley forbids B's employees from refusing to perform the struck work. But no law forbids B and A from agreeing that B undertake to do the struck work and thus starve out A's employees. The law permits this combination of the two employers but forbids a countercombination of the two groups of employees.

1. Do you deem this fair?

IV—FREE SPEECH

(Your question No. 7)

"7. Should labor laws give to both employees and employers the freedom to express their own points of view on employee relations problems—provided such views, or arguments, or opinions do not promise bribes or threaten reprisals? Yes ☒ No ☐"

No law, including the Wagner Act, ever denied the employer free speech. What the employer, the press, and many misinformed people have called denial of free speech was simply the application of the law of evidence. Example: The employer expressed his utter dislike for unions. Then he fired the union leaders—if for union activities, it was and is an unfair labor practice. At a hearing on this question; i. e., "Was the discharge because of union activity?" the employer used to hear his own words given in evidence as tending to prove his motive. The same rule of evidence applies in every field of jurisprudence, and did in the labor law until the Taft-Hartley Act provided (sec. 8–(c)) that, unless the statement contained a "threat of reprisal or force or promise of benefit" that it should "not be evidence of" an unfair labor practice.

A man's expressed dislike of another has always been deemed competent and probative evidence of his motive when his conduct or treatment of the other person becomes the subject of judicial inquiry.

An excellent example of the application of this section is disclosed by the following quotation from the case of—

Intermediate report in the *Matter of Greensboro Coco-Cola Bottling Co. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., Local 391*—Case No. 34–CA–25

"CONCLUSIONS AS TO THE DISCHARGE OF HODGE

"Inasmuch as Hodge was discharged by Parker after obtaining approval from Carter, and immediately upon the conclusion of Carter's talk to the employees, it would normally be presumed that Carter's speech might throw some light on Hodge's discharge, and help to clarify Parker's charge that Hodge was 'dissatisfied,' a term which, without clarification, is vague and ambiguous. If, for example, and as the general counsel contends, this 'dissatisfaction' amounted to nothing more nor less than his activity in organizing the employees, it should be helpful in determing the respondent's motivation—the thing at issue—to know whether Carter expressed a dislike of unions or of union activity.

"Reasonable as this course might seem, and firmly rooted in legal precedent as it is, the undersigned is prohibited from following it by the language of section 8 (c) of the act. Not that he may not examine the speech and construe it. In fact he has done so. He has been impelled to do so because if it had appeared that its declarations were favorable to union organization, that the respondent, for example, preferred to deal with a collective-bargaining agent rather than with all its employees individually, that would be persuasive evidence that Hodge's discharge was not connected with his union activity and that the term 'dissatisfied' had reference to something else. And there would be no difficulty in using the evidence for such a finding. For section 8 (c) forbids only the use of views, arguments, or opinions, not associated with threats of reprisal, or force, or promise or benefit, *as evidence of an unfair labor practice*. In other words, the undersigned may use Carter's words *for* the respondent but not *against* the respondent, odd as such a result may appear to the lay mind.

"Actually, Carter's speech strongly opposed unions and the undersigned may not, therefore, use it in making a finding that Hodge was discharged immediately afterward, and without perceptible change of pace, in violation of the act. The finding hereinafter made, that Hodge was discharged because of his union activity, is based on other evidence entirely.

Do you believe a different rule should apply in labor relations?

V—CLOSED SHOP AND UNION CONDUCT TOWARD EMPLOYER

(Your questions Nos. 13, 16, 15, 5, 9, 10, 11, 14)

These questions are all related to the problem of the closed shop and the union's conduct toward the employer. Hence, they are all treated under this heading, and in the order set forth above, because they seem to me better related in that order.

(Your question No. 13)

"13. Should labor laws permit the forcing of an employer to hire only workers who belong to a given union? Yes ☐ No ☒

Of course, you know the law never required the employer to grant a closed shop. The question of the closed shop was a matter of bargaining. Taft-Hartley forbid the bargaining, or the bargain either. The question of the closed shop has been obscured in platitudes and epitaphs. The closed shop simply provides that the employer employ union men. You apparently oppose this. O. K.; but you want the Government to join you in opposition.

But let's examine the real issue. Is it not something of a question of free enterprise? Are you asking the Government to write for you the favorable provisions of your labor contracts?

Are not the employers, like they accuse the unions, trying to enlist governmental aid in winning at the bargaining table?

I cannot extend this letter to examine all the phases of the closed-shop question, but I think it only proper to point out a few of the obvious facts of industrial life.

Closed shops are not peculiar to labor. Recall I couldn't buy a television set from a company in which I have money invested. That company and the retailer have a closed shop. Do you have a similar closed shop?

Now let's take a very practical aspect of the question: When your company bargains with your employees it is not weakened by any factional stockholders' groups at the bargaining table. You, the management, present a solid front. It is natural that the union should seek like unity. It is to management's advantage that the employees be divided.

This is best illustrated by three quotations:

"A UNION SPEAKS

"The theory of the open shop as a permanent arrangement presupposes a stable balance of power as between the employer and the workers, if not a safe preponderance of power on the side of the former. It breaks down in practice as soon as one or the other party attempts to alter the balance. It breaks down when the employer feels himself sufficiently powerful to endeavor to rid himself of whatever restraints the activity of the mere presence of the organization imposes on his freedom. It breaks down, likewise, when the organization gains in power relative to the employer and uses this ascendancy to secure from him recognition for itself and concessions for its members that he would not voluntarily grant. In practice, therefore, the tendency of an open shop is either to degenerate into a nonunion shop or to develop into some form of union shop with union recognition or participation." Amalgamated Clothing Workers of America, the Clothing Workers of Chicago, 1910–22, page 330 (1922).

"AN EMPLOYER SPEAKS

"A rather frank employer speaking on a resolution before the New Idea Convention in 1921: 'It is unpopular to say you don't believe in the open shop, but I confess I do not quite know what the open shop means. To my mind it is a good deal of a question of a nonunion shop or unionized shop, and I hate to be a hypocrite under a resolution or anything else, or to vote or declare in favor of open shop when my own policy is not to carry that out, but to hit the head of the radical in my shop whenever he puts it up.'" Nation, 112: 529 (April 13, 1921).

AN EMPLOYERS' ASSOCIATION SPEAKS

That this thinking is not dead is illustrated by this very enlightening (though not enlightened) quotation from a 1948 Employers' Association Bulletin, "Anti-Union Campaigns":

"How far management can go in its efforts to keep a union out of its plant is something most employers would like to know a great deal more about."

Then this bulletin, sent to all employers in a great industrial state, proceeded to inform upon the subject. The executive secretary of this Employers' Association informed me that he favored unions. I had the bulletin in my pocket at the time. No, I didn't flash it on him.

But it is living proof to me that some men haven't yet changed too much. This is a factor which Congress must keep in mind if the laws it enacts are to be fair and effective.

In my opinion, the evils of the closed shop have been used as a pretext to create a divided front for labor at the bargaining table.

The closed shop has been abolished before. The Landis Commission once awarded an open shop in building construction at Chicago. The employers disdained the award within a few months.

Where I want to do so I could name employers who have entered into closed-shop contracts since Taft-Hartley, not from force, but because they prefer such. The watch-dog committee complained of such contracts calling them bootleg contracts.

But you will never stop labor's efforts to create for itself a single front to match the strength the employer finds in unity. In practice there is both justification and often abuses; abuses I will discuss under the last heading.

(Your Question No. 16)

"16. Do you believe labor laws should protect individual workers in the right to join or not to join a union—to remain or not to remain members—just as they individually wish? Yes ☒ No ☐"

The workers should have the right to contract with the employer that only those who bear their share of the expense of collective bargaining, and help sustain the employees' side be employed. This means union membership. I would not favor a law providing you had to agree to the closed shop nor that you couldn't.

However, I have been asked by a large union to support legislation retaining the Taft-Hartley union security election with the proviso that when the union won, union security would become a part of the contract by operation of law. I rejected the idea. It didn't fit my philosophy. But if you say the workers must twice win their right to bargain for union security shop, perhaps it is logical that, having won twice, the employer should not have a veto. I think the workers should have a say but when they select the bargaining agent, it should mean "the" not "one of many" bargaining agents. Again, remember the employer presents a unified front at the bargaining table. Here he asks the Government to forbid the union to bargain for a vital right; one sometimes important to its existence.

(Your question No. 15)

"15. Do you believe foremen and other supervisors could properly perform their management duties of serving the balanced best interests of employees, customers and owners alike, if the bargaining for supervisors by unions should be included in the labor laws? Yes ☐ No ☒"

I agree the foremen should not be permitted to belong to the production workers' union. But beyond that let's examine the point.

You speak of the foreman's obligation and loyalty to management. In that you are right. But is the foreman's contract of employment dictated by his and the company's loyalty to each other? Or is it a case of getting down to "the captain and the cook" where arm's length bargaining takes place? Remember there is just one company.

1. In your plant, how many foremen are there?
2. Doesn't one foreman loom pretty small across the bargaining table from General Electric?

(Your question No. 5)

"5. Should labor laws provide that an employer cannot deduct union dues or assessments from wages unless the employee gives his personal O. K.? Yes ☒ No. ☐"

Now we find the employer again advocating something he says will protect the worker—his employee. But coincidentally that proffered protection, if accepted, will also weaken the union. If the union has been selected as the bargaining agent, the workers should support it. Even Senator Taft agreed to this. But all sorts of devices are invented to discourage membership. Iowa required the wife's written consent. A double shot at an anti-union veto. I am sure many men are honest in advocating such a measure. But are they practical?

I am reminded of Justice Brown's comment in 1898 in the case of *Holden* v. *Hardy* (169 U. S. 366). Here the employer contended a Utah law providing an 8-hour day in the mines was unconstitutional. The opinion remarked rather dryly:

"It may not be improper to suggest in this connection that, although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class."

I recognize abuses in the use of union funds. They are discussed under the last heading.

(Your question No. 9)

"9. Do you believe that labor laws should require both union officials and company officials to swear they are not Communists or Fascists or members of any party or organization which plans to overthrow the Government of the United States by force and violence? Yes ☒ No. ☐"

Again your question is misleading, if it is meant to sustain the Taft-Hartley law; inadvertently so, I am sure. The Taft-Hartley law does not require officials (union or corporate) to swear they are not anything. It denies legal remedies to the union if its officers do not swear they are not Communists or subversive.

Of course one is expected, from a political viewpoint, to support that section. It bears the label "anti-Communist." But I'll risk castigation to examine the provision and its effect.

What is the result of a union officer's failure to so swear. The employer can engage in unfair labor practice with impunity. The union can't get its case of unfair labor practices or question of representation before the National Labor Relations Board.

Strange is it not, that in every provision, said to be designed to protect the worker and to prescribe patriotism and honesty somehow by practical application, the employer stands to benefit. As in the case of the financial report, not one provision of the Taft-Hartley Act affords any remedy to the union member who demands an explanation of the prescribed financial report, to protect his rights against a dictatorial labor official, except to forsake his union. No provision for democratic government (by which to oust Communists and dictators in the American way) or a look at the books (without fear of capricious expulsion) if the union official is dishonest and all-powerful in the union.

Recently, J. Mack Swigert (author of Saturday Evening Post articles: October 25, 1947, The Taft-Hartley Law: Does It Really Hurt Labor? and October 30, 1948, Should We Repeal the Taft-Hartley Law?) and I debated the Taft-Hartley law before the Indiana State Bar Association. He said (and wrote) that if international union officials didn't swear to anti-Communist affidavits, or thus qualify, the locals could "secede." Brilliant idea, but wrong on two counts: First, legally a local cannot secede if the union constitution prohibits such, as they all do. (*Martin* v. *Smith* (1934), 286 Mass. 227; *Harris ex rel. Carpenters' Union No. 2573 of Marshfield, Oregon, Lumber and Sawmill Workers* v. *Beckman* (1939), 160 Or. 520, 86 p. (2d) 456; *M and M Wood Working Co. (and Plywood & Veneer Workers' Union)* v. *N. L. R. B.* (C. C. A. 9th, 1939), 101 F. (2d) 938; *Winnetka Trust & Savings Bank* v. *Practical Refrigerating Engineers Ass'n.* (1944), 322 Ill. App. 154, 54 N. E. (2d) 253; *Local No. 2618 of the Plywood and Veneer Workers of The United Brotherhood of Carpenters and Joiners of America* v. *Taylor* (1938), 197 Wash. 515, 85 p. (2d) 1116; *Local No. 2508, Lumber and Sawmill Workers* v. *Cairns* (1938), 197 Wash. 478, 85 p. (2d) 1109; Dangell and Shriber, The Law of Labor Unions (1941), 257; *Brotherhood of Railroad Trainmen* v. *Williams* (1925), 211 Ky. 638, 277 S. W. 500.) I think this is sound law. I prefer to cleanse and preserve, not destroy, unions.

Secondly, the thought of secession illustrates the philosophy of the Taft-Hartley law. Every child that has read American history knows secession means destruction of the union.

(Your question No. 10)

"10. Do you believe labor laws should require unions to make appropriate reports to members and Government as to handling of funds—just as companies are required to make appropriate reports to owners and Government? Yes ☒ No ☐"

Here is a question very dear to my heart. I tried to get Members of the Seventy-ninth Congress to sponsor such legislation. I tried again in the Eightieth and with failure.

The Taft-Hartley law only adds the financial report as an added impediment to the union in presenting its bargaining claims to the employer and in prosecuting unfair labor practices.

Furnishing a financial report means nothing unless the examiner can also look at the books. Taft-Hartley does not provide the right to look at the books. Of course, we know this in inherent. But in practice how does it work?

Taft-Hartley does not provide a remedy if the worker is expelled for demanding a look at the books, or for any other reason, for that matter. I can cite you a local union president who announced he would demand, as a delegate to the international convention, an explanation of the following item in an iternational treasury report:

"Special organizing, $1,101,025.03." That's all.

He said he would ask who got the money and what the union got in return for it. A fair question I would think. Wouldn't you? He was expelled before he ever reached the convention floor. I successfully prosecuted his case for reinstatement to judgment in the civil courts.

I had also called this case to the attention of Congressman Hartley (March 12, 1947). Mr. Hartley answered me 7 months later, October 7, 1947. He wrote that the Taft-Hartley bill was now law and the man should file a complaint with the Labor Board. I immediately wrote back and asked Mr. Hartley to inform me what section or provision of the Taft-Hartley law afforded this man any remedy. Mr. Hartley never answered that question, dated 16 months ago. Can you give me the information? I have been unable to find where the law provided a remedy. It only immunizes the employer, in case of the failure to furnish a formal report. The union I am talking about always furnished reports which balanced, but there was a large embezzlement, which we proved when we went behind another report. But it took an expensive common-law remedy to procure a judgment reinstating the man who had the courage to raise the question. And that judgment is yet ineffective because it is on appeal, almost 3 years after expulsion. This man is entitled to a more efficient and reasonable remedy.

I have been about all the evils in unions there are to see and I favor remedying them by wholesome legislation, not by destroying the union and immunizing the employer that engages in unfair labor practices.

I would appreciate your comment upon these problems.

· (Your question No. 11)

"11. Should labor laws make it clear that a collective-bargaining contract must be honored by both parties? And that each has an equal right to sue the other for breaking the contract? Yes ☒ No ☐"

J. Mack Swigert, a law partner of Senator Taft wrote in the Saturday Evening Post that there had been more nonsense written about this point than any other. Though he was my worthy adversary in a recent debate, I am forced to agree with him. Why? Because a union has always been suable. (See *Duplex Printing Press Co.* v., *Deering* (1921) 254 U. S. 443; *Laylor* v. *Loewe* (1915) 235 U. S. 522.)

The truth is the Taft-Hartley law favored the union member in this regard at least. It limited liability to the union treasury whereas previously the members own funds or property was subject to levy. Mr. Swigert also pointed this out, and I agree with his conclusion.

I sicken at the utter misunderstanding the public gets from such propaganda that only under the Taft-Hartley was the union suable. The facts are many suits are and were generally filed in connection with labor disputes. Few judgments are rendered because when the dispute is settled both sides quit lawing each other and went back to work. Not a bad idea.

(Your question No. 14)

14. Do you believe it should be unlawful for an employee to be prevented from working by the use of violence, force, or intimidation? Yes ☒ No ☐"

Certainly, I agree; and it is unlawful and always has been. I am also against sin. Of course, the same should apply to the employer, who in recent years has been less prone to violence than in the past, and always less prone than the employee. But the employee has never had a complete monopoly on violence though the employer usually acts by proxy.

The employee, however, lacking economic strength to match the employer, is naturally more prone to use violence as a substitute for economic power. Violence is foolish, ineffective and wrong; it always has been and should be forbidden to all men.

VI—UNION RESPONSIBILITY TO PUBLIC AND MEMBERS

(Your question No. 6)

"6. Do you believe labor laws should see to it that both employers and unions be required to bargain in good faith? Yes ☒ No ☐"

To this question I can say "Yes" without further comment.

(Your question No. 17)

"17. Should labor laws make clear that both unions and employers can now so affect the public for good or ill that the labor-management relations of both should be regulated equally by law? Yes ☒ No ☐"

Now we are getting to the meat of the question. In my experience with men no difference in basic characteristics have appeared, whether the man was trying to plow a straight furrow in a stumpy field with a balky mule; working at a factory bench or at the director's table, or perhaps even legislating in Congress; though my experience here is very limited.

In each case the man is trying to better himself, his place in society, perhaps financially; maybe socially, or in political preferment or in the esteem of his fellow creatures, or in all those respects.

But none are divinely anointed by virtue and few are utterly depraved.

Another thing pretty clear is that combinations of men whether corporate or union, spell power.

Furthermore, Government has but one rightful claim to exist; i. e., to protect its citizens from the unwarranted exercise of power from within or without its borders.

With those indisputable facts understood, how could any man deny that unions as well as corporations should be fairly regulated? The question is the fairness of the legal regulation, and that we in Congress refuse to "rook" one or the other. To avoid doing so we must be on our guard against propaganda emanating from those of greater experience than ours.

Such regutations should be as simple as clarity permits. They should leave as much to individual decency as experience warrants. But a government that fails to recognize the necessity when it exists and cries out for remedy, is a static government and has lost all claim to respect, or if it becomes too lax, to the support of its owners, the citizens.

With that in mind I shall answer your only remaining question.

(Your question No. 8)

"Should labor laws protect the employee against unfair practices by unions and management? Yes ☒ No ☐"

Of course. No combination should be permitted to crush the individual. But we must, as reasonable men, agree upon what should be unfair labor practices, and be fair in that determination.

Until the Railway Labor Act, I believe legal unfair labor practices were nonexistent. The employee was a pawn, almost an expendable material in the employer's hand. His only defense was unionization. He fought an uphill fight against the "yellow dog" contract. Only the Wagner Act fully outlawed the "yellow dog" contract. It prohibited the employer from wringing a promise from the employee not to organize. The law finally recognized that the employer's power was so great the worker was forced to sign by duress. Thus, the ancient common-law principle of duress was for the first time made applicable to the labor contract. Like the lender who was restrained by usury laws in dealing with the borrower, the employer was restrained in his absolute power by the Wagner Act. For a half century Congress and State legislatures struggled to enact such protective legislation. But the lawmakers were always thwarted by the courts.

Finally the courts recognized the evils.

In the meantime, unions had struggled to some positions of power in some crafts. Then their power increased. Their power was not, and never has been, (generally speaking), equal to the power of the employer. Wealth is power. No one knows that better than you. When people speak and write of the amassed wealth of unions, they think in terms of their own personal holdings, not in the terms of corporations having more assets and employees than there is wealth and population in many States. Statistics disclose that the combined treasuries of all international unions is about a quarter of a billion dollars. This is but a minor fraction of the wealth of any one of several corporations—one thirty-second the value of American Telephone & Telegraph Co. and the Metropolitan Life Insurance Co., and but one-fourth of your own company, General Electric.

However, the union's wealth and prestige is tremendous when applied to the individual, or individuals, in one local. Some union officials have wantonly abused this power of wealth and position, and such abuses affect the working terms and conditions of its members and their fellowmen of the same trade.

The Taft-Hartley law regulated, not the use, misuse, or abuse of this power, as directed against these individuals, but curbed that power as it was pitted against the greater power of the employer for the benefit of the individual member.

Taft-Hartley proponents have inveighed against the closed shop. But I challenge the closed union, from which stems much of the abuse. California has, by common law, decided that it is tortious to deny membership in a union which controls work in a craft or area. Thus the single front in collective bargaining is preserved; but the worker is not denied membership necessary to a job and protection on the job.

I have heretofore, and will again in the Labor Committee, advocate legislation to prescribe that union officers be elected, in fair elections; to prohibit an international officer from making a local captive and handle all its funds and negotiations, and conclude its contracts without submission of terms to a vote.

I suspect, Mr. Wilson, that you have not had experience with this particular type of abuse. But I have seen men in a captive local union working alongside men in a free local for 25 percent less wages. I won't say why it occurred that way. The fact that it occurred is enough. And when democracy was reestablished, the inequities ceased.

I have seen men expelled because they demanded decency in the union they needed and supported, and without effective remedy, Taft-Hartley claims notwithstanding; and Taft-Hartley remedies all the while nonexistent. Yet it was held up as a bill of rights for labor.

I have talked to union men, leaders, if you please, in as high a rank as president of internationals, all agreeing that remedies in these matters are long overdue. But they mortally fear any legislative move in this direction because it is upon these abuses that the architects of the Taft-Hartley "gimmicks" seized to justify their provisions: provisions which do not strengthen nor sustain decency, democracy, or justice in the unions; but which add further burdens to break them down. The workers in those few unions that abuse democratic processes would welcome legislation affording remedies. But they don't want their unions destroyed.

I know that many honest and sincere union leaders would welcome legislation, fairly designed, to:

1. Provide secret elections in local unions; including delegates to national or international conventions.
2. A remedy for fraud or duress in such elections.
3. A right for any member or body to look at or audit any of the union books.
4. Provisions regulating seizure and holding of captive locals; allowing only reasonable discipline of locals and members.
5. Remedies for capricious and fraudulent impoition of heavy penalties and prohibition against violation of the principles of due process of law generally.

Incidentally, all these rules are now the law of the land by common law. But the remedy is expensive, slow, and generally ineffective. A worker hasn't the means to pursue these remedies, nor to sustain himself while he waits for them. They should be codified and the remedy made more accessible to a man of moderate means.

For emphasis, let me repeat, Taft-Hartley set its provisions against the union leaders who stood staunchly for their members' rights in bargaining with a usually stronger entity, the employer. It ignored, in all practical respects the abuses of the union leader who oppressed his own members.

I sincerely hope both these errors will be corrected.

In closing, I wish to say to you, Mr. Wilson, that the problems upon which your questions are predicated are not as clear as those questions are transparent to one with a mite of experience. I doubt if you prepared them, or possibly comprehended their import and the mischief their leading effect might have. That they might mislead the people—since they were printed in daily newspapers—is obvious. And that they might affect Congress is possible. Hence, your responsibility in this regard is tremendous. It has been said that to whom much is given, much is expected. Therefore, I invite you to give us in Congress some broader and well-reasoned comment upon the subjects concerning which I have inquired.

None of us can know too much, even in that area of the broad field of legislation assigned to our committee, and even in that area we "fear a doubt as wrong."

For my part, I feel I know a little, yet far too little, about the subject of this letter. But, and you may find it difficult to believe this, I had no burning ambition to be a Congressman. And I believe I would not have sought the office had it not been for my interest in this subject, and a desire to help construct some fair legislation in the place of what I knew was unfair. That I am going to try. In so doing, I will probably incur enmity of some folks on both sides. Perhaps that will be the best proof that I am doing the right thing.

But in trying, I and my associates would be heartened by a more objective approach by men of your position and standing than by broadsiding us with a meaningless, or at least confusing, questionnaire ballot barrage. They are balanced by mail from the other side. You can't estimate logic by weighing your mail, or counting induced pros and cons.

One good logical letter, outlining facts, and pointing to specific and fair remedies, would help us more than a million questions marked by persons obviously confused by leading questions of great cleverness.

I trust you will accept this letter in the spirit intended and give me the benefit of your considered judgment upon these several matters.

Most sincerely yours,

ANDREW JACOBS,
Member of Congress, Eleventh Indiana District.

GENERAL ELECTRIC CO.,
New York, N. Y., February 25, 1949.

HON. ANDREW JACOBS,
House Office Building, Washington, D. C.

DEAR MR. JACOBS: I am sorry that, due to my having been away from my office, your letters of February 9 and 15 have just come to my attention.

It was our earnest hope that our questionnaire, dated January 21, would stimulate thoughtful consideration of the important issues involved in any revision of labor legislation. As we stated in our questionnaire, we were hopeful that the reexamination by all Americans, through our Congress, of these important issues would be both calm and thoughtful. Your 22-page letter is one of the most stimulating and extensive evidences we have seen along these lines.

I shall be most happy to accept your invitation to comment upon your views, and I am sure that every American citizen should appreciate your thoughtful consideration of all of the issues and information which you may receive on these matters, and which you are kind enough to indicate you will give to my comments. I will give you my answer as soon as possible. Naturally, I will want to consider carefully and thoughtfully the questions you have raised.

As you may know, I wrote the chairman of this Committee on Education and Labor and each of the members thereof on January 21, requesting that we be given an opportunity to be heard before such committee with respect to these matters. You may be interested to know that I have not as yet received any indication that our request will be granted or even that hearings will be held before the Labor-Management Act is repealed.

Very truly yours,

CHARLES E. WILSON, *President.*

Congress of the United States,
House of Representatives,
Washington, D. C., February 28, 1949.

Mr. Charles E. Wilson,
President, General Electric Co.,
New York, N. Y.

Dear Mr. Wilson: I thank you kindly for your response of February 25 to my letter of February 9, in which I responded to the questions you asked me by letter of January 21. I cannot, however, refrain from saying that I am sorely disappointed that you did not respond to a single question I asked you.

My knowledge of your views is as important as your knowledge of mine. After all, I must act in this matter.

Regarding your statement that you have not received any indication that your request to appear before our committee will be granted, may I point out that in my letter of January 26 to you, I stated that I would favor permitting your representative to appear before our committee. I now change my position. I have already served notice that I will insist upon your appearance. I trust that you will be prepared to help us at that time. Nor will we be able to cover the Taft-Hartley law with 18 questions. Give due consideration to the questions I asked you in my letter and you will have full opportunity to answer them before the committee.

Very truly yours,

Andrew Jacobs,
Member of Congress, Eleventh Indiana District.

(The following correspondence, subsequently received and made part of the record of March 15, is inserted here to preserve continuity of the subject.)

General Electric Co.,
New York 22, N. Y., March 10, 1949.

Hon. Andrew Jacobs,
House Office Building, Washington, D. C.

My Dear Mr. Jacobs: A little over a week ago I wrote informing you that your letters of February 9 and 15, in comment in our labor law questionnaire, had just come to my attention and that I would furnish you our views as soon as possible. We have taken the liberty of setting forth at some length our opinions, as you have requested, which I hope are responsive to your very thoughtful and stimulating letter.

In view of the considerable thought you had obviously put into your letters and the importance of the issues and questions you discussed, I wanted our comments thereon to represent not only my own general opinion, reached after fuller consideration of your views and questions, but also the views of my associates who are more intimately familiar than I am with both the practical or operating aspects of these questions and with the technical aspects of the law. Accordingly, I am setting forth in this letter more or less briefly some views on each of the subjects covered in your letters and in our questionnaire, and I am then enclosing a more detailed discussion of the issues involved and the questions you have raised which has been prepared by the staff of Mr. L. R. Boulware, vice president in charge of employee relations.

It appears from your letter that we are more or less in accord as to objectives, that what we both seek in common with all good Americans are laws which will adequately protect the paramount interest of the public and are fair to the employees, unions, and employers. As you point out in your letter, "We can use all the help and wisdom available to enact a fair labor law."

Accordingly, I was somewhat disappointed when I realized that in reading our General Electric questionnaire, How Would You Revise Our Labor Laws?, you assumed that our questionnaire was devised to sustain the Taft-Hartley Act as such. I get this impression from most of your questions. Such an assumption is entirely unwarranted.

On the contrary, I agree fully—and in fact this was the very reason that prompted our questionnaire—with your suggestion for the need of an "objective approach to these important problems." I would like to suggest that you again read the introduction, conclusion, and suggestions contained in the box at the end of our questionnaire. An employer is rarely credited with objectivity in as emotional a field as employee relations present, but I can certainly assure you we used our best efforts to state these questions objectively and fairly. We supplied this questionnaire to each of our employees (including more than 125,000 members of our many unions) and to many of their neighbors. We hoped to encourage them to give thoughtful consideration to the individual ingredients making up the issues involved as distinguished from the too-prevalent emotional assertions.

You must, of course, be familiar with the ridiculous characterizations of the present law which have appeared in many union publications. I am sure that you do not feel that we, or anyone else, should not suggest that employees and their neighbors consider the basic questions involved. By our questionnaire we simply hoped to initiate some objective thinking which, if continued, would gradually make our employees and their neighbors proof against such obvious untruths, intemperate emotional appeals, and encouragement of class hatred as have continued to appear in the union press.

We are all human. The learned psychologists who have studied human beings quite accurately tell us that, despite our best intentions, we are often more persuaded by emotional factors than we are by our God-given reason. I believe that this present controversy about the Taft-Hartley law is a perfect example of that. Discussion of the Taft-Hartley law has tended too much to be in the area of sheer emotion. Too much significance has been attached to labels and too many epithets have been used, such as the "Slave-labor law" or the "Tough Heartless Act" or—on the other side of the fence—the "Save Labor Act" or the "Labor Emancipation Act." Too little calm and intelligent consideration has been given to this highly controversial measure by too many of us.

It seemed to us that the only intelligent thing for people to do was to forget the epithets, for the proposals to go back to some former and abuse-strewn phase of our labor legislation, and, instead turn our attention to a fresh attempt to create a more nearly perfect law in the public interest, based of course upon the experience we had had under present and past legislation and the evidence as to how well or how badly those laws have worked.

Accordingly, our aim in devising the questionnaire was in getting away so fas as possible from the emotional influences and stigmas attached to either the Taft-Hartley label on one side or the Wagner Act label on the other. We believed, just as we continue to believe, that it would be very helpful for all of us if we could reexamine the fundamental laws regulating the relations of employees, unions and management with each other and the public in the absence of emotional entanglements and solely on the basis of the really pertinent issues involved.

Accordingly, we selected what we thought were 18 of the more important questions that had been raised in the current discussions of the law up to the time the questionnaire was issued. We put considerable effort on preparing a questionnaire which would be as objective and impartial as possible and yet would be susceptible to a "yes" or "no" answer. Our best advice had been that it was necessary to have this simple question and answer type in order to get interest and response.

In this complicated field it would be difficult to devise a series of questions that would adequately cover all of the aspects of the problem in detail. We make no pretense of having done anything more than attempt to initiate some interest and then get public reaction on a few of the important issues under consideration.

You have suggested that the questions involved cannot be completely answered by a "yes" or "no" answer. Your feeling that categorical answers to our questions are difficult to make without qualification would be equally true no matter how the questions had been framed and equally true of any equally complex subject. I think the presentation of issues in such a simplified way for public expression lies at the very root of our democratic system, otherwise no one but experts would ever be allowed to vote. After all, there is no greater simplification—I might say oversimplification—than that which is basic to our American Government itself: The act whereby the people in the solitude of the voting booth resolve all the different issues pro and con into a choice between two candidates for President—or even for Congress.

In preparing our questionnaire, we were entirely mindful of the value of comments. It was for these reasons that we suggested that people "add any comments" they might have on our questions "and any others" they might have. I agree with you that "good logical letters, outlining facts, and pointing to specific and fair remedies" would in many cases help all of us, in and out of Congress, more than mere "yes" and "no" answers to any questions. Fortunately, a great many people have, I understand, made ample comments on the questionnaire itself and many, many more have written letters prompted by the questionnaire.

Your first answer in your letter to me illustrates a common difficulty with comments where it quotes a previous statement of yours in response to a "labor questionnaire" as being applicable to our questions one and two. You then say that "this response illustrates how it categorically would not clearly disclose one's opinion to a single question." I respectfully suggest that if you reexamine these questions it is quite clear that the questions as phrased are clearly capable—and fairly so—of "yes" or "no" answers. Possibly it would be desirable—but not necessary—for an unusually informed person to expand his answers and to go into the ramifications of the issue. But after reading your expanded answer, I confess I do not clearly understand your position.

Nevertheless you will note that we asked people to add their comments and further questions, so that any persons interested in amplifying their "yes" and "no" answers were clearly encouraged to do so. However, it seemed to us that the expression of a view as to the principles involved was the important starting points and accordingly we attempted to encourage and stimulate public interest in those principles.

The average individual naturally feels that the intricacies and the technical involvement in constructing legislation must be worked out by the members of Congress. Few ordinary individuals could be expected to have the necessary background knowledge or experience to be able to make any worth-while contribution to some of the more complex aspects of the issues that must be considered in drafting the actual legislation. But certainly that is no reason a citizen should be deprived of an opportunity to express his opinion.

I hope that more of your associates in Congress, as well as all people out of Congress irrespective of their present opinions, will give these important questions greater consideration. If our questionnaire helps to encourage any of your associates in Congress and some other citizens to give as extensive and thoughtful expressions to their congressional representatives as your letter to me on these important issues, we have exceeded our greatest hopes of encouraging consideration of these matters in the public interest.

I will now try to set forth briefly our views on the 18 individual questions inasmuch as our questionnaire made no attempt to disclose them and your letter indicates you would like to have them.

I will mark the answer boxes as you did in your letter, and indicate thereunder my understandings of your views on the basic issues involved, as expressed in your letter, and the areas of apparent agreement, of disagreement, or of my uncertainty as to your views on such principal issues. In the attached staff memorandum your comments and questions will be considered in very much more detail.

1. Do you believe that labor laws should, in general, preserve the employee's right to strike? ☒ Yes. ☐ No.

We have always believed and, of course, still do, that the right of the working man to strike should be jealously guarded—and that it should be curtailed only where the consequences of a strike to the many are out of all proportion to the issues involved for the few. Accordingly, we check "Yes" here.

You also agree that the labor laws should, in general, preserve the employee's right to strike. But you would apparently limit the right to strike much more severely than does the Taft-Hartley law, as you apparently suggest an exception to this general right in any case of industry-wide strikes.

2. Do you believe labor laws should give the President of the United States the right to seek, through courts of law, to delay a strike that would cause a national emergency endangering the health and safety of the entire country? ☒ Yes. ☐ No.

I believe what present power the President has to protect the Nation from strikes that threaten the national health and safety mus not be weakened. Since General Electric operates the great plutonium plant for the AEC at Hanford, it naturally watched with concern during the Atomic Energy labor dispute at Oak Ridge last year, in which the President felt he needed all the teeth in the present law and used all six steps the law contemplates. Not only for atomic energy, but in other vital industries, the public interest must have effective protection.

It has been proposed, I believe, in the bill which you are now considering as a committee member that the Nation's labor law contain no provisions to delay or stop national emergency strikes other than a Presidential remonstrance or proclamation begging the cooperation of the disputants in refraining from a work-stoppage as affecting the Nation's welfare.

There is nothing in this proposal to make the disputants accede to the President's request or to accept the investigating Board's subsequent solution. I believe there is no way set forth in the proposed bill to obtain through the courts an injunction to block the strike, and I understand it is all too doubtful if the President possesses any powers of enforcement. In hort, the proposal is that public opinion will be able to stop or defer a national emergency strike.

Under the Railway Labor Act, this sort of public opinion provision has been in existence for several years. According to the latest report of the National Mediation Board (New York World-Telegram, January 31, 1949) which administers this act, it is close to a break-down. In the opinion of the Board's members, it has become weak and ineffective.

This experience demonstrates that any effective labor law must contain adequate specific means—through the judicial process—for enjoining promptly any national emergency strikes. Such a vital point should not be left in the realm of speculation. The labor law should clearly embody proper specific powers for the Chief Executive to use when the power or public opinion shall have failed along with any other means available. Doubt should be dissipated.

So, to the second question, "Should the labor laws give the President of the United States the right to seek, through courts of law, to delay a strike that would cause a national emergency," the answer is "Yes."

We believe firmly with you in the considerations you set forth in your own answer regarding the limitations necessary in special emergency situations to avoid destruction of our free economy. We are particularly pleased that you see so clearly what many do not see, that "a controlled economy inevitably results in socialism, communism, fascism, or some form of state monopoly * * * (with eventual) forfeiture of personal liberty to entrenched officials." We are against compulsory settlements, as we assume you to be from the tenor of your questions. We hold to no particular program for protecting the public in such emergencies, except that adequate compulsory delay should be promtply available and legally effective. Along these lines, we do not feel that the present powers of the President to protect the public should be weakened, since in the past he has felt he needed at least these and has used them all.

I don't believe you stated your views as to whether or not the President should have such a right to delay national emergency strikes. We can conceive of industry-wide strikes that might not be of real national emergency proportions and, on the other hand, a national emergency strike need not be an industry-wide one. In view of this and in view of the present controversy about his power, I believe the President should have a clearly defined statutory right, subject to appropriate statutory limitation, to seek any necessary court action to delay national emergency strikes that would otherwise endanger the health and safety of the country.

3. When two or more unions are fighting each other over who shall do a job or who shall represent the employees, and a strike is called to compel an employer to give to the members of one union the work or recognition being given to the other union—that is a jurisdictional strike. Should labor laws prohibit such strikes? ☒ Yes. ☐ No.

You agree that jurisdictional strikes should be prohibited where the employer is taking no sides in the primary dispute. In the case of "different work of an intermittent nature for the same employer, as in craft trades and particularly in construction," you seem to assume that a given self-ordained group has somehow got a clear, inherent, exclusive right to do certain types of work. Do you really believe this? Remember, you have got immediately to face the fact that such a given group has not been able, despite constant effort over a great period of years, to establish that right with others—establish it even with other sister unions or with any top tribunal over this group of unions.

You say you appreciate the plight of the employer who wants to complete his work without getting caught in the cross-fire of two competing unions, but shrug off this whole consideration with "some situations defy remedy." Does not the innocent bystander deserve protection? In this case it is not the employer, but ultimately the public that must pay and should be protected.

It is true that employers and labor have changed their constitutional philosophy on the desirable degree of Federal intervention, depending on the matter at hand. So have all other groups of Americans, including Congressmen of all persuasions. Yet in this matter you yourself agree on Federal intervention, admitting that what you support is "not a complete remedy." Our difference here is not over the desirability of Federal action against jurisdictional strikes, to which you agree, but simply that we want that intervention promptly while there is yet time and that we advocate protection for the innocent bystander, which you apparently would not provide.

I see no justification for an employer becoming involved in the primary dispute between the disputing unions if there is an effective and adequate prohibition and legal remedy against jurisdictional strikes. I do not seek to have the employer be the arbiter between the two unions. I only want some place the employer can go and find a qualified and disinterested government representative who can come and settle the dispute equitably as between the parties and in the public interest. This settlement is usually not really hard to achieve, and it can usually be effected a week or a month ahead of the need for the actual work being done. Such Government aid in settlement need be sought, of course, only after any voluntary or interunion procedures fail.

Apparently we agree that the answer to this question should be "Yes."

4. Should labor laws prohibit secondary boycotts—that is, prevent an employer and his employees, where there is no labor dispute, from being damaged by a union seeking to coerce another employer having a labor dispute? ☒ Yes. ☐ No.

You state that secondary boycotts should be prohibited, where the second employer is not participating in the primary dispute. We agree.

We also agree that where there is a community of interest in the question at issue, clearly demonstrated for instance by an employer taking over work from another's struck plant in obvious effort to assist the struck employer to fight his battle with the union, a strike or boycott against such work should not be prohibited. Incidentally, we don't believe this is properly to be called a secondary boycott at all, but a primary boycott.

I understand that the present law has been so interpreted as to treat a case, where the second employer is participating in the primary dispute, as a primary strike rather than a secondary boycott. I believe this is proper. Apparently, we agree, that the answer to this question should be "Yes."

5. Should labor laws provide that an employer cannot deduct union dues or assessments from wages unless the employee gives his personal O. K.? ☒ Yes. ☐ No.

There seems to be little quarrel with the proposition that a man's take-home pay should not be expended in whole or in part for him unless the wage earner authorizes such an expenditure of his money. There do not seem to be any serious complaints by employers or unions as to continuation of the voluntary check-off.

I don't believe you express any opinion in your comments as to whether or not an employer should be prohibited from deducting union dues or assessments from the wages of his employees without the employee's consent and authorization. In your comments on this question, and particularly in your comments on question 10, you indicate that you are fully cognizant of the abuses that sometimes occur in the handling of union funds, amounting in some cases to outright embezzlement and failure, in the one case you mention, to account for more than $1,000,000. I believe it is better to let an employee decide for himself—on the basis of how he feels the union is handling its funds—whether or not he wants deductions made from his wages and paid into such funds, particularly in the light of your rather shocking revelations of the misuse thereof. What we want is good unions, and this hold by its members on a union's purse strings tends to make the union officials responsive to the members' will. I feel that the proper answer to this question is "Yes."

6. Do you believe labor laws should see to it that both employers and unions be required to bargain in good faith? ☒ Yes. ☐ No.

I am pleased to see that you feel that both employers and unions should be required to bargain in good faith, particularly since I understand that neither the Thomas bill (S. 249) now under consideration in the Senate, nor H. R. 2032 introduced by the chairman of your committee, and on which hearings are being held, nor the Wagner Act contain any requirement that the union bargain in good faith. I certainly agree with your answer of "Yes." I am told that you have voted twice in favor of a resolution to restore the Wagner Act without change and only thereafter to hold hearings on Wagner Act amendments "consistent with the proposal made by the President." I hope your letter indicates that you are going to reconsider your earlier position.

7. Should labor laws give to both employees and employers the freedom to express their own points of view on employee relations problems—provided such

views, or arguments, or opinions do not promise bribes or threaten reprisals? ☒ Yes. ☐ No.

Since you state that no law ever denied free speech to the employer, and since your further comments appear to be concerned with the conditions under which some or all of any statements are allowed as evidence, I gather that you are in favor of the law giving both employees and employers clearly the freedom to express their own points of view, as asked by this question. Apparently we agree that there should be no material denial of the right to such expressions and that the answer to this question should be "Yes."

It would seem that there could be no other answer to this question than one which strongly confirms the right of both employers and unions to speak freely on all subjects to anyone who is willing to hear them, provided that no promises of benefit in the form of bribes or other inducements nor any threats of reprisals are made.

8. Should labor laws protect the employee against unfair practices by unions and management? ☒ Yes. ☐ No.

Regardless of whether abuses are from the employer's side or from the union's side, the employee must be protected. There should be no quarrel on this score.

You state that "of course" the labor laws should protect the employee against unfair practices by unions and management, but that we must, as reasonable men, agree upon what should be unfair labor practices, and be fair in that determination. We agree. The answer to this question should be "Yes."

9. Do you believe that labor laws should require both union officials and company officials to swear they are not Communists or Fascists or members of any party or organization which plans to overthrow the Government of the United States by force and violence? ☒ Yes. ☐ No.

Not only as a private employer, but as a contractor for the Atomic Energy Commission, we believe the labor law should require affidavits of both company and union officials and bargaining representatives that they do not belong to the Communist Party or to any party which plans, teaches, or advocates the use of force or violence to overthrow the Government of the United States. One would have to be naive indeed to think the affidavit could solve the Communist problem some unions apparently have. But we believe we see, at various places, some examples of members in unions having been aided—by the non-Communist affidavit requirement—in making progress toward purging their unions of Communist leadership.

Certainly, the very wonder by union members at some officials' refusal to sign has led to a great deal of new local consideration of the national problem. In a great many cases they have elected new officers where the determining factor seemed to be the belief of the membership that it would be getting new leadership with less Communist taint or certainly with less public suspicion of that taint.

You state that you desire "to cleanse and preserve, not destroy unions." I certainly agree. I go further, and have so testified before the Senate committee, and recommend that this provision be extended and made applicable to all officers and bargaining representatives of both labor organizations and management. Apparently, while you are in favor of cleansing the unions, you do not approve of the effect under present laws of failure to file the so-called non-Communist affidavit. We think the affidavit is helping to cleanse unions.

Secretary of Labor Tobin has testified in the Senate hearings that he believes a law should be passed, making it a crime for a union official to be a Communist. This is a drastic suggestion. But there are those who are more violently shocked by a simple provision obligating union leaders to swear they are not Communists if they are to have access to NLRB.

I would not favor the elimination of the present remedial provision unless and until some other at least equally appropriate method of dealing with this problem is enacted. I feel this question should be answered "Yes."

10. Do you believe labor laws should require unions to make appropriate reports to members and Government as to handling of funds—just as companies are required to make appropriate reports to owners and Government? ☒ Yes. ☐ No.

Filing with the Government and their members information as to manner of operation, income and expenditure—cannot but be an aid toward healthier self-government by unions and instill a sense of responsibility.

You mention that this question is dear to your heart and you describe your unsuccessful efforts to get the Seventy-ninth and Eightieth Congresses to sponsor such legislation. I agree fully with you as to the desirability of such legislation and am curious as to whether you or any other member of the Eighty-first Congress has offered a bill or an amendment to H. R. 2032, to accomplish this. I also agree with your suggestion that the present law does not go far enough and provide for inspection of books, etc., but I don't understand why you have voted to eliminate even the first step taken in the present law unless you are intending to offer a stronger substitute. We agree that this question should be answered "Yes."

11. Should labor laws make it clear that a collective-bargaining contract must be honored by both parties? And that each has an equal right to sue the other for breaking the contract? ☒ Yes. ☐ No.

As President Truman said in November 1945, "if we expect confidence in agreements made, there must be a responsibility and integrity on both sides in carrying them out."

Those who object to such a provision seem mainly concerned as to whether the Federal or State courts are the proper forum. Actual practice under the present law which has such a provision for suits in it has shown, according to the watchdog committee, that there have been only 45 actions of this nature, and, to date, not one has gone to judgment. Like so many other provisions of the labor law, it may seldom or never have to be utilized, but there is assurance in its existence.

You assert that unions have always been suable. Yet you must recognize the legal impracticability of suits in many States, although you have stressed the inadequacy of present legal remedies in the case of members seeking protection against their unions. If unions have always been suable, why not state so clearly in the law and make the remedy prompt and practical?

We agree with you and Mr. Swigert that a lot of nonsense has been written about this point, and I fear about many others in the present law. I am unable to determine from your comments whether or not you feel both parties to a contract should be required to live up to it and that each should have a remedy for breach thereof. I infer that you favor the provision in the present law insulating union members from suit but making union assets liable to suit if there has been a breach of contract. If so, I agree. I feel that this question should be answered "Yes."

12. Do you believe labor laws should make it unlawful for a union to compel an employer to engage in featherbedding; that is, to pay money for work which hasn't been done or won't be done? ☒ Yes. ☐ No.

I am glad you oppose featherbedding. I agree. But I cannot go along with you in your opposition to a law forbidding what you admit is wrong. In view of our own experience and in the absence of any convincing explanation of your position, I feel that this question should be answered "Yes."

Let me briefly tell you of an experience of ours. In the fall of 1947 when General Electric was installing a turbine for the Consolidated Edison Co. at the Sherman Creek station, the local union of steamfitters and plumbers claimed that certain piping which had been done by the factory was a part of their work. The union took the position that this piping work should have been removed by them and then reinstalled by them at regular rates, or the company would have to make a payment of approximately $700 which represented the amount of wages in question. The General Electric Co. wanted to make an issue of this matter but the customer felt it unwise to do so. Faced with the threat that work on the project would have been stopped, thereby causing great loss and inconvenience to the public and to the Edison Co., because of the serious need of this turbine, it was decided to pay the amount in question and not risk a work stoppage.

The whole secret of our ever-higher American standard of living is in production. To the degree that we restrict or limit real production with "made" work we restrict and limit and lower that standard of living.

Featherbedding is morally bad and economically feeble-minded. The reason it needs to be prohibited by law is because the employer and union at the bargaining table are so frequently far from being equally matched.

13. Should labor laws permit the forcing of an employer to hire only workers who belong to a given union? ☐ Yes. ☒ No.

This question brings us to the broad topic of compulsory unionism, and specifically to the problem of the closed shop.

The present Federal law prohibits the closed shop. I am told that 21 States have declared the closed shop and various forms of compulsory unionism to be against public policy. Only severe abuses under closed-shop practices could have brought about all this legislation.

The closed shop is a denial of basic human rights. It is necessary to hear only one of the many stories of wrongs done to individuals to illustrate the point that the closed shop is contrary to our basic American concept of freedom and protection of the individual right of personal choice.

The closed shop can mean expulsion from a given skilled trade and extended permanent loss of livelihood for an individual who happens to be out of sympathy or out of step with the majority or perhaps just the ruling clique in his union. The argument "Doesn't the closed shop seem justified in order to preserve union solidarity?" overlooks the fact that, both under the Wagner Act and the present law, the union is the exclusive bargaining representative when selected by only a mere majority of those voting in a representation election.

To the question, "Should there be a closed shop?" my answer is "No."

I wish you had expressed your opinion on this important question of the closed shop. I had rather assumed from your comments on question 8, that "No combination should be permitted to crush the individual," your comments on questions 1 and 2, indicating that you disfavor Government control over wages and prices, your comments on question 17 indicating "that combinations of men, whether corporate or union, spell power," and the need for fair regulations of unions as well as of corporations, that you would not favor legalizing the return of this restrictive type of organization.

Your comments on this question, although not stating your position specifically with respect thereto, seem to indicate that you favor the closed shop, with proper regulation, but not the closed union. The papers reported that a witness for one of the oldest and most traditional closed-shop unions in the country, in testifying recently before the Senate Labor Committee indicated how effectively the closed shop is used to affect prices and regulate commerce in the industry in which they work. I judge that if you should favor legalizing the closed shop you would insist on close regulation to prevent the abuses to which it is subject—abuses not only restrictive of the freedom of individuals, but also abuses through restrictions on competition and price. I oppose removing the prohibition on the closed shop for the very reasons, among others, you have seemed to indicate in your comments on other questions. I infer that we probably do not agree as to the answer to this question, although you do not state your views specifically.

The closed shop begins by being wrong in its power over the individual employee and the employer. But that soon fades into insignificance as the power increases over a trade or a community or a city government or an industry.

14. Do you believe it should be unlawful for an employee to be prevented from working by the use of violence, force, or intimidation? ☒ Yes. ☐ No.

I am glad to see that you feel it should be unlawful for an employee to be prevented from working by the use of violence, force, or intimidation. We agree the answer to this question is "Yes."

General Electric has had experience in this area.

In Schenectady, in 1946, salaried workers, not members of the union on strike and not even included in the bargaining unit, were forcibly prevented from going to work by means of picketing and violence, in defiance of a court order which the Schenectady police force said they could not enforce.

It seems to me, on the evidence, that the labor law should contain provisions that will quickly and effectively stop such violence, which has not been a General Electric experience alone. The Allis-Chalmers strike is of too recent and painful memory. In the past, this kind of violence has continued until it has either gained its point or been eradicated by counterviolence or other measures. Invariably, however, the Federal Government's prohibition against it comes at a time when it is only a memory. The labor law should provide the Labor Board with power to take quick and incisive action where warranted.

15. Do you believe foremen and other supervisors could properly perform their management duties of serving the balanced best interests of employees, customers, and owners alike, if bargaining for supervisors by unions should be included in the labor laws? ☐ Yes. ☒ No.

Supervisors are management. If they are unionized their unions are likely—as shown in the congressional hearings conducted a couple of years ago and in the Senate hearings 2 weeks ago—to become associated with, collaborate with, and even be dominated by, unions representing the working force that they are supposed to lead and manage. The spirit and effectiveness of management goes and the foremen are no longer useful to the employees and to others as mangement.

You state that you feel that foremen should not be permitted to belong to the production workers union. I agree. You apparently have some question, without expressing your opinion, as to foremen's unions, provided they are not a part of the production workers' unions. Whatever may be the theoretical attractions of independent foremen's unions with compulsory bargaining powers, I believe that once in such unions, the foremen will then almost surely begin to be brought under the dominance of the much more powerful unions of the people they are supposed to supervise. I feel this question should be answered "No."

16. Do you believe labor laws should protect individual workers in the right to join or not to join a union—to remain or not to remain members—just as they individually wish? ☒ Yes. ☐ No.

First of all, General Electric believes the individual should be protected in his right to join or not join a union. Secondly, he should be protected—if so-called union security clauses are to be permitted—in having at reasonable intervals, the opportunity to implement his decision to remain or not to remain a member. Above all, the individual should be protected against excessive admission or dues requirements or expulsion for any reason other than nonpayment of dues.

I do not believe you answered the questions as to whether or not you feel the law should protect an individual worker's right to join or not to join a union, or to remain, or not to remain, a member, although you indicate you do not agree with the prohibition in the present law against the closed shop with respect to which I have already expressed my views under question 13. You indicate that you do not favor the union shop election provision of the present law. I agree. I certainly commend you upon your decision not to supprt the request made on you by a large union to support compulsory union shop. I believe this freedom to join or not join—remain or not remain—is one of the best ways of insuring a strong union, and strong for good reasons, because of the responsiveness of the officers to the membership. I feel this question should be answered "Yes."

On the question of a compulsory union shop I question whether it is fair to keep a man from earning a living at a particular plant because he disagrees with the majority as to a union. Here again I believe the presence or possibility of free riders is worth all the lack of dues costs the other members, because the union management will be so much more responsive to the membership. Nor do I understand the fear that individual voluntary assignment of dues will not be made by union members. The question seems to assume that unions should be strong at any cost, whether they are good or bad in the opinion of their members. We would assume that a union its members thought good would get its dues by voluntary assignments, while a union its members thought bad would have to mend its ways. My observations lead me to believe members will support their union even when they have considerable doubt as to the probity of what's going on.

17. Should labor laws make clear that both unions and employers can now so affect the public for good or ill that the labor-management relations of both should be regulated equally by law? ☒ Yes. ☐ No.

It is conceivable that several years ago the answer to this question might have been "No." It is an indication of our progress that today most everyone would be likely to answer "Yes."

You state "combinations of men, whether corporate or union, spell power." You also indicate that it is Government's primary duty to protect the citizens from the unwarranted exercise of power from within or without its borders and "that unions as well as corporations should be fairly regulated." Apparently we agree.

18. Should labor laws provide that a striker who has been replaced in the course of an economic strike—not involving any unfair labor practice—be permitted to vote in an election to choose a bargaining agent at the conclusion of the strike? ☐ Yes. ☒ No.

I have understood that the principle involved here originated under the Wagner Act and was contained under the Taft-Hartley Act, namely, that a purely economic striker, once he has been permanently replaced in the absence of any unfair employer practice, is no longer entitled to reinstatement. Hence as a logical result, the present law provides that he is not entitled to vote in an election to determine who shall represent those who are the employees.

You suggest that this rule, developed under present and past laws as indicated, may unduly curtail the right to strike. I can't believe that any such combination of circumstances, as you have assumed in your hypothetical case, could ever result in the possibilities you indicate. Needless to say, an employer should not be—and I am informed under the present law he is not—permitted to take advantage of anything in this provision by inviting a rival union into the plant or by "manipulating the decertification" of a union or by engaging in any other unfair practice to defeat the right of his employees to freely choose their representatives. Those who are more able to weigh all these possibilities discuss your fears more completely in the attached staff report. After weighing what seems to me the practical considerations and the equities involved in this question, I believe the fair answer to be "No."

I think the current reexamination of the present laws regulating the relations of employees, unions, and management with each other in the public interest is an extremely desirable thing. Calm and deliberate reexamination of any law at any time based on factual experience rather than emotional assertions is always a good thing and is always in the public interest. I am particularly in favor of public reexamination of the present law, however, because I think that any intelligent and calm examination of the issues involved will have a tremendously beneficial effect in achieving better understanding by individual members of the public with respect to the elements in that law.

I again wish to emphasize that the purpose in issuing our questionnaire was to encourage people to take a fresh look at some of the issues involved in any revision of our present labor laws.

As I stated before the Senate Committee on Labor and Public Welfare, we believe an objective fresh appraisal of each of the ingredients of the present Labor-Management Relations Act will indicate that, although it is a good law and contains a great many important advances in the public interest which need to be retained there may very well be need for two types of revision:

First of all, careful attention should be given to any specific instances in which the law is claimed to have actually operated unfairly against unions, employees, employers, or the public.

Secondly, careful attention should be given to those instances in which the law needs to be strengthened, in order to prevent certain abuses which still are prevalent and which are not adequately provided for under the present law. The law should provide better protection against violent and coercive mass picketing, for example, against featherbedding practices and especially against restrictive practices such as have been effectuated through the use of secondary boycotts, closed shops, jurisdictional strikes, and the like. We have already testified before the Senate Committee on Labor and Public Welfare as to some of our own direct experiences with such abuses, and we will be glad, at your pleasure, to discuss them further with you.

In closing, I want to say that I was rather interested after rereading your letter several times to note how really closely we apparently were in our thinking on even the specific issues involved, as well as the objectives. I have appreciated the very stimulating letter which you have written, and I am glad that you had it reprinted in the Congressional Record, since any intelligent expression of views should be welcomed by all of us—whether or not we are in full agreement with the views expressed—as an aid to better understanding which in turn is bound to result in a drawing together ultimately of the thinking of all sincere students of these problems.

I shall regard it as a pleasure to see you shortly in our proposed appearance before the House Committee on Education and Labor.

Very truly yours,

C. E. WILSON, *President.*

MEMORANDUM OF L. R. BOULWARE, VICE PRESIDENT IN CHARGE OF EMPLOYEE RELATIONS DIVISION, GENERAL ELECTRIC CO., RELATIVE TO CONGRESSMAN ANDREW JACOBS' LETTER OF FEBRUARY 9, 1949, ON LABOR LEGISLATION

Mr. Wilson has indicated briefly his answer to each of the questions included in our questionnaire, and has added his comments on Mr. Jacobs' views as expressed in his letter. In this memorandum, as Mr. Wilson has indicated, the employee relations staff discusses in somewhat greater detail Mr. Jacobs' comments and questions.

The following comments follow the order set out in Mr. Jacobs' letter, with references to the page numbers of his letter and to the question numbers of our questionnaire, How Would You Revise Our Labor Laws? indicated in each instance.

RIGHT TO STRIKE AND NATIONAL EMERGENCY STRIKES

(Mr. Jacobs' pages 1–2; our questions 1–2)

Mr. Jacobs believes, as we do, that a fair labor law must, in general, preserve the right to strike; further, we are in accord that such a law must contain some substantial measure of protection for the public from strikes which could wholly disrupt the national economy or an important segment of it.

Mr. Jacobs' statement of his views does not make his position clear to us as to the means whereby these objectives are to be achieved. In this most recent and controversial field concerning national emergency strikes, the wisest policy to follow would seem to be that of experience. Experience under the presently existing procedures has been, on the whole, successful. We do not know that any substantial claim has been made that the emergency procedures have been either abused or have been ineffectual. Until experience demonstrates that these procedures have either improperly limited the right to strike or have failed to give the Nation the protection it requires and deserves, we should proceed with caution before discarding them. Consistent with this thought it appears that the provision in the present law providing for submitting the employer's last offer to the vote of the membership adds little, if anything, to the solution of the problem. Experience having demonstrated its lack of value, it might well be discontinued.

Mr. Jacobs is seemingly willing to take action to curb industry-wide strikes. His quotation, however, is not quite clear as to whether he would limit this to instances where the strike occurs in what he is one place terms a "vital" industry. If he is willing to prohibit all "industry-wide strikes" he goes much further than the present law provides. He also seems to be searching for some procedue and some definition which, in advance, could cover all possible strikes which might seriously affect the national economy. It is our opinion that any atempted definition of "vital industry" or "strikes affecting the national economy" phrased in advance, is likely to be either too broad in prohibiting strikes or too narrow in protecting the public. The wisest course would seem to be to provide clear statutory power to seek compulsory delay, as now, for a factual appraisal by competent authority of each critical strike at the time it is threatened, leaving the precise remedy undertermined in the event the threat continues beyond the legal delay period.

In view of the present controversy as to whether or not the President has a right in the absence of statutory authority to delay national paralysis strikes, as a minimum measure in the public interest it would seem necessary that any adequate labor law give the President a clearly defined statutory right to seek any necessary court action to delay national emergency strikes that would otherwise endanger the health and safety of the country. Doubt should be dissipated.

As to his specific questions at the bottom of page 2, the following are our comments:

(1) He asks for proposals for dealing with the case of a threatened strike after expiration of the legal delay period. The only experience we have under legislation providing for a specifically invoked delay period, indicates that only in some rare instance will the threat of a national emergency strike continue beyond this period. Consequently, he has asked a question which would call for an answer based on theory and speculation rather than experience. It is our thought that there is no set formula for dealing with all possible situations which may arise. Until such a formula is suggested by experience, it would seem appropriate to retain the present provisions of the law. Should these provisions in a particular case prove inadequate special legislation could presumably be quickly enacted by Congress, if necessary in special session. By dealing with special situations as they arise we may build up a body of experience from which an over-all policy could be developed. We lack such experience now and, lacking it, any set formula seems to us undesirable. Our experience in this country, and the much more mature experience in England, would indicate that what is needed in important situations is time—time for the facts to be fully and accurately obtained and objectively viewed.

In the light of our own present inadequate experience in this delicate field, any other procedures of which we know runs the danger of improperly limiting the right to strike or of ineffectually protecting the public.

(2) Specifically, compulsory settlement of any dispute should be avoided. Experience may demonstrate in time that in certain very rare instances it may have to be employed. As yet, we do not feel that there is any group of cases where a

policy of compulsory settlement would be justified. We believe compulsory delay is all that is warranted at the moment.

(3) His question as to whether if wages are fixed prices would not also have to be fixed, does more than suggest its answer. We do not dissent from the conclusion implicit in the question.

(4) He asks what other remedies suggest themselves for this problem. Some suggestions have been made that the problem is really one of prevention and lies in the direction of limiting industry-wide bargaining. We do not feel that at this time any conclusive opinions can be formulated concerning this issue; the problem is infinitely complex and one policy may be desirable or, at least, workable as to one industry and wholly undesirable or unworkable as to another: Another suggestion has been made that workers in vital industries should receive special privileges and compensation in return for being denied the right to strike. This seems both undesirable and impractical. It could lead only to a gradual regimentation of all major segments of our economy.

(5) As indicated above, we do not think that the present requirement that the membership vote upon the employer's last offer is important to the present law concerning national emergency disputes. However, the law's failure to require stockholders to vote on the union's last offer does not necessarily indicate lack of objectivity on the part of those who wrote and passed the act. It may well have been that the Members of Congress felt such a provision would be an unnecessary gesture which would make for formal symmetry in the law while disregarding the reality of the situation. Perhaps the same reasoning motivated them in drafting this provision as moved them in requiring non-Communist affidavits from union officers, but not from employers—i. e., based on evidence as to the need in the prior congressional hearings.

MR. JACOBS' HEADING "TWO EXAMPLES OF BIAS IN LEGISLATION ON LABOR DISPUTES"

(Mr. Jacobs, pp. 3–5; our question 18)

Our question asked whether labor laws should "provide that a striker who has been replaced in the course of an economic strike—not involving any unfair labor practice—be permitted to vote in an election to choose a bargaining agent at the conclusion of a strike?"

Mr. Jacobs views this provision as going to the heart of the Taft-Hartley law, and treats it as an example of bias in legislation on labor disputes.

To clarify the basic differences in our and his analysis of this question, perhaps a further question should first be asked: Do you believe that a labor law should provide that an employer may keep in his employ a worker whom he has hired as a permanent replacement during the course of an economic strike even if this means denying reinstatement to a former employee who went on strike?

If this question is answered in the negative, such reply would differ with the unanimous decision of the Supreme Court in the case of *N. L. R. B.* v. *Mackay Radio & Tel. Co.*, 304 U. S. 333 (1938). Not even the original National Labor Relations Board thought that an employer was obliged to discharge permanent replacements to make room for a striker where the strike did not grow out of an employer's unfair labor practice. The Supreme Court, upholding the right of the employer to retain replacements, stated that despite the Wagner Act's preservation of the right to strike, "if does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers."

The question of whether a supplanted striker should or should not be allowed to vote in an election seems to us to involve only an extension and application of the doctrine of the Supreme Court. The reasoning involved in making such extension is that if the man is not entitled to reinstatement as an employee he should not have an opportunity to vote on who will represent employees. The same reasoning is applicable concerning a man who, because of violence, has lost his right to reinstatement. Is it contended that, although barred from reinstatement because of extreme violence on the picket line or destruction of property, the employee should still be permitted to vote for the representative of a unit in which he is no longer a member?

While it seems to us that Mr. Jacobs' objection to section 9 (c) (3) is fundamentally an attack on the Mackay doctrine, we appreciate that the problem is difficult and the rule of the statute may lend itself, at least theoretically, to some isolated case of abuse. He doubtless recognizes that under the Wagner Act the Labor Board had difficulty in resolving precisely how this question should be handled. It originally held that only the striker could vote, and later that both the striker and the replacement were eligible. The latter rule was obviously an unsatisfactory rule which permitted two employees to vote, although only one was an employee.

If one concedes the correctness of the Mackay doctrine, it is difficult to see how one can quarrel with the eligibility-to-vote rule of the statute. The case of Columbia Pictures Corp., 64 N. L. R. B. 490 (1945), illustrates the rather ludicrous results which can be achieved without the rule of the statute. In that case the employer had committed no unfair labor practice, but in a representation election the Board nevertheless directed that the strikers as well as the replacements vote. The replacements all voted for one craft, and the replaced strikers, who were no longer entitled to reinstatement under the doctrine of the Board's decision in the Mackay case, all voted for another craft. The number of strikers exceeded the number of replacements, which led to the absurd result that the union certified did not represent a single man then at work in the bargaining unit. All the men actually working belonged to a rival union. It was to correct this incongruous situation that the clause to which Mr. Jacobs objects was included in section 9 (c) (3) of the present law.

It seems to us, however, that Mr. Jacobs' extensive comments under this question are not so much a criticism of section 9 (c) (3) by itself as they are designed to point out how in a very elaborate, involved, and wholly hypothetical situation, section 9 (c) (3), together with other provisions of the statute, might be used for "busting" a union.

The hypothetical situation he presents contemplates an unsuccessful strike by union A, the replacement of the strikers by the company, decertification of union A without the original strikers voting, and finally invocation of a mandatory injunction to prevent union A from continuing pressure against the company for recognition.

Our first comment is that this hypothetical case does not establish bias in the present law. The congressional hearings do not indicate any intent to promote such a result. If these various sections—which relate to entirely different problems—could be used (and this is doubted) by an unscrupulous employer in the manner Mr. Jacobs suggests, judging from the legislative reports, it very clearly is not the result of deliberate congressional intent. It would simply mean that this unscrupulous employer had succeeded in his intent to evade the law.

From a practical point of view, we believe this hypothetical case most remote and extremely unlikely even in a period of unemployment which Mr. Jacobs apparently believes is necessary for its occurrence. Any employer embarking upon the program Mr. Jacobs describes would be treading a dangerous path, one small slip from which would subject him to an unfair-labor-practice charge. The over-all scheme is of course an unfair-labor practice in itself; it presupposes the nonexistence of a contract with union A and the absence of an election within the previous 12-month period; it supposes that the company could pick and choose applying replacements on the basis of their union sympathies—another unfair-labor practice in itself; it assumes that the company could engineer the petition for decertification—again an unfair-labor practice, since the company quite properly has no right to petition for decertification itself. The Labor Board has often exposed and prohibited more subtle and ingenious schemes to dominate a union or contribute to its assistance.

We quite frankly do not think that any real danger, of the kind Mr. Jacobs suggests, exists. If we felt that any substantial possibility existed that such practices could be carried out, we would agree that the result is unfair and should be corrected. However, this analysis of Mr. Jacobs is not new; it seems quite similar to analyses made by some unions shortly after passage of the law. If there were any evidence that such maneuvers can and have been carried out by employers, we assume he would have referred to them rather than restating the problem in its original and hypothetical form.

In passing, we might observe that we did not realize until we actually got a copy of the Business Week article, from which Mr. Jacobs quotes, that this highly hypothetical case he presents was reported by that magazine under the heading "The union contention."

The same article from which Mr. Jacobs quotes rather aptly points out that patently the law did not enslave wage earners nor did it do many of the other things which labor charged. It goes on to say that:

"In order to arouse the members, the unions had to put their case in a way which made little sense to business or to anyone else."

We cannot help but take exception to Mr. Jacobs' comment, "Company A employs replacements, or strikebreakers; term depending upon one's bias." We believe with the Supreme Court and the original Labor Board that there is both a realistic and a legal difference in the terms, and that this distinction does not depend upon bias. A Federal statute, commonly referred to as prohibiting the transportation of strikebreakers in interstate commerce, limits its definition to those who are employed for the purpose of obstructing or interfering by force or threats with picketing or other collective-bargaining rights (52 Stat. 1242).

Those who subscribe to the theory that all replacements during a strike are strikebreakers and that no replacement is entitled to keep a job in preference to a striker would seem to encourage economic strikes. Without the possibility that other workers might find the employers' terms acceptable, one of the deterrents of frequent and prolonged strikes would be removed. This would make it practically impossible for a labor union ever to lose an economic strike, pretty much regardless of its merits, so long as union internal discipline remained firm.

One further word apropos strikebreakers. It is common knowledge that many large unions enforce internal discipline during a strike of questionable merit through the importation of professional goon squads. It would be interesting to know whether Mr. Jacobs would favor a Federal law prohibiting the transportation in interstate commerce of professionals whose purpose it is to interfere by force and threats with the right of the individual to refrain from participating in collective-bargaining activities. Since in his fifth specific question he seems to believe objectivity requires imposition of correlative restraints on companies and unions, possibly he would advocate either repeal of the present transportation-of-strikebreakers statute or endorse an equivalent prohibition upon the transportation of professional goon squads.

Concerning the remainder of his comments under this question, it appears that he reaches his conclusion of statutory unfairness by integrating the exclusive right of a replacement to vote in an election with (1) the right of a group of employees (30 percent of the unit) to petition for decertification of their representative; and (2) the prohibition upon a union to attempt to compel an employer to recognize it when another union has been certified as the appropriate bargaining unit.[1]

(1) From the context of his other remarks, we gather that he is not opposed to the right of employees to petition the Labor Board for decertification of a union representative with which they are dissatisfied. This would seem to be one of the least expensive remedies available for members to escape from at least the continuation of the abuses which he, in the latter part of his letter indicates, he is fighting to correct. In his desire to protect against such abuses, for which we heartily congratulate him, we suggest that continuation of the present decertification procedures offers a means for avoiding further abuse; supplemented by whatever legislation he is able to secure to make more expeditious the correction of past faults, the employees would have for the first time a measure of full protection from any unscrupulous leaders.

(2) Forgetting his hypothetical case, we find it hard to believe that he opposes the provisions of section 8 (b) (4) (C) in principle and unconnected with his supposititious case. That section merely states that where an employer, pursuant to a Labor Board determination, is recognizing and dealing with one union, it is an unfair labor practice for a second union, through a strike, to try to compel him to recognize it in clear violation of the directive of the Labor Board. The obviously impossible situation in which an employer would find himself in such cases, we think, is self-evident. On one hand, he faces violation of a Board order if he recognizes the striking union; on the other, he faces gradual destruction of his business if he doesn't violate that order. Does Mr. Jacobs believe it fair that an employer be without relief in such a case? Does Mr. Jacobs further believe that the right to picket exists even though its express purpose is to compel a violation of law?

In his analysis under this section, it is our opinion that he has at least slightly misstated the effect of the present law. Commenting on the effect of certifying the strikebreakers' union, he states, "Thus a condition is created whereby the old union and its members commit an unfair labor practice if they even try peaceably to induce the strikebreakers to join them to hold up the wage scale." In our opinion, this is not true. All that section 8 (b) (4) (C) prohibits is pressure upon the employer through a strike, or through inducing employees to strike, for the purpose of forcing the employer to recognize a different union in the face of a contrary Labor Board determination. In our opinion, the original union remains wholly free to post and keep a picket line in front of the premises for the very purpose Mr. Jacobs says it cannot. Such pickets could, without violating 8 (b) (4) (C), carry signs reading, "We call upon you strikebreakers to hold up the union-wage scale!" or, "To the public: This stores does not pay the union wage scale. Please don't patronize."

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[1] We feel quite sure it was an oversight on his part which caused him to state that sec. 8 (b) (4) (B) as well as 8 (b) (4) (C) made a strike by union A (the replaced employees) an unfair labor practice, under the facts as he gave them. He undoubtedly knows that subsec. B applies to situations where a strike is called against one employer with the objective that through him pressure may be brought upon a second employer (any other employer) to secure recognition of an uncertified labor union. Subsec. (B) would come into play only if Mr. Jacobs' hypothetical union A struck an employer for whom A was still recognized in order to put pressure on his hypothetical company to recognize A in the face of a contrary Board certification. Since we are sure this is an oversight, our comments are limited to the two pertinent sections he cites.

To summarize Mr. Jacobs' analysis, and at the same time answer his third question, (*a*) we believe that the basic doctrine of the Mackay Radio case is fair and therefore find difficulty in finding fault with the provisions of 9 (c) (3) alone; (*b*) we believe a fair labor law should provide a group of employees, who are dissatisfied with their collective-bargaining representative, an opportunity to have the Labor Board hold an election to determine whether that representative should be decertified; (*c*) we believe it only fair that an employer who is dealing with a union certified by the Labor Board should be protected from economic pressure which might be exerted by another union to compel him to violate that certification.

Thus each pertinent section, cited in Mr. Jacobs' analysis, affords what we consider fair legal rules governing the major and specific problem at which it was directed. It is only by grouping all these provisions together, in a highly supposititious case, which has not as yet been demonstrated actually to constitute a real problem, that he is able to arrive at his conclusion of unfairness. Even if his supposititious case were sometime found to exist, the legislative problem presented would be to remedy that technical loophole previously uncontemplated, while still providing fair rules for the regular run of individual situations above discussed.

FEATHERBEDDING

(Mr. Jacobs, pp. 5–6; our question 12)

Mr. Jacobs states that, although he opposes featherbedding, he also opposes a law forbidding it. Yet the only reason he gives for refraining from legislating his conviction is what we assume he intends as an analogy when he states, "I oppose whisky, but I don't favor prohibition. We tried it." Quite frankly, we do not see the analogy. The notable failure of legislation concerning prohibition can scarcely serve as an argument against all future remedial legislation. Prohibition failed for many reasons, among them being the fact that it attempted to legislate personal and private morals and habits. We do not believe that the practice of demanding and receiving pay for services not rendered has as yet become a widespread personal and moral habit of American workers. However, the fact that some workers and unions can, and do, with impunity, engage in featherbedding, may, of course, make it grow to a much more respected custom than it now is. From this point of view, the absence of corrective legislation is, in the long run, demoralizing to the country as a whole.

If Mr. Jacobs were to legislate against featherbedding, he states that he would favor similar restrictions on business. His illustrations of what he considers featherbedding by business are, quite frankly, puzzling. He apparently thinks that because the corporation in which he is a stockholder declined to sell him a radio at factory price on the ground that its dealer were entitled to a profit margin on which to operate their business, this was a case of featherbedding. Had the company sold to him directly, but insisted on all or part of the dealer's margin with no assumption by the company of the dealer's delivery, installation, demonstration, and service responsibility, we might have agreed with him. His corporation was merely protecting its dealers, without whose services the customers could not be served and the company could not function. We do not think Mr. Jacobs would seriously advocate that his corporation sell radios directly from factory to all who wrote to it direct, and on second thought he should most likely feel the same way about stockholders.

We scarcely suppose he means to suggest that all wholesalers, distributors, dealers, and retailers should be put out of business on the theory that they are exacting money for services not performed or to be performed. We would hate to think that, out of all the business people in Indianapolis engaged in distributing and retailing commerce, none of them perform any functions but instead are making exactions for nothing.

Mr. Jacobs is familiar, no duobt, with the price antidiscrimination prohibitions of the Robinson-Patman Act. We assume he does not believe, just because he is a stockholder in the television-manufacturing company he refers to, that that entitled him to a discriminatory price advanage. General Electric has frequently held stock in various companies but has never supposed that that entitled it to discriminatory price advantages.

We suppose that there are many cases where products have been marked down, as in the case of his radio-phonograph, even at substantial loss to manufacturers or other concerns in order to turn inventories into needed cash, liquidate models superseded by those with new improvements, and free the channels of distribution. It does not seem realistic to us to regard this as any evidence that the vendor had previously at the higher regular price been exacting something for nothing. Specifically, we do not regard any of the illustrations he mentions as in any wise in the nature of exacting pay for nothing. In each of the cases he states, you recognize that something was delivered, while the unfair labor practice covered by section 8 (b) (6) is limited to where such exactions are made for services not performed or to be performed.

We know of no practices in legitimate business where people are compelled to make payments in the nature of exaction for service (or products) which are not performed or not to be performed or delivered. That is all that section 8 (b) (6) of the present law even purports to cover.

As a matter of fact, the present legislation has been practically of no effect in limiting the most offensive kinds of featherbedding.

The general counsel for the National Labor Relations Board has indicated that section 8 (b) (6) will be narrowly construed by his office as applicable only to efforts to extort money for which no services are performed, and not to situations in which a union proffers services for the payment, although the employer may not want or need them. In an address before the American Bar Association, he declared,

"The term 'featherbedding', as it seems to be used throughout the industry, is much broader than the provisions of this section of the act. I have heard it applied in cases where the union rules required an employer to hire six men to do a job that two could do; or to provide 'made' work which normally would be performed incident to general operations; or to the union's requirements for call-in pay; and some have even applied it to paid holidays.

"But, within the purview of this section as it is written, the term has a decidedly narrow limitation. Stand-by crews, for example, who simply are present and do nothing, come within the prescriptions of his section; and it makes no difference whether they are sheet-metal workers hired to stand by while an ironworker does a job because of a jurisdictional dispute or musicians who are held in the anteroom of a radio station while the disc jockey is turning platters in the control room. The gist of this section is that the payment is made for services 'which are not performed or not to be performed'.

"Thus, when the teamsters halted trucks at the mouth of the Holland Tunnel and required the driver to put a member of the teamsters union on the seat in order to qualify to deliver the load in New York City and to pay him a full day's wages for taking the ride, I don't doubt that the owner of the truck called it featherbedding, but I have great doubt that it could ever be brought within the terms of this section of the statute.

"On the other hand, if the driver accepted the option which often was tendered to him of paying the money but waiving the privilege of having his helper ride with him, we have a situation where there were no services performed or to be performed, and probably a violation."

We have had considerable experience with the types of feather-bedding practice which are not presently covered by the law, unless coupled with an illegal secondary boycott. Here is just one example which occurred right here in Washington last year:

During 1948, the medical clinic of Drs. Groover, Christie, and Merritt, radiologists, purchased X-ray equipment for installation in their new additional quarters in the Columbia Medical Building Annex, Washington, D. C.

This equipment was purchased by them for a price which included installation. Other building renovations were being made at the time installation of the X-ray equipment was going on, and the union threatened to boycott and strike the entire job unless permitted to do the work of also installing the X-ray equipment. Because of pressure exerted on the company by the customer, to avoid a serious delay in installation, and a boycott of the entire renovation job and their willingness to assume the extra cost, the job was done by the union.

This procedure cost the purchasers approximately $4,000 more than they had contracted to pay. It was agreed in the purchase contract that, in the event the manufacturer's personnel was not allowed to make the installation, the purchasers would defray the costs of hiring outside labor.

We will be happy to furnish Mr. Jacobs with details of numerous similar experiences which we have had.

As to Mr. Jacobs' concluding specific questions:

(1) As indicated above, we do not believe that his illustrations are in the nature of getting pay for nothing.

(2) To answer his question concerning Government fixing of prices in case of "unconscionable profits" made by a well-established business, would take us far afield from our subject. We know of no generally accepted understanding of the term. Competition, over a period of time, will tend to eliminate anything that could be deemed "unconscionable profits." Generally we think most Americans would dislike the revolutionary change in our accepted ways of thinking involved in price fixing just as they would dislike governmental fixing of wages under the claim that wage demands had become "unconscionable."

(3) We definitely believe the problem of "feather-bedding" is capable of being regulated in a free economy. In fact a free competitive economy would seem to require that it be regulated. The numerous references to "fair profit," "unconscionable profits," and "unwarranted profits" suggests that he has con-considerable distrust in the workings of a free, competitive economy for establishing a "fair price." If so, of course we unequivocally differ with him.

SECONDARY BOYCOTTS AND JURISDICTIONAL STRIKES

(Mr. Jacobs, pp. 6–9; our questions 3 and 4)

Apparently Mr. Jacobs, and everyone else including the President, agree that jurisdictional strikes are bad and should be prohibited. President Truman stated in his State of the Union message in 1947 that:

"Point No. 1 is the early enactment of legislation to prevent certain unjustifiable practices.

"First, under the point, are jurisdictional strikes. In such strikes, the public and the employer are innocent bystanders who are injured by a collision between rival unions. This type of dispute hurts production, industry, and the public—and labor itself. I consider jurisdictional strikes indefensible.

"The National Labor Relations Act provides procedures for determining which union represents the employees of a particular employer. In some jurisdictional disputes, however, minority unions strike to compel employers to deal with them despite a legal duty to bargain with the majority union. Strikes to compel an employer to violate the law are inexcusable. Legislation to prevent such strikes is clearly desirable.

"Another form of interunion disagreement is the jurisdictional strike involving the question of which labor union is entitled to perform a particular task. When rival unions are unable to settle such disputes themselves, provision must be made for peaceful and binding determination of the issues.

"A second unjustifiable practice is the secondary boycot, when used to further jurisdictional disputes or to compel employers to violate the National Labor Relations Act."

It seems to us that the President was eminently correct.

The provisions contained in the present law for the selection of bargaining representatives by election of the employees in the appropriate bargaining unit seem to us to provide just what Mr. Jacobs is suggesting as to the handling of jurisdictional disputes involving permanent employees. Such election becomes a futile gesture if the labor organizations involved are not given a compelling reason for abiding by the result and the Board's ensuing certification.

While Mr. Jacobs unequivocally condemns jurisdictional strikes in plants employing permanent employees, he quite rightly points out that the jurisdictional dispute in a craft industry where employment by a particular employer is intermittent, is infinitely more complex. The fact that it is more complex makes regulation more difficult, but does not excuse its absence.

The President apparently stated that "all jurisdictional strikes are indefensible" and that "strikes to compel an employer to violate the law are inexcusable" and should be prevented. However, in his veto message he indicated his disapproval of the current provisions on jurisdictional strikes on the ground that they would encourage unions to strike or boycott to obtain Board determination of the jurisdictional dispute.

In the building-trades industry where the problems you raise are most acute, the Building and Construction Trades Department of the A. F. of L. and the Associated General Contractors of America have entered into an agreement providing for a joint board to determine jurisdictional disputes in the very type of case which has been generally the most plaguing and difficult because of the intermittent nature of the employment. This we feel is a very healthy step forward. Since jurisdictional disputes arise from internal union policies, it would seem to be the primary responsibility of unions to settle such disputes. To the extent present law has provided an impetus toward establishing machinery for settling these disputes, we believe those provisions have justified themselves.

As of the latest report, we know of, the joint board had received some 40 such jurisdictional disputes and disposed of approximately half of them. We believe the union, employers and joint board are certainly to be congratulated upon establishing this procedure which is certainly in the right direction. Nothing in any way comparable had been developed during the 12 years between the passage of the Wagner Act and the present law.

We recently had a situation of a jurisdictional strike which is of interest, not only because of the rather typical problem it presented to our company as the employer, the United States Navy, for whom we were to develop a 300,000,000-volt synchrotron in the laboratory when completed, as well as numerous other projects under Government contract, and the public interest in general, but because of this illustration of the effectiveness of the provisions of the present law in dealing with such a situation.

We had contracted with a construction company to build this laboratory when a jurisdictional dispute arose between the IBEW-AFL and the Empire State Telephone Union, as to which union was to install the telephone cables. The IBEW threatened to strike the electrical subcontractor unless the telephone company permitted IBEW men to install the cables, rather than the telephone company's own employees who belonged to the Empire State Telephone Union. The telephone union employees took the position that they would not connect the telephones if the IBEW men installed the cables. Our company, as the innocent bystander, urged the respective employers and union representatives to come to some settlement between themselves on the problem. Finally, after the dispute has continued from February until August, the telephone company started to install the cables and 46 IBEW men walked off the job. On the following day we filed, with the NLRB, an unfair labor practice complaint against the IBEW for calling this jurisdictional strike. Two days later the Board examiner arived at the scene to conduct his investigation and on that very day the IBEW international vice president came to us expressing his dismay and surprise that we had filed an unfair labor practice charge and offering to call off the strike if we would withdraw the charge. We reminded him of the prior statement of an IBEW representative that he was very surprised to learn that the men had walked off and that we knew nothing about it whatever, and that certainly it was no action of the union. We then inquired as to his ability to recall the men in the light of his statement and he assured us that he could, and would, do so. In view of the rather highly specialized work involved and the familiarity of the men who had been on the job with the work, we were anxious to get back the same men who had been on the job, although the IBEW representative had indicated that after each of them had voluntarily quit without the knowledge of or influence of any kind by the union, they had all accepted other positions. When we indicated we would consider withdrawing the charge when the men returned to work, the IBEW international vice president assured us he would have them all back the following morning. In view of the charges that we sometimes hear that the Taft-Hartley law has "enslaved" laboring men and that the closed shop and other compulsory union practices are essential to guarantee them their freedoms, the union representative's reply is noteworthy. He said that he could assure us that they would all be back on the jobs even though they would have to quit other employment which they had accepted and in explaining how he could be sure of that he explained that they never could obtain another job in his area, which he went on to say included New York, New Jersey, Pennsylvania, and some other States, unless they did what he told them to do.

In conclusion, on jurisdictional strikes we agree with Mr. Jacobs that the problem in the crafts is complex, and therefore speedy, effective remedies must be devised. We believe unions and employers concerned can and will work this remedy out provided there is some legal compulsion requiring the unions to settle their internal difficulties promptly. The employer is already under the financial compulsion of trying to get the job done to make him amenable, but should any compulsion toward his effecting settlement be found necessary that too, should be provided.

To us it seems that the proposed law loses the gains made by the present law. It removes the incentive for settling the dispute without going to the Board. It would seem to do just exactly what the President in his veto message feared the present law would do, namely, prolong the dispute until such time as the Board had made a determination.

Turning to Mr. Jacobs' comments on the secondary boycott, we are apparently in full agreement that a second employer, not involved in the primary dispute should be protected, and that action against him should be made an unfair labor practice.

Mr. Jacobs also states that where employer B takes over the work usually done by employer A, whose employees are on strike, present law prohibits employees of B from refusing to perform the struck work and he asks if this is fair.

If this were the law we would agree with Mr. Jacobs that it is not fair. However, he apparently has overlooked the case of *Douds* v. *Metropolitan Architects* (21 L. R. R. M. 2256), decided by the District Court for the Southern District of New York which held that action by a union against the second employer in such case was not a secondary boycott and was not prohibited by the boycott provisions of the present law. In other words, the court treated the second employer in such case as involved in the primary dispute, and disregarded form to look at the substance of the matter. Thus we believe Mr. Jacobs' fears as to such unfair results will be avoided by sound judicial and administrative construction.

Any realistic consideration of secondary boycotts must include recognition of the manner in which they are used to force "featherbedding" practices and also of the manner in which they often are used to create a monoply.

There seems to be no justification for labor unions to be permitted through their economic power to issue their injunctions against the distribution of products which may lawfully be distributed for the benefit of the buyer. It is one thing to maintain a primary boycott whereby the public is asked not to purchase boycotted articles, but it is quite a different thing to enter into combination blocking the channels of commerce, so that the public is denied the right to express itself through its purchasing power.

The administration bill (H. R. 2032) now before the House Labor Committee permits monopoly boycotts such as were the subject of litigation in *Allen Bradley* v. *Local Union No. 3* (325 U. S. 797). The defendants in that case pursued the policy of excluding from New York City enumerated electrical products made outside the city, regardless of whether they were made by union or nonunion, CIO or AFL, or independent unions, the purpose being to build a protective wall around the city of New York and deny the citizens the benefits of interstate commerce in order that local electrical workers might thus monopolize the market and increase their work opportunities. The defendants admitted they were not concerning with the working conditions or union affiliations of the men who produced the poacher products. The New York market was their private preserve. Obviously monopolistic and exclusionary practices of this kind should not be tolerated. No responsible labor leader has publicly undertaken to defend such practice, and we see no reason why Congress should encourage their resumption by adopting the administartion bill without amendment.

Certainly boycotts have diminished materially and jurisdictional disputes have all but disappeared under the provision of the present law without any evidence of impairing the rightful interests and power of labor.

Since Mr. Jacobs has voiced no other objection to the secondary-boycott provisions of the present law and has condemned such boycotts when the second employer does not participate in the primary dispute, we assume that he agrees with us that the present provisions of the law are more desirable than those now proposed by way of modification.

FREE SPEECH

(Mr. Jacobs, pp. 9–11; our question 7)

Mr. Jacobs' answer indicates that he has no objection to Federal labor laws giving to both labor and management freedom to express their own points of view on employee-relations problems, as he asserts that "no law, including the

Wagner Act, ever denied the employer free speech." Until 1943, however, when the NLRB changed its policy, the Wagner Act was construed as forbidding employers to say anything at all that might influence employees against unions. In fact, even the most moderate argument, accompanied by assurances that no discriminatory treatment would be meted out to employees who disagreed, was deemed an unfair labor practice per se for many years.

While there was an admonition in a Supreme Court decision, *N. L. R. B.* v. *Virginia Electric and Power Co.* (314 U. S. 469 (1941)), that an employer's right to speak to his employees was protected by the Constitution, the Court still left to the Board discretion to find other facts in the case which would justify a holding that the employer's argument was coercive. It was not until 2 years later when the Supreme Court refused to review a reversal of a Board order in *N. L. R. B.* v. *American Tube Bending Co.* (134 F. (2d) 993 (CCA 2); cert. den. 320 U. S. 768 (1943)) that the Board abandoned this construction of the act. Moreover, the Board sought to narrow the effect of these judicial pronouncements by holding that if an employer had been guilty of an unfair labor practice at some time or other, no matter how remote this act was or how severable from the speech, he was not entitled to express his views. *Monumental Life Insurance Co.* (69 N. L. R. B. 247).

Shortly thereafter the Board placed a further limitation upon employer utterances with respect to union representation by declaring that any speech made in a factory during working time to which employees were compelled to listen was illegal per se. *Clark Bros. Inc.* (70 N. L. R. B. 802).

Moreover, even after the enactment of the Taft-Hartley Act, the Board has still closely limited the right of free speech to the specific provisions of section 8 (c) which applies only to unfair labor practice cases. In the *General Shoe* case (77 N. L. R. B. No. 18), the Board set aside a representation, not because the employer's statements were threatening or coercive but because they were of a character which the Board thought might destroy the "laboratoy conditions" which it felt should prevail in its elections. The reason of the Board majority was that section 8 (c) applied only to complaint cases and, therefore, the Board was free to adopt its own policy rule in representation cases. Yet the Board has placed virtually no curbs on what union organizers could say in preelection campaigns. See *Corn Products Refining Co.* (58 N. L. R. B. 1441).

In the light of these decisions, we wonder if Mr. Jacobs is still of the opinion that it is unnecessary to include in the National Labor Relations Act any provision permitting both sides to express arguments on labor matters as long as they refrain from threats or promises of benefits?

Mr. Jacobs suggests that what many misinformed people have called denial of free speech under the Wagner Act was simply the application of the law of evidence. The record seems to clearly demonstrate, however, especially as to early cases under the Wagner Act, that in fact what occurred was the misapplication of the law of evidence, which the Taft-Hartley Act attempted to correct. Thus in the conference report it was stated:

"Both the House bill and the Senate amendment contained provisions designed to protect the right of both employers and labor organizations to free speech. The conference agreement adopts the provisions of the House bill in this respect with one change derived from the Senate amendment. It is provided that expressing any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, is not to constitute or be evidence of an unfair labor practice if such expression contains no threat of force or reprisal or promise of benefit. The practice which the Board has had in the past of using speeches and publications of employers concerning labor organizations and collective-bargaining arrangements as evidence, no matter how irrelevant or immaterial, that some later act of the employer had an illegal purpose gave rise to the necessity for this change in the law. The purpose is to protect the right of free speech when what the employer says or writes is not of a threatening nature or does not promise a prohibited favorable discrimination" (conference report, H. Rept., 510, 80th Cong., p. 45).

There appears to be confusion in the minds of some, as Mr. Jacobs correctly suggests, as to whether or not under the present free-speech clause a statement, indicative of other unfair behavior, such as discrimination, may not be used in evidence because on its face it does not contain a threat of reprisal or a promise of benefit (see interesting comment on trial examiner's opinion in Minnesota Mining case, contained in the Daily Labor Report for October 13, 1948, p. A-3). While there has been no well-defined precedent on this issue, we agree that if it is not clear whether the present provision has the effect of excluding evidence which should have probative value, some clarification of that part of section 8 (c) which gives rise to the confusion should be considered. (Section 8 (c) provides that the expressing of any views, arguments, or opinion shall not "be evidence of an unfair labor practice" but also shall not "constitute" an unfair labor practice as long as they do not contain threats or promises of benefits. Apparently there is agreement that such expressions should not "constitute" an unfair labor practice, and the only question raised is as to the application of the provision relating to evidence.) However, any clarification should be made with extreme care in order to guard against a return to the unfair and unsatisfactory rulings under the Wagner Act.

Attention is directed, however, to the fact that the Board itself has not placed such an extreme construction upon this subsection as the trial examiner's dictum in the Greensboro Coca-Cola case from whose report Mr. Jacobs quotes. The Board has emphasized that it is only expression of arguments generally which are privileged under this subsection. Consequently, it has held that employers may not invoke this subsection to justify interrogations of individual employees with respect to their union membership. The Board has also decided that advising or instructing employees to take an illegal course of action is not privileged, even though such instructions or advice are not accompanied by express threats.

The NLRB general cóunsel is an unofficial ruling (CCH Labor Law Reporter 5415) has instructed Board attorneys to ask trial examiners to admit in evidence all statements alleged to constitute or to be evidence of an unfair labor practice, without ruling on whether or not the statements are coercive, leaving that question to be determined by the Board.

CLOSED SHOP

(Mr. Jacobs, pp. 11–13 ; our question 13)

Mr. Jacobs is correct in stating that the Wagner Act did not require an employer to grant a closed shop. Nevertheless, because the provisions of that act were frequently invoked to cover boycotts and other forms of concerted activity for the purpose of forcing an employer to agree to a closed shop, it is not accurate to imply that closed-shop contracts in many industries were not the results of a great amount of economic pressure. He also points out that even though the Taft-Hartley Act forbids closed-shop agreements, a great many employers have voluntarily entered into them despite the act.

The whole problem of closed-shop contracts presents a much larger issue than the question of whether or not employers like or dislike such contracts. The legislative history of the Taft-Hartley Act shows that the restrictions on compulsory union membership contracts were not enacted to help employers, but to protect the individuals who comprise the working force of our country. The Senate committee report (S. Rept. No. 105, 80th Cong., 1st sess.) pointed out that in many industries the closed shop "which requires preexisting union membership as a condition of obtaining employment creates too great a barrier to free employment to be longer tolerated (and) * * * permits unions holding such monopolies over jobs to exact excessive fees." The committee referred to numerous examples of how "union leaders have used closed-shop devices as a method of depriving employees of their jobs and in some cases a means of securing a livelihood in their trade or calling for purely capricious reasons." The report also cites "examples of equally glaring disregard for the rights of minority members of unions."

In view of the efforts and experience which Mr. Jacobs describes in his letter in helping to assert the rights of individuals who have been expelled from unions for demanding to look at the books, or for other reasons, he is probably familiar with a survey entitled "Democracy in Trade Unions" prepared by the American Civil Liberties Union and published in November 1943. The following are a few typical statements from such survey:

"A member of the Musicians Union, Local 802, New York, charged that the 1936 election of officers was fraudulent and urged a new election under impartial auspices. He was brought up before the trial board and expelled from the union. When he sued for reinstatement, a New York court ruled in 1941 in his favor because the trial board which had expelled him contained union officers involved in his accusation (p. 22).

"In a local bill poster's union, a member was opposed to handing over part of his wages to certain union officials. He was expelled for bringing court action to recover these kick-backs. He went to court again and sued for reinstatement as a member of the union. The court ruled in his favor. It held that the grounds on which he had been expelled were invalid; the technical charge was that appealing to the courts to recover kick-backs was a violation of the union's constitutional provision forbidding a member to conduct any union business outside of meeting or executive board rooms (p. 22).

"Another case involved a New Jersey teamster who had been a driver for 19 years. He fought for improvements in working conditions. Despite vigorous opposition by the union administration, he was elected shop chairman for his 'barn.'" Two union members then charged him with making derogatory remarks about the local president and vice president. On this charge he was expelled. He sued for reinstatement and the court found that no charges were served and no hearings were held. Nevertheless, the complaint was dismissed because the worker had failed to exhaust all remedies available to him (p. 22).

"In another case the president of the painters and varnish workers union, AFL, charged a member with seeking to remove him from office. Thereupon the executive board expelled the member from the union." At the time the report of the American Civil Liberties Union was issued, court action in this case was pending (p. 23).

"Another instance of the extremes to which union leaders may go in combating opposition is the way Maj. George Berry handled the New York printing pressmen's strike in 1923. This local struck without the international's sanction and in violation of an arbitration clause. Berry thereupon revoked the local's charter, suspended the entire membership and telegraphed pressmen's locals throughout the country to send men to New York to take their jobs. Despite strong opposition, Berry retained power and won acceptance of his policies.

"In another case, bitter conflict broke out between two locals of the furniture workers union. In support of the group favorable to its interests, the administration of the international suspended the opposition local, deprived it of its charter and records without notice and transferred its assets to the rival organization. The suspended group tried to appeal from the acts of the international, but the union's appellate tribunal ignored its communication. On these grounds, a court ruled that the suspended local be reinstated and its assets returned" (p. 25).

Mr. Jacobs may recall one of the striking illustrations Mr. J. Mack Swigert gave in his article "The Taft-Hartley Law: Does It Really Hurt Labor?" (Saturday Evening Post, October 25, 1947.)

"On October 30, 1940, E. C. Pfoh, who was past president of Lodge No. 132, Brotherhood of Railroad Trainmen, sent a circular letter to fellow members of his union endorsing Wendell Willkie for President of the United States. The top brass of the brotherhood was supporting Franklin D. Roosevelt. The letter was a technical violation of a rule in the union constitution that all circular letters signed by members must first be submitted to International President A. F. Whitney for censorship. Mr. Pfoh's local was directed by President Whitney to 'see that charges are promptly filed against Brother Pfoh and the constitution enforced against him for the violation of his obligation and our law.' The local tried Mr. Pfoh and acquitted him. Mr. Whitney appealed the acquittal and the board of directors of the union ordered the local to retry Brother Pfoh. The local dutifully tried him again and acquitted him again. Mr. Whitney filed a new appeal, which the board also sustained. This time the board went further. It kicked Brother Pfoh out of the union. Under a closed-shop contract, this would have cost Pfoh his job. Fortunately for Pfoh, this could not be done in his case, because the Railway Labor Act, in effect for many years, does not permit compulsory union membership. The union could not lawfully deprive Pfoh of his job for exercising his constitutional right of freedom of speech during an election campaign. Similarly, under the Taft-Hartley law a worker in industry can be expelled by his union for any reason it considers sufficient, but if nonpayment of dues is not the issue the workers' job is safe and he can continue to support his family by following the trade he has learned through years of experience."

We understand that the administration bill now before the House Labor Committee not only wipes out any prohibition against the closed shop but is intended to override all State laws which in any way prohibit or qualify the closed shop. Moreover this overriding of State statutes permits agreements not only requiring the payment of union dues as a condition of employment, but permits deductions from wages and salaries for the purpose of meeting all "membership obligations" which may be construed to include deductions of an amount to cover fines and penalties imposed by the union.

In this connection attention is invited to information published in the Journal of the United Mine Workers of America in 1922, listing disciplinary actions taken against union members in their closed-shop industry, which in the aggregate show that within a period of 16 weeks 1,236 members were expelled for varying periods totaling 66,784 years and fined a total of $171,852.

The Boilermakers, Iron, Shipbuilders, and Helpers Union published a record or four or five hundred expulsions and fines for the period of about a year. Fines ranged from $5 up to $9,999.99. Expulsions ranged from 1 to 99 years.

According to the statement of Mr. Samuel Gompers, expulsion from a union in an organized trade was equivalent to "capital punishment." Even men who come out of prison after the commission of offenses against society are supposed to be allowed again to work at their trade, but extreme disciplinary action by the union, as above set forth, if carried out, bars men from their trade for their lifetime.

We believe that Mr. Jacobs does not meet the real issue when he suggests that "employers who favor these restrictions in the Taft-Hartley Act are trying to enlist Government aid in securing favorable provisions in bargaining contracts." Even if it is assumed that the employer incidentally benefits from the prohibition of the closed shop, the real issue is not that but whether the individual worker and the community should be exposed to the abuses peculiar to the closed shop? If the law forbids—as it rightfully does—an employer to bargain for a "yellow dog" clause under which no employee is free to join any union, why should not a clause providing that a prospective employee must become a member of a particular union in order to be employed be equally repugnant to public policy?

Mr. Jacobs' argument in favor of the closed shop is based upon the assumption that unless such an agreement is in effect labor cannot present a united front at the bargaining table. That, of course, is the historic defense of the closed shop. It might have possessed some validity before the passage of the Wagner Act. Once legislation was enacted, however, which protected a union applicant or union employee from discrimination and which made the labor organization selected by the majority of employees the exclusive representative for collective bargaining purposes, the need for a closed shop vanished. In passing the Railway Labor Act of 1926 Congress perceived this. Consequently, that act specifically prohibits all forms of compulsory membership agreements.

We wonder if Mr. Jacobs believes that all or any of the railway labor organizations have been unable to present a united front to the carriers at the bargaining table?

Mr. Jacobs also says "Now let's take a very practical aspect of the question," towit: "When your company bargains with your employees it is not weakened by any fractional stockholders group at the bargaining table. You, the management, present a solid front. It is natural that the union should seek like unity."

His underlying assumption that a union which does not have a closed shop is divided at the bargaining table seems entirely erroneous. Under the provisions of section 9 (a) of the present law (and of the Wagner Act) an employer must deal exclusively with the union designated by the majority of the employees in any given bargaining unit. Thus in a plant in which, let us say, the United Electrical Workers, CIO, has been certified as the sole bargaining agent, the management of our company can bargain only with that union on matters affecting the employees in that unit. Yet some of the employees in that plant belong to other CIO unions, some to AFL unions. There are others who do not belong to any. Doubtless many of these employees may not agree with the policies of the majority bargaining representative, just as some minority stockholders may occasionally disagree with the policies of our management. Yet as long as the certified union represents 51 percent of the employees, we must assume that it is speaking for them all, for we are forbidden by law to deal with any of the minority unions. In short, the absence of a closed shop confers no right on the part of the dissidents to be represented at the bargaining table.

It seems to us that closed shop—and especially the closed union which Mr. Jacobs opposes—is an antisocial institution which labor unions can no longer socially or ethically justify. Collective bargaining has been assured by governmental laws which have encouraged the growth of unions, made them secure, and given them recognized status as administrators of collective-bargaining agreements. Having obtained this legal status, unions need no longer rely on the closed shop for their conttinued existence. What may have been necessary in the early days of organization is now the mens of acquiring an economic monopoly with respect to job markets and job availbility. For the unions to assert, as some have, that they have a right to limit the number of members whom they take into the union, based on the number of jobs available in a particular industry or trade, is equivalent to asserting that employers may properly through agreements limit the output of goods and determine the prices to be charged so that they might assure themselves of profit in market which might otherwise be oversupplied.

EMPLOYEE'S RIGHT TO JOIN OR NOT TO JOIN, AND TO REMAIN OR NOT TO REMAIN, MEMBERS OF A UNION

(Mr. Jacobs, p. 13; our question 16)

Mr. Jacobs answered this question by saying that workers should have the right to contract with the employer that only those who bear their share of the expense of collective bargaining and help sustain the employees' side should be employed.

Apparently the authors of the Taft-Hartley Act would not disagree with Mr. Jacobs in this respect. As he is undoubtedly aware, that statute does permit unions, with the approval of the majority of the employees, to negotiate contracts under which all employees in the bargaining unit can be required to apply for union membership and tender their dues and initiation fees. We agree with Mr. Jacobs that the referendum which the present act requires on the union security question could well be eliminated, and we are in accord with his views that if the majority have designated a particular union as their bargaining agent, this designation should be sufficient to empower the union to bargain for any contract clause which is not contrary to the provisions of the act.

In answer to our question, first of all, we think the individual should be protected originally in his right to join or not join a union. Secondly, we think he should be protected—if so-called union security clauses are to be permitted—in having the opportunity at reasonable intervals to remain or not to remain a member just as he may wish. It would seem to be against public policy to permit union security clauses unless an annual escape period is made mandatory.

Turning to the first point, under the old Wagner Act an employee didn't always have the right to vote for or against a union, because of a very queer rule applied to run-off elections where two unions were competing for represetation and neither union won a majority of the votes cast in the first balloting. For example, take a plant where 100 workers are choosing among an A. F. of L. union, a CIO union, and no union. Assume the result is as follows: A. F. of L. union, 24; CIO union, 27; no union, 49.

Since there was not a clear majority favoring any of the three choices, the Board, under the old law, would have thrown the "no union" proposition off the final ballot and left the workers to choose between the A. F. of L. and the CIO unions.

Under the present "slave-labor" law, the Board must hold the run-off election on the two choices receiving the largest number of votes in the earlier balloting. Thus, in the case described above, the workers would be permitted to vote, in the run-off contest, between the CIO unon and no union.

Also of great importance is the need to make sure that those who profess to be the representatives of the employees are truly the selected choice of the employees. For this reason, any good labor law should have adequate and precise provisions requiring those who claim they represent a majority to prove it in a democratic method by secret ballot; there should be provisions enabling employees to dislodge a union that no longer represents the majority of them; there should be provisions allowing a harassed employer to demand an election to determine who is the actual representative among competing unions or to determine whether the employees want any union whatsoever; there should be provisions that an election cannot be had prematurely at the instance of any interested parties; there should be provisions making the election final and binding for a substantial period of time.

There apparently is no substantial quarrel with any of the above suggestions except perhaps the argument of those who believe that allowing an employer the right to petition for an election is disruptive of the organizing ability of a union. There is insurance against this through the ruling that an employer cannot insist upon an election until a union has formally requested him to recognize it as the bargaining agent for the union. The watch-dog committee report indicates that of all certification petitions filed under the present law only about 7 percent were instituted by employers.

In connection with Mr. Jacobs' comments on nonunion workers receiving a free ride, the Senate committee in reporting out the Taft-Hartley bill (S. Rept.

No. 105, 80th Cong.) expressed sympathy for the argument that in the absence of compulsory membership provisions "many employees sharing the benefits of what unions were able to accomplish by collective bargaining refuse to pay their share of the costs" (p. 6).

It would not logically follow, however, as Mr. Jacobs suggests that the statute should permit closed-shop agreements. To go this far would mean that applicants for employment or employees who were willing to join unions could nevertheless be deprived of their jobs should the unions enjoying the benefits of such agreements decide to deny them membership or expel them for some reason quite unconnected with their willingness to share the cost of administering the union contract.

ORGANIZATION OF SUPERVISORS

(Mr. Jacobs, p. 14; our question 15)

Although Mr. Jacobs feels there is some impropriety in a foreman belonging to the same union as the production workers, he implies that if the foremen are given the right to bargain collectively through a union not affiliated with the production workers that an entirely different issue is presented. Presumably this means he would favor the amendment to the Wagner Act sponsored by the Foremen's Association of America in the last Congress, which would require employers to bargain with supervisory organizations provided they were not affiliated with rank and file unions.

Viewed purely in the abstract, such a proposal is plausible since it would seem to meet the problems of conflicting loyalty, which may have prompted Mr. Jacobs to state that "foremen should not be permitted to belong to the production workers union." As a matter of practical industrial relations, however, this conflict of loyalty would still remain.

At the time he commented on our questionnaire, Mr. Jacobs of course did not have the opportunity of reading the testimony of Mr. Gossett of the Ford Motor Co. before the Senate committee, in which he explained why his company, after entering into collective bargaining relations with the foremen's association for some years felt constrained to discontinue. He cited several instances to show that the foremen's association, even though nominally independent, was under such obligation to the United Automobile Workers, that the members of the foremen's union were unwilling to discipline any members of the production workers union. The same observation was made by the NLRB in the Maryland Drydock case (49 NLRB 733) and, although glossed over, in the Packard case (61 NLRB 4) where the Board reversed itself.

The record of that case shows nevertheless admissions by counsel of the foremen's union that when his association struck "there was a direct and express agreement between us and the responsible CIO leaders that members of the CIO maintenance and production workers union would not be permitted to take the place of foremen," *Packard Motor Co.* (61 NLRB 31), and that on occasions agreements were made with the CIO, pursuant to which both unions respected each other's picket line (id., p. 31).

In the Chrysler case (69 N. L. R. B. 1424), the Board subpenaed correspondence between the officers of the foremen's association and various CIO unions. This correpondence revealed that the foremen's association had received letters from 22 different UAW-CIO locals offering to organize foremen's chapters in their plant, that the foremen's associations had requested UAW locals to submit a list of supervisors to whom it could send its literature direct, and that Mr. Keys, the president of the foremen's association, had conferred with Philip Murray, Walter Reuther, and other CIO officials to work out problems of mutual concern in connection with organizing drives for supervisory employees.

In the light of this well-documented history, it is obvious that the so-called independence of the foremen's association was purely fictional. It is apparent too that the realities of industrial relations would tend to make any group of organized foremen subservient to the powerful rank and file unions.

If they are unionized their unions will—as shown clearly in the congressional hearings conducted a couple of years ago—become associated with, collaborate with, and even be dominated by, the unions representing the working force that they are supposed to lead and manage. The spirit of management goes and the entire operation becomes inefficient. The foremen tend to become simply another group of workers, instead of a true part of management. The union may discipline, fine, suspend, expel—and under the old form of union shop—actually fire these men from their jobs for merely doing their work properly and carrying out the orders issued to them by the employer.

In the debates at the time that the present law was adopted, the situation was aptly summarized as follows:

"* * * When the foremen unionize, even in a union that claims to be independent of the union of the rank and file, they are subject to influence and control by the rank and file union, and, instead of their bossing the rank and file, the rank and file bosses them. The evidence shows that rank and file unions have done much of the actual organizing of foremen, even when the foremen's union professes to be 'independent.' Without any question, this is why the unions seek to organize the foremen.

* * * * * * *

"The evidence further shows that rank and file unions tell the foremen's union when the foremen may strike and when they may not, what duties the foremen may do and what ones they may not, what plants the foremen's union may organize and what ones it may not. It shows that rank and file unions have helped foremen's unions, not for the benefit of the foremen, but for the benefit of the rank and file, at the expense of the foreman's fidelity in doing his duties."

Mr. Jacobs is, of course, aware that the supervisory provisions of the Taft-Hartley Act do not forbid employers to deal collectively with the foremen, but simply relieve them from any legal duty to bargain with supervisors. Our foremen are management, and indeed are regarded as probably the most significant management group in their power to affect the company for good or bad. It is true that in some of our plants there are a large number of foremen. This does not mean that with respect to their authority over their subordinates or the discretion reposed in them with respect to production problems, the handling of grievances at the first stage, and the differential between their pay and that of their subordinates, our foremen are any different from the foremen in small companies.

Although the argument is sometimes made that in a big company where there are several thousand foremen, their problems are more serious than those in smaller companies who are employing only 20 foremen or less, it has never seemed to us that this argument is particularly sound. During the war some 30,000 colonels were commissioned, a number vastly in excess of those in our peacetime army. Yet so far as their respective regiments were concerned, these colonel possessed all the authority and discretion enjoyed by permanent officers of similar rank.

It seems to us, therefore, that the problem of dealing with supervisory employees in a statute providing for compulsory collective bargaining is primarily a matter of drawing a line between management and labor. The Taft-Hartley Act attempts to do this not by drawing this line between the workers and the lowest supervisory level, but between the supervisor who possesses actual managerial authority and such minor supervisors as "straw bosses, lead men, set-up men, group leaders and expeditors" whose authority is not sufficiently great to justify any distinction between them and the ordinary employee (S. Rept. No. 105, 80th Cong., p. 4).

If this is not a valid distinction, where should the line be drawn?

CHECK-OFF

(Mr. Jacobs, p. 14; our question 5)

Mr. Jacobs aparently regards the provision in the Taft-Hartley Act requiring the individual workers' consent to the union check-off for union dues or assessments as a provision advocated exclusively by employers. However, this type of protection for workers has enjoyed a much broader advocacy, appearing in various forms in State legislation. The Taft-Hartley Act in permitting deductions for union dues goes no further than the statutes in many industrial States, e. g., Massachusetts, which protect wage earners from the claims of creditors by providing against deductions except where they have been voluntary written assignments, or New York, where no deductions can be made from a worker's wages for the benefit of his employer even where the employee his given his specific consent. The implication of Mr. Jacobs' comment seems to be that any employer who feels that the provisions of existing law with respect to the check-off are sound, is hypocritical in saiyng that this provision protects the individual workers. As a mater of fact, it is much easier from an employers' standpoint if he agrees to a check-off clause in collective bargaining—he does not burden his bookkeeping department with the duty of keeping track of individual employee assignments

We fail to see how the restrictions on the check-off in existing law weaken the union for members that wish to support it. It has been our experience that employees who are sympathetic with the unions' policies will raise no objection to signing check-off cards.

Is it Mr. Jacobs' position that employees should be taxed by a private organization without their consent?

COMMUNIST OR OTHER SUBVERSIVE ORGANIZATION—AFFIDAVITS

(Mr. Jacobs, pp. 15-16; our question 9)

The General Electric Co. was quite aware in drafting this question that the present law does not require company officials to sign any affidavit with respect to their political beliefs or connections. As has been indicated, we were not interested in sustaining the Taft-Hartley law as such. We also were aware that the present non-Communist disclaimer is not required of all union officials but is simply a condition precedent to a union's having access to administrative remedies of the Taft-Hartley Act. Our position has been that the same obligation should be applied to both union and management officials. Then if employers fail to conform to the filing requirements of the act they would also, like noncomplying unions, be barred from obtaining relief against unfair labor practices.

We do not quarrel with Mr. Jacobs' conclusion that the provisions of the present act may be too weak to give workers in some unions effective methods of ousting from leadership Communists and dictators. While the platform of the Democratic Party promised to write into law an effective method of ridding unions of Communistic leadership, S. 249, the administration labor bill now pending before the Senate Committee, fails to deal with the problem of subversive leadership in labor unions in any manner whatsoever. Yet this bill is proposed as a complete substitute for the provisions of the present act.

From his comments, we gather that Mr. Jacobs has a more constructive solution of the problem, which we would be interested in learning.

UNION FINANCIAL REPORTS

(Mr. Jacobs, pp. 16-17; our question 10)

We are inclined to agree with Mr. Jacobs' view that the section on unions' filing of financial reports in the present Taft-Hartley Act does not afford adequate protection to union members since there is no requirement that the statements which are filed with the Secretary of Labor have to be audited. Moreover, the efficacy of this provision has been weakened by the regulations of the Labor Department which contain no provision permitting union members to inspect the documents upon which the financial reports are based. We read with much interest the summary of his correspondence with Congressman Hartley in which he took up with the Congressman the fact that his client had been expelled from an international union for his temerity in seeking to see a financial report. If he was forced out of his job, however, by reason of his expulsion, it would appear that Congressman Hartley was correct in saying that the passage of the Taft-Hartley Act afforded him some remedy.

Attention is drawn to sections 8 (a) (3) and 8 (b) (2) of the present law. We are in accord with Mr. Jacobs' conclusion that the Taft-Hartley Act gives a member no method of reinstatement in his union and that the common law action to which he had to resort is a slow and cumbersome remedy. We notice, however, that in the administration bill, unions are not only relieved from the reporting requirements, but would also have the right under compulsory agreements to deprive your client of his job. We hope that Mr. Jacobs will agree that in cases such as he reports even the weak remedies of the present act are much better than nothing. But any legislation designed to require the auditing of union financial reports and protecting against retaliation union members who wish to inspect them, deserves support.

MUTUAL AND EQUAL RESPONSIBILITY AND SUABILITY OF PARTIES

(Mr. Jacobs, p. 17; our question 11)

We are glad to note that Mr. Jacobs expresses no disagreement with section 301 of the Taft-Hartley Act which makes both employers and labor organizations suable for breaches of collective agreement, and he has very fairly conceded that the Taft-Hartley Act favors union members by limiting liability to the union treasury, thus preventing the property of an individual worker from being attached and levied upon in order to pay a judgment against an organization.

We believe Mr. Jacobs is mistaken however, in his assumption that in all jurisdictions unions were suable, as such, even prior to the enactment of this section. In neither of the cases which he cites (*Duplex Printing Press Company* v. *Dearing Press*, 254 U. S. 443; *Lawler* v. *Loewe*, 235 U. S. 522) were unions, as such, the defendants. The Duplex case was a suit against certain named officials, and *Lawler* v. *Loewe* was an action for damages against the members of a union in their individual capacities. Of course in many jurisdictions by statute unions were suable, as such, prior to enactment of section 301, but this was not the common law rule. The report of the Senate Labor Committee on the Taft-Hartley Act (S. Rept. No. 105, 80th Cong.) contains a lengthy summary of the laws in the various States under the caption "Enforcement of Contract Liabilities" pp. 15–18

VIOLENCE, FORCE, INTIMIDATION

(Mr. Jacobs, p. 18; our question 14)

We apparently are in agreement with Mr. Jacobs in feeling that the use of violence, force or intimidation to prevent an employee from working should be unlawful. We hope that his suggestion that such practices have always been unlawful does not mean that he is not in favor of what we consider to be the absolutely minimum provisions contained in the present law relating to these serious matters. We can think of no milder Federal legislation to discourage such practices than the provisions of the present law, which merely provide, in section 8 (b) (1), that it shall be an unfair labor practice for a labor organization or its agents "to restrain or coerce" (a) employees in the exercise of their legal rights, or (b) employers in the selection of their own representatives. These provisions should be fortified with specific prohibitions against violence.

It must be remembered, of course, that the law must give an adequate and effective remedy, if the right to be protected from violence is to mean anything.

A most graphic illustration of the importance of having an adequate remedy as well as a legal right was just furnished a few days ago in the recent decision of the N. L. R. B. in the Smith Cabinet Manufacturing Co. case (N. L. R. B. case No. 35–CB–3, made public February 25, 1949).

In this case, the Board found that the United Furniture Workers, CIO and its Salem, Ind., local had indulged in strike violence in violation of the L. M. R. A., 1947. Among the actions which the Board found in violation of he ban on coercion of employees were:

"Carrying of sticks by pickets, and the piling of bricks for use by pickets; blocking of plant entrances by railroad ties, automobiles, raised gutter plates, and tacks; threatening violence to nonstrikers over a loudspeaker; intimidation of nonstrikers as they tried to enter the plant; lacing of pickets in a manner to prevent nonstrikers from unloading a boxcar on a railroad spur to the plant; 'goon squad' mass assaults on nonstrikers, the overturning of a nonstriker's automobile, and individual assaults on nonstrikers; barring a plant superintendent and a foreman from the plant by force and intimidation, and attempts to upset the foreman's automobile or damage it" (New York Times, February 25, 1949).

However, the remedy ordered by the Board was merely for the unions and the union officials involved to cease restraining or coercing employees of the Smith Co. and to post notices announcing that they would cease such activities. But note that the activities themselves occurred in September 1947, while the Board's order was issued in February 1949. It is obvious—shockingly obvious—that as a practical matter there is no protection afforded at all to the aggrieved parties in this particular case by a Board order issued over a year after the incident had occurred.

In the New York Herald Tribune's account of the case (February 25, 1949), this significant statement is made: "The trouble was finally quieted and the plant reopened after the company obtained a court injunction." Presumably the injunction obtained was in a State court. In view of the great variety of State laws with respect to this subject, it seems perfectly apparent that the Federal law itself should provide for adequate, immediate, and uniform relief. We, of course, think that the present provisions of the law which permit injunctive relief to be secured only by the N. L. R. B. and not by private parties are perfectly proper, but we point out that the Board must be able to act promptly if any practical relief is to be granted.

Certainly as Mr. Jacobs says "violence is foolish, ineffective (except to injure great numbers of innocent people) and wrong * * * and should be forbidden to all men," but it would seem that the real question is whether the Federal Government has, or is going to recognize, its responsibility by providing an adequate remedy. It is assumed that his suggestion that employees lack "economic strength to match the employers" is not intended to imply that this justifies violence of the kinds herein described, or of the kind with which Mr. Jacobs is probably familiar as a result of his representation of the individuals convicted for resisting and abusing peace officers by the use of dangerous and deadly weapons in the CIO violence at the International Harvester plant near Indianapolis a few years ago, or of the kinds displayed at the Allis-Chalmers plants in Milwaukee, to mention only a few of them.

BARGAINING IN GOOD FAITH BY BOTH EMPLOYERS AND UNIONS

(Mr. Jacobs, p. 18; our question 6)

Mr. Jacobs' answer to this question is that you "can say 'yes' without further comment." We are gratified, for this would indicate that he feels that section 8 (a) (5) and 8 (b) (3) of the Taft-Hartley Act should be retained as part of the law. We have been inclined to feel that the mutuality of bargaining obligations was one of the important reforms made by the 1947 amendments to the Wagner Act, and we are disturbed, as no doubt he was, to see that the administration labor bill did not include any provisions requiring unions to bargain in good faith.

REGULATION OF BOTH EMPLOYERS AND UNIONS IN THE PUBLIC INTEREST

(Mr. Jacobs, pp. 18–19; our question 17)

It is heartening to know that Mr. Jacobs feels that this question should be answered in the affirmative. We agree with him that neither management nor labor has a monopoly of virtue. It has always been our position that, where inequalities exist under the present law, they should be corrected.

UNFAIR PRACTICES BY UNIONS OR EMPLOYEES, AND GENERAL CONSIDERATIONS

(Mr. Jacobs, pp. 19–end; our question 8)

Despite the concluding part of Mr. Jacobs' letter, we do not think that we were as far apart as he implies, inasmuch as he says that he would answer this question, "Of course. No combination should be permitted to crush the individual." He suggests, therefore, that the only difference of opinion between us is in the unfair labor practices which should be agreed upon.

There is no doubt that a number of corporations in this country do have assets which exceed union assets, but it would be unreal not to acknowledge that unions have grown to such enormous power that, as an economist recently declared, they are "the greatest private economic power in the community." Prior to the enactment of the protective legislation, it is also true that many employers abused their power by insisting upon "yellow dog" contracts and other arrangements which were unfair to the workers.

As we think was made clear in testimony before the Senate committee on S. 249, it is not the position of General Electric that we should return to the pre-Wagner Act era. Mr. Jacobs recognizes, as we do, that many unions have also abused their power with regard to individual workers, but he apparently overlooks many of the provisions of the Taft-Hartley Act when he declares that this statute "regulated not the use, misuse, or abuse of this [union] power as directed against these individuals but curbed that power as it was pitted against the greater power of the employer for the benefit of the individual member." If Mr. Jacobs will examine in detail the list of enumerated unfair labor practices by unions under the Taft-Hartley Act, he will observe that most of them are directed primarily at protecting individual workers against abuses and that any benefit which employers may have received has been incidental.

Section 8 (b) (1) (A), for example, does not protect an employer from restraint or coercion by unions. It specifically protects only employees.

Section 8 (b) (2), moreover, which makes unions liable for causing employers to discriminate, is also protective legislation for the individual worker. As Mr. Jacobs undoubtedly knows, the decisions of the Labor Board are studded with cases in which unions compelled employers by their superior economic force to violate the rights of individual workers. *NLRB* v. *Gluck Brewing Co.* (144 F. (2d) 847, enforcing 47 NLRB 1079), *Matter of Henri Wines* (49 NLRB 511), *Matter of Rutland Court Owners* (44 NLRB 587), and *NLRB* v. *Electric Vacuum* (315 U. S. 685) are some of the cases that come readily to mind. In these cases the union was the moving party in the discrimination from which the employees suffered; but, because the old act penalized only employers, the employers concerned deemed it less disastrous to violate the act than to resist the economic pressure of the unions. Therefore, section 8 (b) (2) is a real deterrent against discriminatory tactics by unions, since it makes both parties liable for such conduct.

Mr. Jacobs is also familiar, of course, with the abuse of the secondary boycott to make workers in one plant who do not wish to join a particular union do so under the pressure from their own employer in order to enable him to continue to get supplies or to obtain a market for his products. See *Harold Levinsohn Corp.* v. *Joint Board of Cloak, Suit, Skirt and Reefer Markers' Union, et al.* (N. Y. Sup. Ct., App. Div., 22 LRRM 2153). Section 8 (b) (4) (A) must accordingly be viewed as a protection to the freedom of choice of the individual.

Similarly, section 8 (b) (5), which prohibits the exaction of excessive initiation fees when there are compulsory membership provisions in a collective-bargaining contract, and the amendments to section 8 (a) (3) which make it impossible for unions which practice racial discrimination to prevent workers in minority groups from pursuing their vocation are also designed to vindicate the rights of the individual against the missuse of union power.

It seems to us that the suggestions which Mr. Jacobs makes for replacing these provisions are subject to the objection that they bring the Federal Government too much into the internal affairs of labor organizations. As he is probably aware, provisions almost identical with those which he suggests were included in the original Hartley bill which passed the House. (See subsec. 8 (c) or H. R. 3020 prior to the conference agreement). These included requirements for secret ballots in union elections, opportunity to vote on assessments, equal status and rights among the members, notice and hearing prior to expulsion and suspension, and many others. The Senate conference apparently felt that these provisions were unnecessary as long as they inserted safeguards against the principal methods by which unions occasionally abuse their power over their members; e. g., closed shop, check-off of dues and assessments without consent, excessive fees, secondary boycott, and misuse of union welfare funds.

There should be no objection to a bill which contained provisions to give union members the remedies against union misconduct which Mr. Jacobs proposes, but we think that he would fail to go to the heart of the matter if he omitted the protections which the Taft-Hartley Act also established.

NATIONAL LABOR RELATIONS ACT OF 1949

THURSDAY, MARCH 10, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10:20 a. m., Hon. Adam C. Powell, Jr., presiding.

Mr. Powell. The subcommittee will kindly come to order, and our first witness this morning is Mr. H. L. Strobel.

Have a seat, Mr. Strobel, and state your name.

TESTIMONY OF H. L. STROBEL, A FARMER, OF MONTEREY COUNTY, CALIF.

Mr. Strobel. My name is Hank Strobel. I am a farmer from Monterey County and have no source of income other than my farming operations.

I appreciate very much the opportunity to appear before this committee and to discuss briefly some of the reasons why agriculture thinks the Taft-Hartley bill should remain a law and the provisions of it should remain substantially the same. This legislation has certainly done much to bring about stable labor conditions and relations throughout the country. It provides protection on an equal basis for industry, labor, and the public. It has again clothed the individual worker with that dignity which is his inherent right as a citizen of this country. It has guaranteed him the right of freedom and choice to organize, or not to organize, as he, the employee, sees fit. It guarantees him the right to speak out for or against any question under consideration in his union without fear of economic retaliation by labor bosses. It has again restored to him the right to discuss his individual problems with his employer on a man-to-man basis.

I will not take the time of the committee to enumerate any other benefits this law has extended to the individual worker. It is my firm belief that no right of any individual worker or union has been unfavorably affected by this legislation. Some of the autocratic and dictatorial practices engaged in by labor bosses have been curtailed, but certainly that has been in the best interests of the public and the employees concerned.

With the efforts to repeal this law the problems that brought about its passage in the first place again become pertinent. Hot cargo and secondary-boycott practices; mass-picketing violence; jurisdictional disputes; the closed shop; lack of responsibility on the part of unions for their actions and the actions of their membership; the loss of labor, agriculture, and the public, due to irresponsible and costly strikes, called in many instances, without the full consent of employees involved.

One of the strongest arguments in favor of the Taft-Hartley law is found in comparing the strikes in 1946, the year preceding passage of the act, and 1948, the year immediately following. In 1946 there was a loss of 116,000,000 man-days, while in 1948 there was a loss of 34,000,000 man-days. These figures are from the Bureau of Labor Statistics and furnish the strongest argument in favor of the retention of this legislation. They also provide overwhelming proof that this act has accomplished more for labor, agriculture, industry, and the public than any piece of legislation passed in the last decade.

Inasmuch as agriculture is exempt from the provisions of this act, you may wonder why we are concerned with its retention. The answer is simple, gentlemen. Without the protection of certain provisions of this act, the productive efforts of agriculture are completely nullified. Of what us is it to the public for agriculture to produce and bring to the harvesting period a crop, if from that point on tie-ups over which we have no control and in which we have no direct concern, in transportation, processing or distribution, make it impossible for us to deliver our commodities and have them become available to the consuming public?

As far back as 1932 a systematic and well-organized attack was made on agriculture in California. This original attack was sponsored and carried on by many well-known members of the Communist Party. Unfortunately, during the years these efforts have not been confined to this type of leadership, but added to their efforts have been the efforts of many different unions—principally the teamsters' union and its subsidiaries.

We have had almost every product we produce declared as "hot" at one time or another in the past 15 years. We have had "hot" lettuce, "hot" turkeys, "hot" milk, "hot" oranges, "hot avocados, "hot" lemons, "hot" asparagus, "hot" peaches, "hot" spinach, "hot" peas, "hot" lambs, "hot" cattle, "hot" wool, "hot" strawberries; in fact, gentlemen, just take your pick and we will serve you a meal with no notice whatsoever, piping hot from the union ovens and well-seasoned with violence, hate, and economic disruptions.

The farmer was indeed very discouraged in 1947 and felt that in most cases without some protection such as the Taft-Hartley bill has afforded, he might just as well throw up his hands and quit. You may well ask what protection this act has afforded agriculture. It has done this: It has freed us from the paralyzing effects of hot cargo and secondary boycott bans invoked against our products many times when they were not even a part of the argument in dispute. It offers us protection from such crippling tie-ups as that which existed in 1945–47 in the California fruit and vegetable processing plants. These facilities were denied agriculture for long periods of time because of bitter intra- and inter-union jurisdictional warfare. There is every indication that a reoccurrence of these attacks can again be expected.

Do you wonder then that agriculture is concerned with this legislation and earnestly petitions that you gentlemen do not take away from us the protection we have under this law which, in a measure, makes it possible for us to continue our productive efforts to the end that the consuming public shall always be able to secure and have the foodstuffs necessary to the well-being of the people of this Nation?

I am going to discuss just a few of the instances mentioned earlier in this statement where our products were declared "hot." Let us take milk, for example, and the case of Dan Ryan, dairyman in Marin County, Calif.

Late in the fall of 1937—I would like to correct that, gentlemen: it should be 1936—Mr. Silva, a business agent for the teamsters union, approached Mr. Ryan with the demand that he sign a closed-shop agreement with the union, forcing his milkers into the Milkers' union of which they were not members and flatly stated they did not wish to become members. After several meetings in which Mr. Ryan declined to sign a contract which would force his workers into a union against their will, Mr. Silva sought and obtained sanction of the unions to place a hot-cargo ban against the delivery of Mr. Ryan's milk through the Borden Dairy Delivery Service in San Francisco. That hot-cargo ban was in existence for 600 days during which time Mr. Ryan was not allowed to deliver a drop of milk to the city of San Francisco, or any other plant in which the union had membership or affiliations. These attacks became so widespread that the farmers in self-defense were forced to purchase a stand-by plant in Point Reyes, Calif., at which they could process this "hot" milk. Today, this plant costing some $80,000, is not operating but stands as a bulwark between the people of San Francisco and hot-cargo practices of the union which would deny them their daily ration of milk. Because of the ability of the farmer to handle his milk in spite of the unions in northern California, these attacks have practically ceased. This is not the case, however, in the Los Angeles milkshed where such protection has not been attacked by the farmer.

The Los Angeles milkshed is the largest milkshed west of the Mississippi, servicing a population of approximately 4,000,000 people, who depend upon the producers of this area for their daily supply of milk. In 1946 the teamsters' union through its affiliate, the Dairy Milkers and Milk Drivers Union, declared open warfare upon the producers in this area, seeking to obtain closed-shop contracts and job control of all employment in this industry. Hot-cargo bans were invoked in the creameries and processors' plants against as many as 30 to 40 dairies at one time, causing a daily loss of from twenty to forty thousand gallons of milk. Where independent dairies operated not under union control, delivered milk, their delivery wagons were followed, their customers noted, and individuals in many cases called upon these customers insisting that they cease to purchase milk from that particular source. Intimidation and interference of all kinds was invoked. Many of these dairies under attack were operated by servicemen who had just returned from the armed services and who were seeking to establish themselves in business. The fact that the man involved owned a dairy, was doing his own milking, had no influence on the union whatsoever. They demanded that he either join the union himself or hire a union milker. When these demands were resisted, as I stated before, hot cargo and secondary boycott bans were invoked; efforts were made to cut off their feed supply; and their usual distribution outlet was denied them.

Late in 1946, when it became evident these tactics were going to be controlled by legislation, a truce was declared by the union and no interference was offered during the year 1947 when the act was passed, and in 1948, following the passage of the act.

Now, however, in anticipation that the protection afforded under the Taft-Hartley Act will be withdrawn, the unions are again entering the field and now have two dairies under attack, one operated by Mr. Walter Koning, 13615 S. Woodruff, Bellflower, Calif., and one operated by Roy Hutchinson, 13331 Newland, Westminster, Calif. These dairymen have been threatened with picket lines—not of their own employees because none of the employees of these two dairies have seen fit to join the union, using the protection afforded them under the Taft-Hartley law, which allows them to decide for themselves whether they shall or shall not become members of a union. The output of these two dairies is approximately 500 10-gallon cans per day. The employees of these two dairies are paid well above the union scale. In Mr. Koning's case, five employees are concerned, the lowest of which is paid $390 per month, while the highest averages $460 per month, this with 1 day off per week. These dairies use as their outlet Arden Farms Creamery, in Los Angeles. This creamery operates under a very tight union contract. The unions have informed Mr. Koning and Mr. Hutchinson that unless contracts satisfactory to the unions have been signed by January 31, a hot-cargo ban will be placed on their milk and Arden Farms Creamery will not be allowed to accept any milk from these two dairies after February 1. About 15 other dairymen in the Los Angeles milkshed have been indirectly told they will get the same treatment in case they refuse to sign a closed-shop contract with the union.

Asparagus is a very important crop in California. There are approximately 60,000 acres under production, located principally in Sacramento, Solano, San Joaquin, and Contra Costa counties. This production accounts for approximately 100 percent of the canned, white asparagus and about 60 percent of all the commercially packed asparagus in the United States. The growers of this very important crop have been under attack several times in the last 8 years. In 1941 a strike developed in the fields where unions sought closed-shop contracts covering the entire harvest operations. No points were involved in this strike other than closed-shop and job control. Union demands were resisted by the growers who stated they could not hope to operate their ranches under closed-shop conditions. A severe loss resulted with the growers eventually harvesting a portion of their crop without signing a union contract.

Immediately following this strike in the field, which, incidentally, concerned the harvest of green peas for fresh shipment, a paralyzing strike was declared in the canneries, denying to the growers the use of these facilities for the preserving and canning of their white asparagus. The loss to the growers amounted to about $1,750,000. It is impossible to estimate how much this cost the workers involved, in loss of wages.

From 1941 to 1948, because of war conditions very little interference was offered the producers of this crop. In 1948, however, the CIO union known as the Food, Tobacco, Agriculture and Allied Workers' Union of America, entered the area, demanding a 100-percent closed-shop contract covering all harvest activities in this industry. The demands were preposterous and could not be met by the growers.

A strike was declared and tremendous losses were inflicted upon the growers and workers alike, many of whom did not belong to this union and who would under no circumstances join. This attack was made during the month of May, which is peak harvest season. All types of interference was used: crews who refused to walk off their job were threatened; huge caravans of automobiles patrolled the area intimidating and seeking to frighten those men who remained on the job. Through the loyalty of certain workers and very fine cooperation of the law-enforcement agencies and citizens of this area, peace was eventually restored and the balance of the crop harvested. The loss caused by this strike was estimated to be about $1,250,000 to the growers; to the field workers, loss of wages, approximately $1,250,000; and to the cannery workers, loss in wages, approximately $750,000; a total loss to these three groups of about $3,250,000. The loss to the public cannot be estimated, but was reflected in higher prices for that portion of the crop which eventually reached the consumer's table.

I have cited these few instances, gentlemen, to call to your attention the terrific handicap under which agriculture operates in their daily efforts to supply the American table. Is it any wonder when you consider the handicaps offered by nature which cannot be controlled or overcome, that the farmers of this Nation are becoming very bitter and hostile to those man-made hurdles which are becoming daily more numerous and tougher to scale?

There is one other case I think will be interesting to this committee because it does bring out the direct aid to agriculture afforded by the Taft-Hartley Act. This case is the so-called strike on the Di Giorgio farms in Kern County. I say "so-called strike" because of some 1,200 to 1,500 workers involved only about 25 or 30 actual workers left Mr. Di Giorgio's employ and joined the picket line when this strike was called by Hank Hasiwar, western representative for the National Farm Labor Union, A. F. of L., upon refusal of Mr. Di Giorgio to discuss with him and negotiate a closed-shop contract covering his employees. Some 1,250 of these employees—which was the entire number employed on that particular day—signed a letter, presenting it to the sheriff of Kern County, Calif., saying they were not members of this union and had no intention of becoming members, and petitioning the sheriff to stop interference with them while entering and leaving the ranch to carry on their work. Later, when products from this ranch began to flow to market, the union attempted to invoke hot-cargo and secondary-boycott bans as far away as New York City. In one particular instance where bulk wine was transported from this to the Swiss-Italian Winery in the Fresno area, picket lines were thrown around the winery and across the railroad tracks into the winery, in an attempt to halt the movement of this wine to the winery. Mr. Di Giorgio petitioned the National Labor Relations Board under the provisions of the Taft-Hartley law, charging the unions with violation of same. The National Labor Relations Board made an investigation and petitioned the courts for an injunction prohibiting the unions from interfering with the movement of all products from this ranch. This order was signed by United States District Judge Pierson M. Hall, on July 15, 1948, docketed on July 15, 1948, book No. 4, page 415, in Los Angeles County.

Again, may I urge, gentlemen of the committee, that in the best interests of the majority of the people of this country that you retain in this act or any amended act, those provisions which restored to the American people certain freedoms which we cannot have without a stable economy; namely, freedom from paralyzing Nation-wide strikes; freedom from arbitrary restrictions on production and distribution of goods and services because of secondary boycotts and jurisdictional rows; freedom from political domination by either corporations or labor unions; freedom from added costs because of stand-by union rules, more commonly known as "feather bedding"; freedom from strikes by Government employees; and above all, freedom of an individual to exercise his rights of citizenship without fear of reprisals by employers or unions; assurances that the officers of unions certified for collective bargaining are not members of the Communist Party who seek to overthrow the United States Government by forceful or illegal means. This could be materially strengthened by requiring the same oath by employers or leaders of employer groups. Any American citizen should be proud to take such an oath.

In the past 16 years many varied and different types of legislation have been introduced—many experiments carried on supposedly in the best interest of everyone concerned. In my estimation the Taft-Hartley bill is the most important of all.

In my conclusion, let me say, in our efforts to make everybody happy, we have made that old saying, "The Lord helps those who help themselves" obsolete. Daily we are leaving less and less for Him to do, and I am not at all sure the current floods and freezing we are experiencing are not His way of showing his displeasure with us for muscling in on His job.

I thank you.

Mr. Powell. Mr. Strobel, you are a farmer?

Mr. Strobel. Yes, sir.

Mr. Powell. You are a member of the Associated Farmers, Inc.?

Mr. Strobel. Yes, sir.

Mr. Powell. Do you hold a position in the Associated Farmers, Inc.?

Mr. Strobel. I am secretary-treasurer of the Associated Farmers, Inc., a nonpaying job, however.

Mr. Powell. The Associated Farmers, Inc., a few years ago was investigated by the Senate Labor Committee, was it not?

Mr. Strobel. Not the Senate Labor Committee. It was a committee headed by Senator La Follette.

Mr. Powell. It was a special committee?

Mr. Strobel. Yes, sir.

Mr. Powell. And since then, the Associated Farmers, Inc., has been a little bit different?

Mr. Strobel. No, sir; I cannot say it is any different from the time we started out in 1934. There has been no change in our activities or policy of principles.

Mr. Powell. The Associated Farmers, Inc., has been, what we might say, a separate organization, is it not, or is it subsidized by industrial enterprises?

Mr. Strobel. Every member is a farmer in his own right. We have members of other types of industries who have a mutuality with agriculture in common interests. That support is brought about by the fact that the Associated Farmers, Inc., do not work entirely in the interests of their own membership. Any interference is attacked by the Associated Farmers, and they are interested and will aid that person, whether he is a member of the Associated Farmers, or not.

Mr. Powell. The Associated Farmers represent very large farms, do they not?

Mr. Strobel. From 5 acres to 15,000.

Mr. Powell. Most of them are large?

Mr. Strobel. No, sir; I would not say most of them are larger farmers. As I say, we make no difference in the type of farmer. We figure he is a farmer whether he has 5 acres or 5,000, and our membership is a fair cross section of all types of agriculture.

Mr. Powell. Back to this situation, the Di Giorgio farms——

Mr. Strobel. Yes.

Mr. Powell. The Di Giorgio farms or corporation. Was it not true that a majority of the workers on that large farm met around October 1 and held a strike meeting?

Mr. Strobel. The workers or the employees of the Di Giorgio farms?

Mr. Powell. Yes.

Mr. Strobel. They may have had a strike meeting, but not the employers.

Mr. Powell. The employees?

Mr. Strobel. The employees under Hathaway, but not the bulk of the employees. There may have been some of the Di Giorgio employees present, but the main group of the employees had no such meeting.

Mr. Powell. About how many Di Giorgio workers were there, would you say?

Mr. Strobel. I would not be able to answer that. I was not there.

Mr. Powell. The sheriff of the county was there, was he not?

Mr. Strobel. I could not say, because I was not there.

Mr. Powell. Did not the Associated Farmers come into that strike later, and furnish help to the Di Giorgio Corp.?

Mr. Strobel. No, sir, we never took any official part in that strike. Mr. Di Giorgio needed no help because his workers did not leave his employ.

Mr. Powell. I heard that a public relations man of your organization worked with Mr. Di Giorgio during the strike.

Mr. Strobel. That is not true. We have no public relations man in our organization.

Mr. Powell. Did the Associated Farmers advise Mr. Di Giorgio not to meet with the strikers?

Mr. Strobel. I would not say that we exactly advised him not to. It has been our advice to all farmers not to meet with any union representative who is seeking closed-shop contracts, because in most instances they do not represent the employees concerned. They are merely seeking to have a union contract in which they can force you to hire their union members, or force your employees to become members of a union, who do not wish to join, in many cases.

Mr. Powell. Mr. Bailey?

Mr. Bailey. As you probably know, Mr. Strobel, the Wagner Act excluded agricultural laborers from the definition of the term "employee," and the Taft-Hartley Act does the same.

Mr. Strobel. Yes, sir.

Mr. BAILEY. This committee reported out a Minimum Wage and Fair Standards Labor Act yesterday, in which all farm activities were exempted. Farm laborers, therefore, do not have the right to join unions. Would you favor that the act be amended so that farm laborers would have the same right to organize as industrial employees, and that when a farmer hinders himself and his employees in their rights to join unions, he could be charged with an unfair labor practice under Federal law?

Mr. STROBEL. Certainly I would not. You would place the production of the necessary foodstuffs of your country in the hands of power-mad labor leaders who would use any method to bring employees into the union to satisfy their needs. They would have no compunction in starving the public to gain their ends.

Mr. BAILEY. Why would you ask special consideration for the farm group?

Mr. STROBEL. If any farm employee wishes to join the union there is no effort on our part to keep him from joining. We have many employees working on our ranches who are union members.

Mr. BAILEY. Did you not say you advised your members not to deal with them?

Mr. STROBEL. Not to sign closed-shop contracts; yes, sir.

Mr. BAILEY. Do you think the Taft-Hartley Act is fair in permitting farmers to commit unfair labor practices with impunity as far as the Federal law is concerned; but if a union commits an unfair labor practice against a farmer, such as imposing a secondary boycott, the farmer may immediately go to court and have the unfair union practice enjoined? In other words, do you not think that the Taft-Hartley Act should be discarded and a law written so that if farmers have privileges under such a law they will also be subject to all the responsibilities of the law?

Mr. STROBEL. Sir, I would say that if farmers were engaging in unfair labor practices such as you mentioned here, there are ways and means of controlling their activities. You have those ways and means already, and I know of no occasion when farmers have engaged in unfair labor practices against labor and against their employees. If we engaged in unfair practice against our employees, it would be impossible for us to get employees; but in most of the cases that are mentioned, these employees have had no desire to join any union, and have stayed with us and worked with us, and they feel more or less the same responsibility to the public that we do, that we have a job, to produce the food for this Nation, and we have to be free to exercise the rights of management, and to get the job done when it is necessary to be done. We cannot put off from day to day, or until tomorrow, what has to be done, and we cannot argue about whether that man is going to cultivate or irrigate, or this man is going to milk a cow; those jobs have to be done when it is necessary to do them, and we must be in a position to exercise the rights to get the job done, if you are going to eat.

Mr. BAILEY. Since you are from California, you are probably aware that California had a hot-cargo and secondary boycott law. You are also probably aware that in 1947 the State supreme court, in a case entitled "*In Re Blaney*," held the law unconstitutional because, among other reasons, the act violated the constitutional guaranty of freedom of speech and freedom of assembly. The provisions of the Taft-Hartley Act as to secondary boycotts have not yet been tested in the United States Supreme Court, but such a test will be inevitable if these provisions are continued in the new labor law. In view of this, would you not agree that such matters as secondary boycotts and hot-cargo could best be handled by State statutes?

Mr. STROBEL. By what?

Mr. BAILEY. State laws.

Mr. STROBEL. Well, as far as the intrastate activities of agriculture are concerned, yes, they can be handled that way. But you have an interstate problem which is invoked against it to the other side of the question any time it arises, and so in many instances operations which we, in our way, think are purely intrastate, are declared by some administrator of these activities or by bureaucratic dictum to be interstate, and therefore we are faced with a Federal law from which we thought we were exempt. So that was the reason that the secondary boycott and hot-cargo law was passed in California. There is a difference of opinion as to its constitutionality, and I think I can safely say that such laws will again be enacted in California. At least, attempts will be made to enact such legislation on a State-wide basis.

Mr. BAILEY. I believe, Mr. Strobel, you mentioned the Di Giorgio case and the injunction issued by Judge Hall. I do not take your statement to imply that Judge Hall considered the strike to be unjust. All that Judge Hall did was to find that the union engaged in a secondary boycott. Since the court found that a boycott existed, he was required under the Taft-Hartley law to issue the injunction automatically without regard to the merits of the case; is that not correct?

Mr. STROBEL. I do not remember that Judge Hall took any stand whatsoever upon whether the strike was right or wrong. I have some copies of that injunction. If you would like to have them, I will supply them here.

Mr. BAILEY. I want to make that point right here, and I want to read Judge Hall's comment into the record, Mr. Chairman. The case referred to by the witness as the Di Giorgio case is *LeBaron* v. *Kern County Farm Union* (23 L. R. R. M. 2077). Judge Hall in issuing this injunction said:

> I want to again emphasize the fact that in my views the power conferred upon the court in such a case as this is a very narrow power and that whatever I have said in connection with this matter, or my conclusions now, or anything that I have said during the course of the hearing, is not to be construed as an indication as to whether the strike is just or unjust, or whether any of the acts or conduct of any of the persons or unions or organizations involved, whether labor organizations or whether otherwise, are or are not unfair labor practices.

Mr. WERDEL. Does the gentleman yield there for a minute?

Mr. BAILEY. I yield.

Mr. WERDEL. Would you put into the record what you are quoting from there and where it came from?

Mr. POWELL. I have it here.

Mr. WERDEL. I notice you are reading from a typewritten sheet. Was that prepared by the Department of Labor? Or what are you reading from?

Mr. BAILEY. I am reading from some notes that I have here, Mr. Werdel.

Mr. WERDEL. I notice you both seem to have the same notes.

Mr. POWELL. I do not have his notes.

Mr. WERDEL. I just wondered where it came from, if we can get it in the record, because the gentleman's time has already expired.

Mr. POWELL. We are keeping track of that, and I will tell him when his time has expired.

Mr. WERDEL. Will you put in the record where it came from?

Mr. JACOBS. On a point of order, Mr. Chairman, is it the province of one member of the committee to inquire of another member of the committee where he procured his notes or information from which he frames his questions?

Mr. POWELL. No, but a member can ask a question. If the other member does not choose to answer, that is all there is to it.

Mr. WERDEL. Mr. Chairman, when someone reads words of a Federal judge into this record, I take it it is the province of all of us to see whether they are correct.

Mr. POWELL. No.

Mr. WERDEL. I am asking the question of where they came from.

Mr. POWELL. You asked the question of Mr. Bailey where they came from, and Mr. Bailey did not answer.

Mr. Bailey, you have one more minute.

Mr. BAILEY. That is all.

Mr. POWELL. Mr. Jacobs?

Mr. JACOBS. No questions, but I will reserve my time.

Mr. NIXON. Mr. Chairman, may I ask a question? I understand that you cannot reserve time.

Mr. POWELL. No; they cannot reserve time for another witness. But if another member desires to question the witness, one can yield time to that member.

Mr. NIXON. But he cannot yield time for the purpose of questioning another witness longer. As far as I am concerned he can question him any time, as long as we all follow the same rules. But I want it one way or the other.

Mr. POWELL. That is correct. You cannot yield time on one particular witness in order to question another witness longer.

Mr. PERKINS. Mr. Strobel, what position did you say you held with the Associated Farmers?

Mr. STROBEL. I am secretary and treasurer of the Associated Farmers of California.

Mr. PERKINS. How long have you been active in that capacity?

Mr. STROBEL. I cannot say exactly, sir, but I think from around either 1938 or 1939 I have been treasurer of the organization, and for the last 2 years I have also been secretary. We combined the two jobs as a matter of convenience.

Mr. PERKINS. Now, I will ask you whether you have any information about some of the officers of the Associated Farmers testifying under oath that their organization was financed by a number of industrial concerns, mainly for the purpose of preventing unions from being organized in rural areas?

Mr. STROBEL. No; I have no such information that any of our group testified to under oath. They may have. We have no control over our officers. I would like to point out to this group at this time that the Associated Farmers of California is an organization comprised of whatever local——

Mr. PERKINS. All right. Just answer my questions. I do not have much time.

Mr. STROBEL. Well, I do not know.

Mr. PERKINS. Do you have any knowledge of any testimony given by officers of your organization to that effect?

Mr. STROBEL. No; I have no knowledge of that. At least, to my recollection, I have no knowledge of that.

Mr. PERKINS. Now, is it not now true that your organization is still being subsidized by members of the Merchants and Manufacturers Association?

Mr. STROBEL. I would say this—there may be some members of the Merchants and Manufacturers Association as individuals or corporations that contribute to our organization but the Merchants and Manufacturers Association or organization, which you speak of, does contribute to our organization.

Mr. PERKINS. To what extent would you tell this committee that they contribute?

Mr. STROBEL. I would say to the extent of close to $20,000 a year, with the allied support that we receive.

Mr. PERKINS. Are you sure that they stop at the figure of $20,000 a year?

Mr. STROBEL. I am absolutely certain of it, sir, because I happen to be the treasurer, and those——

Mr. PERKINS. Do you have that data along with you?

Mr. STROBEL. No; I have not, sir, but I can tell you this, that at no time since I——

Mr. PERKINS. Would you care to put that data in the record and make it a part of your testimony in this case?

Mr. STROBEL. I would not care to put that data in the record. I will state so, and that is just the same as any data that you might get.

Mr. PERKINS. Why do you object to putting it in the record?

Mr. STROBEL. Because I do not have the data here, sir.

Mr. PERKINS. Will you furnish the clerk of the committee with it at a later date and let him put it in the record?

Mr. STROBEL. I do not see that there is any point in my furnishing that data. I will state here that we do receive such support, that it is around $20,000 a year now; that it has been as high as $27,000, and that that is the extent of the allied, or industrial support that our organization receives.

Mr. PERKINS. Is it not true that a strike of the employees of the Di Giorgio Fruit Corp. was called on October 1, 1947, following the refusal of the officials of your corporation to meet with a committee of their own employees?

Mr. STROBEL. No. I would say this, in answer to that, Mr. Perkins, that our organization has no control whatsoever over Mr. Di Giorgio's operations. Mr. Di Giorgio handles his own business; he hires his own employees, and our organization never seeks to interfere in the handling of any private individual operation.

Mr. PERKINS. Do you know Mr. Di Giorgio personally?

Mr. STROBEL. I know Mr. Di Giorgio very well; yes, sir. I have known Mr. Di Giorgio for——

Mr. PERKINS. What is his capacity with the fruit corporation? Is he the chief owner or not?

Mr. STROBEL. I understand that it is a corporation, and I am sure that Mr. Di Giorgio is at the present time the chief owner; yes.

Mr. PERKINS. And you know the extent of the ownings of the Di Giorgio Fruit Corp.?

Mr. STROBEL. No, sir; I do not know the extent of the ownings of the Di Giorgio Fruit Corp. I know that they are extensive. At least, I believe them to be very extensive.

Mr. PERKINS. About how extensive would you tell this committee they were?

Mr. STROBEL. I could not tell you, sir. I think I can say this, that the ranch in question, which is perhaps one of the subjects you would like to have answered—the ranch in question in Kern County has also been referred to as 20,000 acres by the union——

Mr. PERKINS. To refresh your recollection, I will ask you if according to your information he does not own about 30,000 acres of farm land, the largest farm in the world, and either controls or influences the fresh fruit and the vegetable markets of the principal cities of the United States; among the markets he controls are the New York Fruit Auction Corp., the Baltimore Fruit Exchange, and if you do not further know that, from his financial statement, he has holdings worth in excess of $14,000,000?

Mr. STROBEL. Sir, I could not answer that. I will say this, that to my knowledge I know none of the things. I heard, just the same as everyone else, that he has large holdings. I believe that those statements you have made may be correct. However, I would say that I have never made any detailed study of Mr. Di Giorgio's holdings.

Mr. PERKINS. Will you state whether you have heard that he netted a profit of approximately $3,000,000 after his taxes had been paid in 1946?

Mr. STROBEL. No, I have not heard anything like that. That could probably be true. But I have made no investigation, as I say, of Mr. Di Giorgio's financial standing or operation. To me he is just another farmer.

Mr. PERKINS. Is it not true that a meeting of over 700 workers employed by the corporation was held on the night of September 31, 1947, in the Grange Hall, and that they voted unanimously to walk out the following day?

Mr. STROBEL. I could not answer as to whether such a meeting was held or not, because I was not present. I would say this, though, that——

Mr. PERKINS. Did you hear anything about the meeting? Can you give any information about it?

Mr. STROBEL. No, I did not hear anything about that meeting, but I can state that no 700 workers ever walked off Mr. Di Giorgio's ranch.

Mr. PERKINS. Are you positive about that?

Mr. STROBEL. Yes, sir, I am positive about that.

Mr. PERKINS. What about 650? Are you positive about that figure?

Mr. STROBEL. Would you allow me in my own way——

Mr. PERKINS. No. I do not have much time. Just answer my question.

Mr. POWELL. One minute, Mr. Perkins.

Mr. STROBEL. I would say, no, that no 650 employees ever walked off Mr. Di Giorgio's ranch.

Mr. PERKINS. Now, I will ask you if it is not a fact that the Associated Farmers——

Mr. JACOBS. I waived my time. I yield my time to Mr. Perkins.

Mr. POWELL. Excuse me, Mr. Perkins. Mr. Jacobs waived his time to you. So you have more time.

Mr. PERKINS. At this point, I do not care to consume any more time. I will just retract my question.

Thank you. That is all.

Mr. POWELL. Very well. Mr. Burke?

Mr. BURKE. Mr. Strobel, I would like to pursue further the questioning about the happenings during the particular strike that you referred to in your testimony on the Di Giorgio Farms. Is that the proper title?

Mr. STROBEL. The Di Giorgio Fruit Corp., yes, or the Di Giorgio Farms, as it is known in Kern County.

Mr. BURKE. I believe that at the time, friends and associates of the Di Giorgio Corp., issued a pamphlet entitled "A Community Aroused"; is that not true?

Mr. STROBEL. Yes, sir.

Mr. BURKE. And in that pamphlet they stated that the corporation provided swimming pools and other recreational facilities for the employees of the farm.

Mr. STROBEL. Yes, sir.

Mr. BURKE. How large is that swimming pool?

Mr. STROBEL. I could not tell you the size of it, sir. I have one of those pamphlets, or I have several of them I would be glad to give to the committee to look at. It shows the type of housing and the swimming pool. I will show you one of the swimming pools here and some of the tennis courts and other facilities provided.

Mr. BURKE. Mr. Chairman, I would like to ask that Mr. Strobel be permitted to present the pamphlet to the committee for inclusion in the record.

Mr. JACOBS. Do you have more than one?

Mr. STROBEL. I have three here, sir. I could furnish you more of them if you would like.

Mr. POWELL. Do you desire it to be included in the record, Mr. Burke?

Mr. BURKE. Yes.

Mr. POWELL. Without objection, it will be so ordered.

(The pamphlet referred to is as follows:)

A COMMUNITY AROUSED

Kern County, Calif., is one of the first 10 counties of the United States in agricultural production. Even so, it is still learning and growing, and it is still peopled by the pioneers who built it.

In 1947 Kern County heard of the National Farm Labor Union for the first time. An A. F. of L. affiliate, it was headed by H. L. Mitchell, national president, formerly a member of the executive committee of the Southern Tenant Farmers Union, an affiliate of the CIO and according to pages 679 to 682 of the 1938 report of the House Un-American Activities Committee, an associate in that CIO venture with Donald Henderson, a known Communist.

Early in 1947 a man named Hank Hasiwar, western organizer for this newly formed National Farm Labor Union, boldly announced he was going to attempt to organize all of the farm workers in California. Newly arrived from Texas, Hasiwar began holding mass meetings in farm communities, supported by a few of the local labor unions in Bakersfield, the county seat.

Hasiwar picked Di Giorgio Farms, pioneer development in the extreme southern portion of the fertile San Joaquin Valley, for his focal point in the first drive.

With the coming of the grape harvest, Hasiwar demanded the farm adopt and accept industrial unionism control of the workers on the farm, under threat of a strike at harvest time. The demands were ignored.

Picket lines were placed on the ranch October 1, 1947, in an unsuccessful attempt to stop grape picking and packing. Mitchell then arrived from Tennessee to inspect the picket lines and then began issuing propaganda press releases on a national scale. Even train crews bringing cars to the packing shed were stopped until their own union committee investigated the "strike," after which they went through the lines.

A union crew at the Di Giorgio winery is still going through the picket lines.

Failure to stop the harvest brought extravagant propaganda claims from the union, then Nation-wide circulation of defamatory statements about farmers and the way they were "treating" farm workers.

Finally Kern County, as a community, became aroused as inquiries began to come in from many places.

This is Kern County's answer to one portion of the slanderous attack.

[Excerpt from a letter of C. A. Cobb, owner, Ruralist Press, Atlanta, Ga., written November 28, 1947]

Mr. W. B. Camp,
701 Oleander Avenue, Bakersfield, Calif.

My Dear Bill: * * * (Here is) a statement appearing on the right-hand editorial page of the (Atlanta) Constitution yesterday. Mr. Ickes is deeply concerned over the situation at Arvin and like everything else that he deals in he knows little or nothing about it; shows no understanding yet is willing to tell the world exactly how it all ought to be managed. I wish you would read the article very carefully and check it against the facts and that you would let me have those facts. * * *

[Copy of column in the Atlanta Constitution, Thursday, November 27, 1947 (Thanksgiving day)]

Plight of the Migrant Farm Laborers

(By Harold L. Ickes)

In the tradition, if not the spirit of the Pilgrim Fathers, the Nation today will offer up a special thanks for its obvious blessings. It will give thanks for the feeling of content and security that derives from our vast national cornucopia overflowing with golden corn, wheat of the color of falling leaves, to say nothing of the plenitudes of nuts and luscious fruits.

Yes, America may well say grace in round and sonorous phrases today. But it is not likely to give even a fleeting thought to the desperate plight of the more than 2,500,000 migrant farm laborers whose calloused hands harvested this bounty against the coming of Thanksgiving.

I have said before that food and aid for starving western Europe are unquestionably necessary, and that America can and must provide both. But we should not allow the vastness of this critical problem across the seas to blind our eyes to an equally dire, if less widespread, need for succor at home. It is generous of us to help the sticken of other lands; it would be only simple justice that we also render aid to our own. We can do both.

Millions of Americans do not even know that migrant labor constitutes one of our persistent problems. The notorious name of the Associated Farmers of California means nothing to them. Neither does the fact that migrant farm laborers are being treated more shamefully than were their prototypes in the dark ages. I suspect that I will not be spoiling a holiday dinner if I should introduce the public to a migrant farm family, typical of hundreds of thousands of actual farm slaves in the West.

In the fashion then, of Ebenezer Scrooge, if you will take my hand, we will visit a hovel in the Arvin labor camp, near Bakersfield, Calif. * * * Ah, here we are. This is the "home" of John and Stella Gorman and their four children—Nora, 10; George, 7; Mable, 2; and Gladys, under 1.

As you can see, the Gormans have just finished saying grace. They obviously are thankful for the crusts on their table, as it is all that they have. Their home, as you will see, is a one-room shack, the pot-bellied stove and the electric light bulb are the only household equipment provided this hapless family by a miserly landlord.

The Gormans share plumbing facilities with several dozens of their fellow laborers in an unhygienic community building, which we will avoid. Those are homemade beds in the corners, covered with cheap chenille. That calendar on the wall is, of course, an ornament. Days mean little to farm slaves. The table on which rests their travesty of a Thanksgiving dinner is crudely constructed from chance boards. Mr. Gorman and his wife pay $5 a week rent. But they will not be able long to afford this, because they are unemployed.

With 1,500 other members of the National Farm Labor Union, A. F. of L., they are out on strike against the Di Giorgio Farm Corp., an outfit which grows plums, apricots, and grapes. The human chattels quit work to force their employer at least to agree to discuss such (to them) life or death matters as better hours, an increase in the pittance they call wages, and more acceptable working conditions. Included among the strikers were 130 Mexican nationals, working under contract between the Mexican and the United States Governments.

These serfs sought to walk out along with others, but they were prevented by the orders of arrogant officials of the United States Department of Agriculture. In effect, those officials threatened: "Either act as strikebreakers here or be deported to Mexico." This high-handed action brought protest from the Mexican Embassy to the State Department, resulting in a promise that the Mexicans would be removed from the strike-bound area.

Meanwhile, the Di Giorgio Corp. is able to operate on a reduced scale. Naturally the agricultural slaves are the chief sufferers. Until now the Gormans have maintained a roof over the heads of their children. We will not examine the roof too closely, but the climate is a dry one. The family has no money, but it is accustomed to this, as are the other strikers. There is no church to attend, no medical services, no recreational facilities. During the war the Federal Government saw to it that a few of these migrant families were decently housed. But peace brought the end of this unwanted consideration.

What remain of Government-built labor camps have been either leased or sold. The gentle Associated Farmers leased the Arvin Camp, where we are now, and at once raised the rents and abolished all comforts and services. Long hours and meager pay are their ideas of social obligation. But we must leave the Gormans to their hopes and dreams of a better day and return to our Thanksgiving Day dinners, the first one of which, indulged in by the Pilgrim Fathers, was made possible by the great-hearted Massasoit. Take my hand again, while we whisk back to the hearthside of a happy, well-fed America. We will drink a toast to the richest Nation on earth.

W. B. Camp & Sons, Inc.,
Bakersfield, Calif., December 19, 1947.

Mr. C. A. Cobb,
Owner, Ruralist Press, Inc., Atlanta, Ga.

My Dear Cully: Your letter of November 28, enclosing a copy of the statement made by Harold L. Ickes in his column in the Atlanta Constitution on Thursday, November 27, is very much appreciated.

I am not alone in my appreciation of your interest in sending this to us because it has been the subject of considerable discussion among the farmers of Kern County.

First let me say that while we are all, as farmers, concerned about the inflammatory, untrue propaganda statements made by Ickes about our particular agricultural area and the people who live in it, I think on the other hand those of us who have helped build this community take some pride in being blasted by the incorrigible Ickes and take a pride in joining that ever-growing throng upon whom he vents his ire.

For it seems to us here, that in being placed with that group we are being placed among the people who have made America great through belief in working and fighting for free enterprise and a free people, as opposed to bureaucratic governmental controls by the crackpots and the left-wingers.

A number of our community leaders were so incensed by the Harold Ickes article that a committee was voluntarily formed of men from various civic organizations of the community—men who are members of our Rotary Club, our Bakersfield Chamber of Commerce, our Kern County Chamber of Commerce, our Kiwanis Club and headed by the publisher and general manager of our local daily paper, which as you know, is the leading newspaper of the southern San Joaquin Valley.

This committee was formed for one sole purpose—to go to Di Giorgio Farms, there to personally make their own study of the true facts of the situation as compared with the statement made by Ickes.

The facts of the matter are that what Ickes calls a "strike," is in actuality an invasion of Kern County agriculture headed by outsiders, using the name of A. F. of L. National Farm Labor Union, but using similar tactics to Communist agitators in an attempt to organize workers who do not want to join the union, and impose industrial unionism on seasonal agriculture with an attempted stoppage of the harvest.

Harold Ickes in his own inimitable way is parroting the statements of the out-of-State leader of this incited disturbance—a man who has failed in his task and is now desperately attempting, through national publicity, to collect a tremendous war chest from labor unions all over the United States, to use in a campaign for left-wing labor dictatorship over our agriculture.

Ickes' statement is as farfetched as John Steinbeck's Grapes of Wrath. And with your having been out here and visited these very farms on which these occurrences have taken place, I am sure that you can bear witness with us that our wage scales are higher, our living conditions better for our farm workers than in any place in the United States.

In fact along with the other farmers of our community, I am very proud of the progress we have made in building a community composed of farmers and farm workers, where mutual concern for the community has resulted in one of the most highly productive agricultural areas in the world and a prosperous community for all.

Naturally we object and fight when left-wing labor agitators attempt to utilize the sympathy of the American public to force us to bow to their dictatorial demands and give them control of our economy.

This picket line on the Di Giorgio ranch is propaganda and partly an attempt to force simultaneously, the company to sign a closed-shop contract, and the workers to join the union to pay dues. The attempt has failed and the labor union has grown hysterical in its statements, resulting in parroting by such people as Ickes, who completely disregarded facts in an effort to go all out sensationally on the theory that more and more bureaucratic control is what we need.

I am attaching hereto the report of the committee which I mentioned earlier in regard to their investigation of Ickes' statement and the actual facts of the matter. In fact, one of the members, Harry G. Thompson, is president of the National Cotton Ginners Association and will be in Atlanta in January for a meeting of that group. I have asked him to look you up and I hope that you can arrange a luncheon discussion of this subject with the editor of the Constitution.

Sincerely yours,

W. B. CAMP.

A REPORT

On Thursday, November 27, 1947, a number of newspapers in the United States, among them the Atlanta Constitution of Atlanta, Ga., carried a syndicated column written by Harold L. Ickes, in which a great deal of space was given to the plight of "Migrant farm laborers" in Kern County.

We, the undersigned members of a special committee, believing such erroneous information being distributed nationally by a public figure is detrimental to our community, have personally investigated the situation referred to by Mr. Ickes and hereby report our findings as related to Mr. Ickes' statements:

Mr. Ickes says: "With 1,500 other members of the National Farm Labor Union, A. F. of L., they are out on strike against the Di Giorgio Farms Corp., an outfit which grows plums, apricots, and grapes."

The facts are: Labor organizers placed a picket line on the ranch October 1. The workers did not strike. Of 1,445 persons employed at the time, 540 of them reported for work the day the picket line was established and that number grew daily after that. An economic survey of the Southeastern San Joaquin Valley, prepared early this year for the Kern County Board of Supervisors and the water resources committee of the Kern County Chamber of Commerce, shows that on Di Giorgio Farms in the same month of 1946, no transient farm labor was employed and only 110 resident temporary workers were used with all other workers employed being permanent labor. This same report shows that 91.7 percent of all labor required on the Di Giorgio Farms is permanent worker filled; 6.8 percent is filled by resident temporary workers and only 1.5 percent is filled by transient workers throughout the entire year.

Mr. Ickes says: "The human chattels quit work to force their employer at least to agree to discuss such (to them) life or death matters as better hours, an increase in the pittance they call wages, and more acceptable working conditions." "Days mean little to slaves."

The facts are: Employees at Di Giorgio Farms receive the highest agricultural wages paid in the community with the minimum wage being 80 cents an hour. The average wage of all the workers employed at Di Giorgio Farms during the month of October 1947 was $202.47. Official Government reports show the average monthly pay of farm workers in California is $192 and in the United States, $112.

Mr. Ickes says: "Included among the strikers were 130 Mexican nationals. * * * These serfs sought to walk out along with the others * * *."

The facts are: At no time did any of the Mexican nationals join in any of the activities of the picket line. Instead, they kept at work and when the labor leaders demanded they be returned to Mexico, these nationals, using the sheriff of Kern County as their interpreter, signed statements stating (1) their satisfaction with working conditions on the Di Giorgio Farms, and (2) their desire to complete their contract with the ranch, and (3) their desire to return in 1948 if it is possible.

Congressman Alfred J. Elliott (Democrat), representing this district, personally investigated the situation at that time and was quoted in the Bakersfield Californian as follows (October 18, 1947): "I have visited the Di Giorgio Farms on two occasions where there is picketing by outsiders in an effort to cause trouble with inside workers and Mexican nationals. To date, with imported picket lines, they have not succeeded in efforts to cause inside workers to leave their jobs. * * * If there were sufficient laborers to harvest the agricultural crops of California, I would be the first to ask the removal of the Mexican nationals, giving our own people the employment."

Mr. Ickes says: "Meanwhile the Di Giorgio Corp. is able to operate on a reduced scale."

The facts are: That while operations of picking and packing fruit were slowed down the first few days of intimidation with mass picketing at the farm, as soon as it was evident the law-enforcement officials would be present at all times to prevent mob action with violence, additional regular employees of the farm reported for work so that normal operations were resumed within 3 days. The work of harvesting the grape crop was completed and normal pruning operations in the orchards and vineyards have begun.

Mr. Ickes says: "Their home (John and Stella Gorman and family) as you will see, is a one-room shack, the pot-bellied stove and the electric light bulb are the only household equipment provided this hapless family by a miserly landlord."

The facts are: There is no basis for the implication that the Gormans live, or have ever lived on Di Giorgio Farms. The Gorgmans live several miles from the farm in housing which Di Giorgio Farms does not, nor has ever owned or controlled. Implications and statements of abject poverty do not check with pay-roll records. Gorman works in various harvests of the area, potatoes, fruit, and grapes. Di Giorgio Farms pay-roll records show that in his last employment there, Gorman worked a total of 65½ days during the grape harvest, earned a total of $419.60, an average of $6.40 per day, or $167.84 per month. It is emphasized that he did not work full time at Di Giorgio Farms during this period.

Mr. Ickes says: "There is no church to attend. * * *"

The facts are: Within a radius of 7 miles (most are 3 to 4 miles) of Di Giorgio Farms, there are the following churches which conduct regular services: Three Baptist, one Methodist, two Assembly of God, one Catholic, one Congregational, one Gospel Tabernacle. During the time of employment of Mexican nationals, they were provided free bus transportation to church services. Free bus transportation is also provided for children who wish to attend Sunday school when their parents do not care to drive in to town.

Mr. Ickes says: "No medical services * * *."

The facts are: An eminently qualified physician and surgeon, Dr. D. H. DeSmet, has lived on Di Giorgio Farms for more than 10 years, serving the surrounding communities.

Mr. Ickes says: "* * * no recreational facilities."

The facts are: Excellent recreational facilities are available at Di Giorgio Farms and surrounding communities. The Di Giorgio Farms softball team, sponsored by the farm, with uniforms, equipment, and transportation furnished by the farm, won the Kern County softball championship in 1947. Di Giorgio Farms donated 40 acres of its best land plus $150,000 in cash for improvement of the public school on the farm, including the best recreational facilities, playgrounds, gymnasiums, and modern equipment. Tennis courts and other game facilities are maintained on the farm. Sports and recreational activities are encouraged on the farm.

Mr. Ickes says: "What remain of Government-built labor camps have been leased or sold. The gentle Associated Farmers leased the Arvin Camp, where we are now, and at once raised the rents and abolished all comforts and services."

The facts are: When Congress decided against continuation of Farm Security Administration operation of the farm labor camp at Arvin, a group of private farmers of that community, not the Associated Farmers, assumed the lease and obligation of operation. They kept the same manager, Mr. Dewey Russell, who for 6 years had operated the camp under Government supervision, in order to provide the same and improved services for workers residing there. In addition, inasmuch as inference is made by Mr. Ickes that all Di Giorgio Farms employees must live under extremely meager housing conditions, it is well to point out that Di Giorgio Farms furnishes 132 houses on the farm for regular employees. There is no rent charged for these but a utility fee of $3 per month is charged for such services as water, garbage disposal, etc. The farm lost $18,000 on this rent-free worker housing project in 1946, which they charge off as worth while from an employee-relations viewpoint. The same reasoning is used in a loss of $49,000 in the operation of bunkhouses and dining rooms for the single men employed on the farm, where room and board is provided for $1.25 per day. The committee visited all of these facilities, found them to be in excellent condition, under constant inspection of the Kern County Health Department, and found that in addition to housing, most of the resident employees had been provided with space for vegetable and flower gardens, poultry pens, etc.; that facilities are provided on the farm without cost for such organizations and activities as the YMCA, Boy Scouts, Red Cross, etc. The committee found that approximately 200 children living at the camp attended excellent schools, with two bus loads daily attending Kern County Union High School and Junior College in Bakersfield.

Mr. Ickes says: "Long hours and meager pay are their (the farmers') ideas of social obligation."

The facts are: That Government statistics have shown for many years that California agriculture pays the highest wage rates in the United States and that Kern County wage rates are among those highest. As pointed out in this report about the one farm mentioned by Mr. Ickes, Kern County farmers are constantly improving housing conditions and working with their workers and other residents of their communities to provide improved public recreational and other social facilities. These same public facilities are available to worker and farmer alike.

The committee makes this report in the interest of justice and fair play, feeling that much injury has been done to Kern County as a growing and prosperous community by the publishing of statements such as those made by Mr. Ickes. Were the statements made by Mr. Ickes true in even a few regards as to conditions prevalent in Kern County than neither this county or California would be enjoying the greatest population growth of any area in the United States. It seems obvious that millions of people would not be trekking to California in order to be downtrodden, and in spite of such misleading statements, we feel that California will continue to be the mecca of many who come here and stay because of better pay and better living conditions.

Respectfully submitted in the hope of correcting the impressions created by Mr. Ickes.

Walter Kane, Chairman; C. L. Whelden, Harry G. Thompson, C. P. Lake, A. H. Walker, Frank Jeppi, G. B. Crome, J. K. Thrasher, Richard Leask, E. G. Buerkle, John J. Kovacevich.

Mr. Burke. There were at the time of the strike some 1,300 or more employees, were there not?

Mr. Strobel. I believe, as nearly as I can remember, there were between 1,350 and 1,500 employees on the ranch, at the time the so-called strike was called; yes, sir.

Mr. BURKE. It would take a pretty large swimming pool to accommodate that many employees and their families.

Mr. STROBEL. I do not think there was every any intention of 1,350 people going in swimming at one time. They have two swimming pools there that are at the call or use of the workers any time they see fit to use them.

Mr. BURKE. Actually, were they not more for the use of the officials of the corporation and their families?

Mr. STROBEL. I could not say as to just exactly what the extent was. They were there. The workers were welcome to them. I would like to say that Mr. Di Giorgio maintains a very close relationship with his workers, and they have a very fine employer-employee relationship, and if those swimming pools were there and they were said to be available to the workers, they were and are available to the workers.

Mr. BURKE. During the time of the strike, I understand the representatives of the corporation went to Texas to recruit Mexican nationals as strikebreakers; is that right?

Mr. STROBEL. No, sir; that is absolutely not right. There was never any need to import any workers or strikebreakers on Mr. Di Giorgio's ranch, because no amount of his employees left his employ that would make such recruitment necessary.

Mr. BURKE. Was it not the policy of the corporation to hire Anglo-Americans prior to the strike?

Mr. STROBEL. No, sir. I have here with me a statement by 1,250 of Mr. Di Giorgio's employees, a letter addressed to the Kern County sheriff, signed by these twelve-hundred-and-fifty-odd employees, which were all of the employees working on the ranch that day. It was unsolicited. They got it themselves and presented it to the sheriff of Kern County. And if the committee would care to have a copy of that—I cannot give them this copy I have here with me—I can let you see it and let you read it if you care to. But I will furnish you with additional copies of that particular letter signed by 1,250 of Mr. Di Giorgio's employees saying that they did not belong to the union and had no desire to join this union.

Mr. BURKE. Would you furnish it for the record, Mr. Strobel?

Mr. STROBEL. I will. I will furnish it for the record, and if you care to see it at this time, sir, I will furnish it to you.

Mr. BURKE. That is not necessary, because my time is very limited. We have just 10 minutes.

Mr. STROBEL. I see.

(The letter referred to is as follows:)

> We, the undersigned workers at Di Giorgio Farms, whose residence here reaches up to 25 years, have read statements made by people who are nonresidents and who we do not know, to the effect that the people working on this ranch are dissatisfied with wages and living conditions. We wish to state that we are quite satisfied here, and know that we are getting better wages, better food, and living conditions than any farm worker in the United States of America. We also wish to state that we have so advised the management of Di Giorgio Farms that we do not want to join any farm labor union as we are capable of representing ourselves.
>
> W. W. PALLADINE
> (and 1,159 others).

This is to certify that the above typewritten names are facsimiles of original signatures affixed to the above statement, which statement and signatures are now on file. Approximately 40 names appearing on the original list do not appear on these typewritten pages due to the fact that the names were signed in pencil and are not legible.

[SEAL] PEARL ROBINSON,
Notary Public in and for the County of Kern, State of California.

My commission expires August 26, 1950.

Mr. BURKE. Do you know if there were any illegal aliens imported during the strike for work on the ranch?

Mr. STROBEL. I could not say that, sir. I do not think that anyone would be capable of saying whether there was an illegal alien employed in California or not. It is common practice for many Mexicans to cross the border and come over on our side of the line to seek employment. Many of those men are imported and very few questions are asked the average Mexican when he seeks employment, as to whether he came into this country on a visa, or what.

Mr. BURKE. Your answer is that you do not know?

Mr. STROBEL. I do not know; that is right.

Mr. BURKE. On May 17, 1948, was there an attempt made to assassinate leaders of the strike, and Mr. James S. Price, who was president of the local union, was shot down by an unknown gunman while he was presiding over a meeting in a private home?

Mr. STROBEL. I would say what the newspapers said; that such a talk was made, that shots were fired into the house. According to the newspapers, Mr. Price was one of the men that was struck by such a shot.

Mr. BURKE. It is my understanding that the company's doctor, the doctor hired by the Di Giorgio Co., was the only doctor available or near the scene at the time, and that he refused to render fair aid to Mr. Price while he was lying there waiting for the arrival of the ambulance from Bakersfield, some 18 miles away.

Mr. STROBEL. I have no knowledge of anything of that nature, sir. I have never even heard of it. That is the first I have ever heard of such a statement.

Mr. BURKE. That is all, Mr. Chairman.

Mr. POWELL. Mr. Irving?

Mr. IRVING. I was necessarily a little tardy in getting up here and I did not hear the statement or some of the remarks. Not being personal, I would like to inquire as to the witness' educational and professional background.

Mr. STROBEL. My background?

Mr. IRVING. Yes, sir.

Mr. STROBEL. I am a farmer, sir. I have farmed all my life. Since around 1907 I have been engaged in farming activities and have never been employed other than a few years as a very young man, when I worked some in a shoe store. But most of my entire life has been in agriculture.

Mr. IRVING. Are you a lawyer?

Mr. STROBEL. Am I a lawyer?

Mr. IRVING. Yes.

Mr. STROBEL. No, sir. Unfortunately, I had to quit school at the age of 14 and go to work.

Mr. IRVING. I do not have too many questions, but I noticed you said you became secretary-treasurer of the association in 1938.

Mr. STROBEL. Yes, sir.

Mr. IRVING. Were you in charge of the vigilante groups in Solano County which used tear gas against the striking lettuce shed workers in the 1936 lettuce strike?

Mr. STROBEL. Was I in charge of vigilantes? Was that the question, sir?

Mr. IRVING. Yes; in the strike involving about 3,500 workers.

Mr. STROBEL. Absolutely not, sir. There were no vigilantes in that strike. Every man that was engaged in law-enforcement activities in that strike was a deputy sheriff sworn in by the sheriff of Monterey County and had direct orders from the sheriff of Monterey County for all of his activities. Arm bands were on those people who were deputized by the sheriff to maintain law and order, and I do not know how many, exactly, there were. I would say there were between 1,200 and 1,500 such men, from the first to the last of the strike; that the riots that they were deputized to put down involved some 3,500 workers; that we had to close the schools in Salinas for 3 days because it was unsafe for the children to go back and forth to school.

Mr. IRVING. We all lived at the time. I wish you would answer.

Mr. STROBEL. You asked me if I was the leader of vigilantes.

Mr. IRVING. I asked you if you were not in charge of them.

Mr. STROBEL. I was not. The sheriff was in charge of all law-enforcement agencies.

Mr. IRVING. Is it true that, since the time they signed contracts with the FTA-CIO, and the 1940 strike, there have been no strikes, but there have been peaceful relations?

Mr. STROBEL. I would not say that was exactly true.

Mr. IRVING. Did they sign that contract in 1942; do you know?

Mr. STROBEL. They signed a contract on order of a subpanel of the War Production Board: yes.

Mr. IRVING. The question that I asked, I understand, is documented in the La Follette hearings and reports. So there must be some basis for questions. I presume that the vigilantes were merely being benevolent in testing tear gas for salesmen of the companies selling it. Perhaps that was their object.

That is all.

Mr. STROBEL. Well——

Mr. IRVING. That is all.

Mr. POWELL. Have you finished, Mr. Irving?

Mr. IRVING. Yes.

Mr. POWELL. Mr. McConnell?

Mr. STROBEL. The gentleman made a statement. I would like to answer his statement.

Mr. POWELL. I am sorry. Right now we are just questioning the witness.

Mr. STROBEL. All right, sir.

Mr. MCCONNELL. I would be very glad to have the witness answer the statement on my time.

You proceed.

Mr. STROBEL. There was tear gas used in the Salinas lettuce strike. I will say this, however, that Mr. La Follette did not investigate the Salinas lettuce strike. It was one of the reasons why he came to California, but when he got to California and delved into the so-called interference of civil rights of workers that had been so widely charged, he found that interference was merely the law enforcement by different law-enforcement agencies throughout the State in protecting life and property, and that there was no violation of the kind and nature as charged, which were the reasons for Mr. La Follette's appearance in California; that he never investigated the Salinas lettuce strike. We were prepared to testify. We asked him to go into that strike. We wanted an opportunity to put the public right on what happened in that strike, and Mr. La Follette did not carry on any investigation into that particular strike.

Mr. McConnell. Mr. Strobel, I did not get here in time to hear all your testimony. In fact, I did not hear any of it. I came in during the course of the questioning period. Have you seen H. R. 2032, which is the bill being considered, known as the Lesinski bill?

Mr. Strobel. I saw part of it, Mr. McConnell. Unfortunately, I have not read it all.

Mr. McConnell. Do you feel that that will protect agriculture in the future, and is adequate for that purpose?

Mr. Strobel. No, sir; I do not feel that it will protect agriculture.

Mr. McConnell. In other words, it is your opinion as you have expressed it here, without the protection of certain provisions of the Taft-Hartley Act, the productive efforts of agriculture are completely nullified? Is that correct? Is that your position?

Mr. Strobel. That is correct, sir.

Mr. McConnell. And that is your position?

Mr. Strobel. That is my position, sir. Unfortunately, we have too often been tied up at times of harvest, and we have experienced losses because of these strikes. Agricultural commodities are of a particularly perishable nature—that is, the vegetables and fruits that comprise the majority of our productive efforts in California. They must be harvested; they must be moved into consumption immediately, or they become lost. They must either be canned or sold as fresh products from day to day, and if any interference occurs in that chain, then there is a loss to the farmer of his productive efforts and a loss to the consuming public of foodstuffs.

Mr. McConnell. In other words, it is your opiinon that the repeal of the Taft-Hartley law would bring before the country again the problems of hot-cargo and secondary-boycott practices, mass picketing and violence, jurisdictional disputes, lack of responsibility on the part of the unions for their actions and the actions of the membership, and so on? That is your view?

Mr. Strobel. Yes, sir, it is; because at the present time there are three dairies in San Bernardino County that are at this time under attack by the union. These dairies are operated, some of them, on a cooperative basis with the employees. They are nonunion; that is, they have no union contracts. Already those delivery trucks are being followed; letters are being written to the customers of those particular trucks calling their attention to the fact that these are nonunion trucks, and asking these particular people not to buy these products. Now, that was going on on Monday when I left California, and there were 15 other dairies that had had indirect notification that they would either have to sign contracts or that they would be tied up.

Mr. McConnell. Mr. Chairman, I believe I have used about 5 minutes of my time, since I have checked it here.

Mr. Powell. That is correct.

Mr. McConnell. I yield to Mr. Werdel, of California, when his turn comes.

Mr. Powell. Mr. Smith?

Mr. Smith. Mr. Strobel, in the difficulties that you have had out there with these strikes which have caused great loss, were they strikes purely over wages or working conditions, or were they matters involving secondary boycotts and jurisdictional strikes?

Mr. Strobel. There were some of all classes, Mr. Smith. The primary strikes that we have had have been for organizational or closed shop purposes. The strike on the Di Giorgio ranch, for instance, was purely an organizational effort, and in many of the other strikes—in the milk strike in particular—that has been the main problem; the demand for closed shop control of all of the unions concerned in that industry.

Mr. Smith. What about jurisdictional strikes? Have you had any trouble with that?

Mr. Strobel. Yes, sir. The cannery strikes that were on in 1945, 1946, and 1947, in many instances were the result of jurisdictional disputes between unions, interunion, or between two opposed unions—the CIO and the AFL, for instance, in the cannery strike, with each seeking a contract with the California processors and growers, and our canneries were tied up for close to 60 days during 1945, 1946, and 1947. During that time, we lost a considerable amount of spinach and other crops. And in 1941, the cannery tie-up cost was tremendous in asparagus. If you would care to see some of the losses that have occurred, I have some pictures that I would be very glad to give you showing the loss in asparagus that we had.

Mr. Smith. I would like to see them.

(Some photographs were handed to Mr. Smith.)

Mr. Strobel. I also have here, Mr. Smith, some pictures that perhaps you will be interested in, and some of the types of intimidation that were used. That is a picture of some trees that were cut down on Mr. Di Giorgio's ranch in an effort to force him to sign a closed-shop contract. These men entered upon this ranch at night and cut down those trees. Four men later were arrested. They have not been tried as yet.

Mr. Nixon. Will you yield a moment, Mr. Smith?

Mr. Smith. I yield.

Mr. Nixon. I understood, Mr. Strobel, from the questions on the other side that all the intimidation and violence were on the other side, that Associated Farmers was doing it all. You do not mean to say that the unions did some?

Mr. Strobel. Well, I would not say that the unions cut these trees down. I would say this, that the four men charged with the crime by the sheriff were members of the union, and bond was furnished for them by the union.

Mr. Nixon. What were the trees worth?

Mr. Strobel. I could not state the worth of the trees, but I presume that fruit of that kind runs anywhere from $1,000 to $2,000 an acre.

Mr. Nixon. Thank you, Mr. Smith.

Mr. Smith. Mr. Strobel, in cases out there where they have disputes in the canneries, do you know whether or not it has been the practice of some farmers to go and take their produce as far away as Los Angeles?

Mr. Strobel. Mr. Smith, we have to use any outlet that we can secure when our processing facilities are denied us in order to keep down the loss to the farmer. He has to take any means or methods he can to dispose of his products. But you must understand this, that there is a very decided tonnage of fresh fruits and vegetables that is available to the consuming public, and any additional surplus or any additional supplies taken into the market in most cases force the market down to where you lose on the fresh production side of the picture as well as the cannery production. There is also a very definite balance in there, and our productive efforts are divided between the fresh market and the canning.

Mr. Smith. Mr. Strobel, are you familiar with the case where a rancher took his lambs to market in Oakland and they were boycotted there because the previous year the yews had not been sheared by union shearers?

Mr. Strobel. I have no personal knowledge of that particular instance, Mr. Smith. I will say, however, that periodically for several years, Mr. Maxwell of the butchers' union served notice on the farmers in California that unless their sheep were sheared by union sheep shearers, when the lambs came to market they would not be handled by the union butchers. We had some attempts to stop the sale of such lambs, but in most instances it was so unfair that the public would not stand for that sort of interference and we were able to dispose of our lambs.

Mr. Smith. That is all, Mr. Chairman.

Mr. Powell. Mr. Nixon?

Mr. Nixon. Mr. Strobel, is the only member of the Associated Farmers the Di Giorgio farm?

Mr. Strobel. Is that the only member?

Mr. Nixon. Yes. sir.

Mr. Strobel. No, sir. We have 17,000 members in California.

Mr. Nixon. Well, of those 17,000, would you say that 12,000 were the large farms, 10,000 acres or more?

Mr. Strobel. Oh, no, sir. The larger farms——

Mr. Nixon. That would more or less take up all of California, would it not?

Mr. Strobel. Yes. The large farmers, or so-called larger farmers, are very few in comparison to the smaller farmers such as myself and others.

Mr. Nixon. Approximately how many of these 17,000 are in the small farm category, as you would put it?

Mr. Strobel. We have never broken that down, Mr. Nixon, but I would say that probably 85 percent to 90 percent of our membership are the average type small farms.

Mr. Nixon. You have indicated that you were concerned over the possibilities that would occur in the event the Taft-Hartley Act was repealed. As far as farmers are concerned, what do you think is the major problem that would arise in the event of the repeal of the act?

Mr. Strobel. Sir, at the present time, perhaps you have heard that Mr. Beck, the head of the teamsters union, has said that he is going to take over and control all the jobs in the warehouses of the United States from, I think he put it, Canada or Maine to Miami, or something like that, which was the statement in the paper. Many of those contracts are now held by CIO unions, and if a jurisdictional dispute develops within the processing industry or in those warehouses where we need those facilities from day to day, certainly there is going to be a terrific loss inflicted on the farmers of this country, not alone in California, but all over the Nation.

Mr. NIXON. In other words, Mr. Strobel, right now there is pending in California an all-out jurisdictional strike between the CIO and the AFL on certain farm labor, and particularly processing workers; is that right?

Mr. STROBEL. I think that would be true, sir, if you can trust what you read in the newspapers.

Mr. NIXON. Did you indicate a moment ago that there had been any violence in any of these labor disputes? The reason I ask that question is that there had been considerable discussion here today as to where any violence occurred, whether it was on the side of management or on the side of labor. Now, we have had some description of the management violence which has been condemned. In your statement, you spoke rather generally on that point. Do you have any specific examples of any violence being used?

Mr. STROBEL. Well, sir, I could say in the Salinas lettuce strike, I have some very personal experiences. As a deputy, I was under the order of the sheriff in our main street, and the boys apparently objected to my presence there to the extent that my nose was broken, I had my teeth kicked out, two ribs broken and quite a number of cries of lynching. In fact, they had a rope around my neck, which fortunately for me did not quite shut off my wind. They were quite capable of going through with their intentions.

Mr. NIXON. You are sure that those are not stooges that the union has put on the spot?

Mr. STROBEL. I would hate to think that was the case, because certainly I would have been very much put out with some of my friends.

Mr. NIXON. We were speaking about the issues in these strikes that occurred out there and the efforts to organize the dairies and the other farm labor of California. Did you indicate that the major issue in the Di Giorgio strike was the matter of wages or the matter of union security?

Mr. STROBEL. It was organizational, as far as I have been able to determine, and I think I am correct in that statement, Mr. Nixon. The matter of wages was not involved, because the minimum wage rate on that ranch was 80 cents per hour. That pamphlet I turned over to the committee will give you a fairly accurate picture of the wages that those people were receiving. And as I said awhile ago, very few of Mr. Di Giorgio's employees left the ranch; there never was any need to import or bring into the area any additional workers. On the first day of the strike, about 250 people whose normal period of time would have ceased in about 10 days—and they would have gone into the cottonfields, because the grapes would have been harvested—did not come through the picket line. But in less than 4 days, over 400 additional applications were made for employment by people within the county for those particular jobs, and there was never any need to bring in any outside workers, and never any need for Mr. Di Giorgio to solicit or ask for any additional workers to come to his ranch.

Mr. NIXON. Were any efforts made by those in the picket lines to keep the workers from continuing with their work?

Mr. STROBEL. Yes, there were numerous cases of interference with workers going in and out of the ranch, and on one or two occasions they sought to take some workers out of the trucks. I believe one morning there they stopped the truck, and started to drag some workers who were going in out of this truck, and I think they were rather more willing to come out, because three of the attackers were taken to the hospital. The boys unloaded the truck, and three of those people who attempted to stop them were taken to the hospital, and as far as I know, the trucks continued on to the ranches to their work.

Mr. NIXON. Don't you believe in freedom?

Mr. STROBEL. Absolutely I do, Mr. Nixon.

Mr. NIXON. Well, after all, as far as these people were concerned, they had a right to beat up these people up. Why should the law step in and interfere with them?

Mr. STROBEL. Of course, sometimes the law has not stepped in. But I would say this, that any attack on any person by any group whatsoever is absolutely against all my principles of law, and if a man is proceeding down the street or into his place of employment, certainly I do not think that anyone should have the freedom to walk up and slug him or stop him, or attempt to stop him. I think that that is a violation of law as we know it. I think it is a violation of that particular person's freedom, and that any attempt to interfere with me would meet with just exactly the same sort of reprisal that evidently these people used.

Mr. NIXON. In other words, you do not believe that the freedom of one individual or one group of individuals should go so far as to allow them to interfere without fear of any legal action against them, with the freedom of other individuals?

Mr. STROBEL. Absolutely I think that we all stand in the same position before the law, or should.

Mr. NIXON. In the case of the dairies and the other farm enterprises that you mentioned in your statement, I noted that in all of the specific cases the workers in those particular enterprises were not the individuals who were instigating the strike; they were people who wanted to stay on the job, who were satisfied with their working conditions. The pressure came from the outside, from union leaders who were attempting to come in, and, having failed to obtain membership from within the ranks of the workers, were attempting to get the employer to force the workers into the union; is that right?

Mr. STROBEL. That is right.

Mr. NIXON. That was the issue?

Mr. STROBEL. That was the issue.

Mr. NIXON. That is why you think that a provision in the law, as we have in the Taft-Hartley law, which prohibits that type of practice, is one that you think is to the best interests of the country and the best interests of the workers as well?

Mr. STROBEL. I think it is in the best interests of everybody concerned, particularly the workers, because it does give them freedom of choice.

Mr. NIXON. That is all.

Mr. POWELL. Mr. Werdel, you have 15 minutes.

Mr. WERDEL. Mr. Strobel, what gave rise to the organization of Associated Farmers?

Mr. Strobel. Mr. Werdel, as far back as 1932 there were periodic attacks—and in 1932 there developed a very general pattern of attack on agriculture in California. For instance, in the harvesting of the cotton up in the San Joaquin Valley there was an attack, and then the following spring in the harvest of the peas down in Imperial County there was also an attack made in an attempt not to secure for the workers a job or higher pay, but primarily to stop the entire harvest of that particular crop. And it appeared that certain people who were engaged in the cotton strike in the San Joaquin Valley were the same leaders who engaged in the so-called pea strike in Imperial County. Now, individual farmers so attacked had no one to whom they could appeal for aid. They were out by themselves; they were absolutely helpless, and so the Associated Farmers were organized in 1934 to aid the farmer in his efforts to produce, to harvest, and to market his crop with no interference, working all the time within the framework of the law-enforcement agency in any locality in which violence occurred. We merely stepped into the picture. This farmer who in many instances was not a member of the Associated Farmers could appeal to us, and we would use our best efforts to iron out the difficulties and see that his productive efforts were not interfered with, that his crop was marketed, and that his foodstuffs were made available to the public.

Mr. Werdel. You mentioned violence. Can you tell us what the nature of that violence was? Did it involve the destruction of property or the threat of personal violence, or what was it?

Mr. Strobel. In some instances, it involved the destruction of the property, and in some instances it was personal violence. I think I remember in the cotton strike—I do not know whether it was Sonoma County or which one it was—but there were two men killed in that strike, unfortunately. It has never been known just exactly who killed them, but those were the type of things that alarmed us. Attacks were made on farmers by large groups of irresponsible people. They went on their ranch—I would not say they were workers, because we have no way of knowing that they were. But because of that condition, we sought to bring our influence into law enforcement. In other words, we asked the sheriff in the law enforcement agency to enforce the law, to protect lives and property on both sides. We were very much alarmed at the rate that violence was increasing, and I might say that after the Associated Farmers was organized, there has been no single instance in which a worker was seriously injured in California, and none has been killed.

Mr. Werdel. In regard to the property damage, were there instances when property was destroyed, where it was burned, where they burned haystacks and sheds, and that sort of thing?

Mr. Strobel. Yes, there were numerous instances of packing sheds that were burned in Imperial Valley. In one particular year in Imperial Valley over 200 haystacks were set on fire. That was attributed to what we then called the IWW's, and then later developed into the Communist Party as we understand it today.

Mr. Werdel. Was that destruction just confined to Imperial Valley, or did it spread throughout California?

Mr. Strobel. I understand that on the ranch adjacent to Mr. Di Giorgio's ranch during this particular strike that we have been discussing, a barn—and this barn was filled with hay—to the best of my information, was set on fire and destroyed.

Mr. WERDEL. In connection with law enforcement, where it was necessary to have farmers organize for assistance, will you describe to the committee the disturbing influences it dealt with with reference to traveling around the country.

Mr. STROBEL. Yes. In numerous instances, large automobiles and trucks were used and other types of attacks were made. These people rode throughout the area, and wherever anyone was working they threatened them with reprisals if they continued to work. And in this asparagus strike last year, in particular, it was the second time that this type of attack was used. Two airplanes were used in buzzing the workers that remained out in the field. Later those two pilots were arrested, and that type of violence stopped. Back in 1934 or 1935, in the citrus strike, in Orange and Riverside Counties, an airplane was used, and they flew over the workers and threw rocks and chain at the workers, and numerous types of interference such as that were indulged in and have constantly been indulged in.

Mr. WERDEL. When these automobile caravans traveled around throughout the productive area, as I understand it, did they enter upon the fields of the farmers to drive people out of the fields?

Mr. STROBEL. Such attempts were made in instances; yes.

Mr. WERDEL. Now, give the committee some idea of the position of the farmers in regard to the cost that is required to be laid out up to the time of production of some of these crops as compared to the value of the crops.

Mr. STROBEL. Of course, Mr. Werdel, there are many types of crops, and the production costs differ very widely. I would take citrus as an example at this particular time and say that due to the weather hazards that citrus has encountered this year in California, no matter what the crop that they harvest brings, they would still be at a loss. There was a certain loss because of the actual freeze damage, and then the effort to protect the crop against freeze damage resulted in such a costly operation that, no matter what the crop brings, in many instances that farmer will be in the red. Now, I can tell you about sugar beets and lettuce and crops of that type, because that happens to be my particular line. The cost of producing an acre of lettuce and bringing it up to the harvesting period runs from $150 to $175 per acre. As regards the income from that particular crop, I might say that my particular efforts—and you will pardon me if I speak personally, because I know what I am talking about—my particular efforts in the direction of producing lettuce last year cost me $40,000. I lacked just exactly $40,000 of getting what my crop cost me to produce.

Mr. WERDEL. These labor disturbances that you referred to, they are precipitated during harvest time; is that not correct?

Mr. STROBEL. Almost always; yes, sir. There is no point in their trying to interfere with our productive efforts until they are ready to move, because there is no place at which they can affect us. Most of our workers are loyal and remain on the job; they are not interested in joining a union. If they want to join, we certainly would not tell any man not to join a union, if he saw fit to. But most of our workers during our productive periods are workers who have been with us for many years in many instances. Some of the workers have been on those ranches for as much as 25 years.

Mr. WERDEL. If you know, tell us whether or not the parties leading these labor disputes in agriculture in California are known to the community when the trouble starts or if they come from the outside.

Mr. STROBEL. Most of the leadership comes from the outside. For instance, the leadership involved in the efforts to tie up Mr. Di Giorgio's operation, Mr. Hank Hasiwar, of the National Farm Labor Union, came in there from Texas, and had been formerly, I believe, in Tennessee. He was not, I believe, a California man. And many others are the same way. They come from outside.

Mr. WERDEL. What I am getting at is this. So far as agricultural organization is concerned, do the central labor councils of the various counties usually stimulate this agricultural organization, or is it someone else?

Mr. STROBEL. I would say in most cases it is someone else, sir.

Mr. WERDEL. Regarding these pictures you have given the committee, I notice that some of them are duplicates. But I will ask you if they were all taken at the same time, or at the time of the same labor dispute?

Mr. STROBEL. Are you referring to the asparagus pictures there, Mr. Werdel?

Mr. WERDEL. Well, let us take them one by one. Here is a truck and a brick wall, and entitled "Hauling Asparagus From Storage to Dump." I will mark that "Exhibit No. 1." Just tell us briefly what it is.

Mr. STROBEL. That is a picture of a truck removing asparagus from the storage sheds. The canneries were tied up at this particular time, and we hoped that, by harvesting our asparagus and putting it into cold storage, we would be able to take it to the canneries and get it put in cans later. But the facilities were not sufficient to protect the asparagus, and so they lost that, because the canneries were tied up and the freezing facilities were not sufficient to protect it to the point that it could be canned later on.

Mr. WERDEL. And that is also true of this other photograph with the truck, entitled "Loading at Cold-Storage Plant To Be Hauled to Dump"?

Mr. STROBEL. Yes; I think that is the same.

Mr. WERDEL. I will mark that "Exhibit No. 2."

And these pictures refer to your written statement in which you say there was a $3,500,000 loss?

Mr. STROBEL. No. That was prior. That was the strike in 1941. Those pictures were of the strike in 1941. We did not have any pictures of the strike in 1948 which we have just experienced.

Mr. WERDEL. All right. Now, here are a few other pictures that appear to be carrots. What are they?

Mr. STROBEL. No; that is asparagus, sir. That is being put out in the dump and being thrown overboard there.

Mr. WERDEL. And that is the same strike?

Mr. STROBEL. Yes, sir; that was the same strike.

Mr. WERDEL. I will mark these "Exhibits No. 3 and No. 4."

What was the amount of loss in this particular strike to the farmers?

Mr. STROBEL. That particular part of that strike amounted to about $1,750,000. That was the second phase of that particular strike, Mr. Werdel. We had had a previous strike in the field in which we had lost a considerable quantity of grass, and I am sorry I have not the pictures. The Taft-Hartley committee has pictures of the previous strike, which was in the field where we were cutting and harvesting grass and just throwing it on the ground in an effort to keep our beds producing.

Mr. WERDEL. But that is the same strike?

Mr. STROBEL. No. That was previous to this particular part of it.

Mr. WERDEL. And these losses, you say, resulted from secondary boycotts?

Mr. STROBEL. No. That particular loss there was because the canneries were tied up. There was no secondary boycott. The canneries were tied up by a strike in the canneries at that time.

Mr. WERDEL. I see. All right. Now, you have four pictures there of cut trees. I take it those are the ones you referred to earlier in your statement.

Mr. STROBEL. Those trees were cut down on Mr. Di Giorgio's ranch.

Mr. WERDEL. Do you want to leave all four of these pictures with the committee?

Mr. STROBEL. I will leave them with the committee if you would like them all, sir.

Mr. WERDEL. I will mark them "Exhibits 5, 6, 7, and 8."

Can you tell us how many trees were cut?

Mr. STROBEL. No, sir. I have heard it at from 3 to 5 acres. I would not know exactly how many were cut.

Mr. WERDEL. And those were cut all in 1 night?

Mr. STROBEL. Yes, sir; all in 1 night.

Mr. WERDEL. Were they cut by hand ax?

Mr. STROBEL. Yes, sir.

Mr. WERDEL. Is it your opinion that four people could cut that many trees in 1 night?

Mr. STROBEL. I do not know how many people engaged in that. Those trees, as you know, are spaced rather widely apart. It might be possible that they might have had additional help. I only say that four men were charged with this particular crime.

Mr. WERDEL. Mr. Strobel, I show you two small pictures in which it shows the same thing, with the man carrying a placard. Will you tell us what that is? It is in front of the Kilburg Co.

Mr. STROBEL. I do not know what those particular pictures are. I am sorry. I have some additional pictures here that you might be interested in. Here is a picture where an attempt is made to stop the movement of strawberries from Santa Clara County.

Mr. WERDEL. What is the nature of that attempt? Is that a secondary boycott or a closing of that plant, or what?

Mr. STROBEL. That was a secondary boycott. The unions were attempting to organize that particular processing plant, and these strawberries were hauled into this plant and then sent out as fresh fruit to San Francisco and other plants; and, because of the attempt to organize that plant, the trucking outfit refused to move the strawberries. They refused to load them on their trucks, and at this time the farmers loaded the strawberries on the trucks themselves and then told the trucking companies that unless they moved the strawberries their trucks would stay there. And they eventually moved them.

Mr. WERDEL. I will mark that picture, then, "No. 9."

Mr. STROBEL. I have here some pictures of the secondary boycott.

Mr. WERDEL. I think our time is running out, Mr. Strobel.

Mr. BAILEY. Your time is up.

Mr. WERDEL. Do you want to leave the other pictures, or just those that I have marked?

Mr. STROBEL. I will leave these, if you care, sir. It shows citrus.

Mr. BAILEY. Mr. Werdel, do you want these included as exhibits?

Mr. WERDEL. I would like to have them included.

Mr. BAILEY. Without objection, they will be received and filed as reference exhibits.

The next witness is Mr. E. L. Chandler of the Engineers Joint Council.

Will you kindly step forward and give your name and occupation, Mr. Chandler?

The gentlemen are with you, Mr. Chandler?

Mr. CHANDLER. Yes, sir.

Mr. BAILEY. Will you give us their names and addresses?

Mr. CHANDLER. I will be glad to introduce them to you. Their names are included in the statement we have, Mr. Chairman.

TESTIMONY OF E. LAWRENCE CHANDLER, ASSISTANT SECRETARY, AMERICAN SOCIETY OF CIVIL ENGINEERS, AND CHAIRMAN OF THE PANEL, ENGINEERS JOINT COUNCIL

Mr. CHANDLER. Mr. Chairman, my name is E. Lawrence Chandler. I am assistant secretary of the American Society of Civil Engineers whose headquarters are in New York. I appear before you this morning as chairman of the panel of the Engineers Joint Council, representing the following organizations: American Institute of Chemical Engineers, American Institute of Electrical Engineers, American Institute of Mining and Metallurgical Engineers, American Society for Engineering Education, American Society of Civil Engineers, American Society of Mechanical Engineers, National Society of Professional Engineers. Because of the confusion that arose regarding the scheduling of hearings, it is not possible for them all to be here. Two of them are here. I should like to introduce Mr. E. H. Bancker and Mr. Gail A. Hathaway, who are members of the panel.

With your permission, we would like to have this statement included in the record, and if I may, I will read the statement.

Mr. BAILEY. Are there objections?

Mr. PERKINS. No objection.

Mr. CHANDLER. The several engineering societies represented on this panel are national professional organizations having a combined membership of well over 100,000 individual members distributed throughout all of the States and Territories of the Nation. Our members include both employers and employees and they are engaged in a wide variety of fields, including Federal, State, and local governments, industrial organizations and private engineering firms. Due to the character and widespread distribution of our membership, we believe we are in a position to speak with a well-balanced and unbiased viewpoint regarding those phases of labor legislation which particularly affect professional employees.

I would like to interject that the American Chemical Society, although it did not participate in the preparation of this statement, also stands with us in approving its contents. The American Chemical

Society has a membership of nearly 60,000, including chemists and chemical engineers.

Our purpose in presenting this statement to you may be expressed very simply. We find nothing in H. R. 2032 directed toward protecting the collective-bargaining rights of professional employees as such, and recommend that the National Labor Relations Act of 1949, in whatever form the Congress may determine to be appropriate, shall carry the provisions affecting professional employees which have been established for the first time in the existing law. We refer specifically to section 2 (12) and to section 9 (b) (1) of Public Law 101, Eightieth Congress.

Section 2 (12), which is a definition of the term "professional employee," states that—

> (12) The term "professional employee" means—
>
> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (ii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
>
> (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 9 deals with representatives and elections. In subparagraph (b) of that section it is stated that—and this is the section that is particularly important to the professional worker—

> (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit.

These provisions are tremendously important to professional employees. Activities governed by them have been such as to contribute to the betterment of relations between management and employees in accordance with the stated objective of the country's labor laws.

The fundamental purpose of according special recognition to professional employees, as distinguished from nonprofessional employees, is to increase effective application of the law. Philosophy of professional separation in collective-bargaining determinations should not be confused with proposals to restrict the application of the law to smaller numbers of employees or to give employers undue advantage in the professional field.

Prior to the enactment of the provisions cited, situations continually arose where the best interests of professsional employees, nonprofessional employees and employers alike, were not well served. Confusion and conflict with organizations of nonprofessional employees developed. We do not believe those developments to have been in accord with the intentions of Congress and certainly they were not in the interest of promotion of progressive, cooperative relations between employer and employee, nor for the best interest of the country. Under the present law, with statutory provision of protection of the rights of professional employees, there has been a distinct trend away from such unsatisfactory conditions and it is fair to say that we are well on the way toward complete abolishment of the confusion and distress that existed among professional employees under the earlier law.

In view of the rapid technological developments in American industry, most large-scale industrial enterprises today employ large staffs of professional engineers, architects and scientists on a full-time basis. As a result, these professionally trained and professionally minded employees come within the coverage of the labor laws. In a lesser degree, the same trend has been occurring in the professions of law and medicine, for it is common to find banking, insurance, and manufacturing corporations which have legal departments and medical departments of their own.

The National Labor Relations Act of 1935 was enacted primarily for the benefit of unskilled and unorganized workers in mass production industry. Cognizance was taken of the status which the skilled craftsman had attained and special provisions were contained for recognizing craft units. Unfortunately, no corresponding recognition was accorded the special problems of the professional employee.

A fundamental difficulty with the Wagner Act, as it affected professional employees, was that no distinction was made between professional and nonprofessional employees in spite of the fact that their viewpoints and abilities are inherently different and that their conditions of employment cannot be made subject to a common standard.

This statement is a simple recognition of fact. It does not imply any suggestion of placing one segment of the employment force in a preferred position. It is for the best interests of all in the collective bargaining field to recognize the essential differences.

Professional service, even though rendered by an employee, is predominantly intellectual and varied in character. Constant demand exists for originality and creative thought in the solution of problems presented with each new undertaking. Technical skill is only a part of the equipment of a professional person. There is no yardstick by which creative ability can be measured. Individual talents vary and every person possessing a professional attitude constantly strives to expand his knowledge and improve his abilities in his chosen field to the end of personal excellence, personal advancement, and the betterment of his profession. Strict regimentation of professional employees is incompatible with the maintenance of true professional standards.

With regard to conditions of employment, consider the typical situation of a professional employee in a large industrial plant. The duties of one engaged in the development of industrial processes or the design of equipment may be such as to demand continuous and prolonged application of his individual services. From the very nature of those services, the employee must be granted prerogatives such as access to various portions of the plant at all hours, the right to work with continuing shifts as occasion may demand, latitude as to hours and location of employment, and freedom of judgment as to the best method of carrying out his special assignment. Obviously, such working conditions cannot be set forth in the usual labor union type of contract.

To attempt application of the same standard of measurement for services of professional men and nonprofessional men is not in the public interest. The output of professional employees cannot be standardized as can that of manual and skilled labor. It cannot be measured in terms such as the number of brick a man should lay in a given number of hours, the amount of cubic yards of dirt that should be moved, the square yards of painting, the amount of type to be set, bolts to be placed, feet of conduit to be laid, or in terms of any other similar unit.

The productive output of the professional man is largely that of his mind, while that of the nonprofessional depends largely on his manual skill and dexterity. No law by which professional employees and those engaged in routine, mental, mechanical, and physical work must conform to the samé regulatory pattern is a just law. It is unjust alike to the laborer, to the nonprofessional white-collar workers, to the professional man, to their employers, and to society.

In spite of all this, prior to the enactment of the present law, professional employees were often included against their will in heterogeneous groups and compelled to accept representation which they did not desire in collective-bargaining procedure. The results were most unsatisfactory. There was serious effect on the morale of professional employees and generally poor relationships developed between those employees and labor unions and employers.

In industrial undertakings, professional employees always are far outnumbered by the production and clerical employees. Even though the vote of the professional employees were unanimous against proposed representation, it was of no avail. By sheer numerical force the professional employees were denied effective representation.

We accept the principle of collective bargaining as a right of employees, professional and nonprofessional, but we firmly believe that there should not be any submergence of the desires and interests of professional employees. The background, education, training, and work interests of professional employees and nonprofessional employees are inherently divergent. It is futile to expect that a forced grouping of the professional and nonprofessional employees in any plant or organization could possibly form an "appropriate bargaining unit." Under the old organizational law and its administration, such plainly inappropriate groupings were made and, by fiat, were declared appropriate. We do not consider that to have been the intent of Congress.

Let us cite a few early cases to illustrate actual development under that unfortunate situation. No attempt is made to cite all such cases. We think that a few are sufficient to demonstrate the need for correction.

One of the first cases decided by the National Labor Relations Board was *Matter of Chrysler Corporation* (1 N. L. R. B. 164) wherein, in referring to design engineers, the Board said:

> It is true that this work requires a considerable degree of skill and more or less imagination. There is nothing, however, peculiarly personal in the relationship between the company and its many hundreds of engineers. They are in no sense executives. The engineers have need of organized strength in common with all wage earners.

In *Kennecott Copper Corporation* (40 N. L. R. B. 986) the Board determined the following category for an appropriate unit:

> Employees of the office department at Santa Rita Mine and employees of the Hurley miscellaneous clerical department, chemists included.

In *Black and Decker Electric Company* (48 N. L. R. B. 726) the following unit was prescribed:

> Employes in the accounting, cashiers, pay roll, cost, sales, service, production, material control, purchasing, personnel, stores, receiving, shipping, experimental, mechanical engineering, and tool and processing engineering departments.

In *Permanente Metals Corporation* (45 N. L. R. B. 931) the Board found as appropriate a unit—

> including professional chemists, gas analysts, stenographers, and sample boys.

There are a number of cases in which no distinction was made between purely technical employees and purely professional employees. The two are far from identical.

The difficulties encountered by professional employees in maintaining autonomy and preventing a forced grouping into heterogeneous units is no better illustrated than in the *Shell Development Company* case (38 N. L. R. B. 192) decided in January 1942. It was only through an all-out effort on the part of professional chemists involved and extensive litigation backed by the financial support of the American Chemical Society that the professional employees were able to escape compulsory inclusion in a bargaining unit which included janitors, roustabouts, window washers, and the like. It is absurd to think that the professional viewpoints could be properly represented as a result of including professional employees in such a group.

This type of dissension extended throughout the administration of the National Labor Relations Act. In only a few cases did professional employees succeed in gaining recognition, and then only after protracted and costly controversy, entailing litigation and appeal and fundamental disturbance of employer-employee relationships.

The early cases also illustrate the difficulty which confronted the Board in attempting to apply standards for classifying professional employees. The original act contained nothing in the way of definition and the varied concepts of professionalism naturally had no firm basis. Without a statutory guide, the application of standards for determining professional status wavered according to the individual concepts of the board member or the examiner and left the professional public in a constant state of uncertainty.

The solution of this entire complex situation was found to be as simple as the problem was tangled. The heart of the solution is in the two sections of the present Labor-Management Relations Act, 1947, previously quoted.

It should be stressed that section 9 (b) (1) takes nothing away from the professional employee. Rather it protects his rights in the collective bargaining field, and permits exercise of those rights on a professional basis. Under this provision, professional employees may engage in collective bargaining and in many cases have done so. They may have had their nonbargaining unit restricted to professional employees, or they may be a part of a larger over-all bargaining unit including nonprofessionals, if that is their desire.

The definition of professional employee is basically not a new one; it is based, with minor changes, on the definition of professional employee currently in force under the Fair Labor Standards Act. This definition has stood the test of time and has been found in the administration of the Fair Labor Standards Act and of the current labor act to be fair and practical. The inclusion of subsection (b) to the definition is designed to apply the same general standards to young men who have completed the basic professional education and are in the process of acquiring the necessary experience to qualify for full professional status, that is, internes in the medical field, and engineers-in-training in the engineering field, and the like.

It is significant that the legislative history of the present labor law indicates very little discussion and debate on the principle of professional separation. This is accounted for by the fact that the rights of professional employees are being fully protected and by the evident justice of the principle. The few objections raised have been technical in nature and are quite easily met by examination of cases decided by the National Labor Relations Board involving professional employees.

Although the professional provisions have been in force only a little over 1 year, there have been Board decisions in sufficient number to demonstrate conclusively that the professional sections are successful in application and have not been abused to the detriment of labor unions. They have brought highly significant benefits to professional groups and marked improvement in management-employee relations.

Any misapprehension that the professional sections would be used to deny collective-bargaining rights to professional employees was dispelled by the Board in the *Lumberman's Mutual Casualty Com. of Chicago* case (75 N. L. R. B. 1132) wherein the Board rejected the argument of the employer that a number of attorneys involved were not employees within the meaning of the act because they were professional employees. The Board's opinion clearly stated the opposite principle to be true, stating:

> We are of the opinion, therefore, that the mere fact that the attorneys are professional personnel does not preclude them from being employees within the meaning of the act, and entitled to its benefits, and we reject the employer's contention in this respect.

Later in the opinion the Board stated:

> That the attorneys have a statutory right to self-organization cannot be denied. If doubt ever existed, it has been removed by the * * * act * * * which defines "professional employees."

It is significant that the Board acknowledges in this decision the element of doubt as to appropriate classification of professional employees in the past and definitely indicates that the collective-bargaining status of the professional employees has been enhanced by the professional sections of the existing law.

To the same effect is *Worthington Pump and Machinery Corporation* case (75 N. L. R. B. 80) in which the Board states:

> * * * the statute itself refutes the respondents' contention that employees like the ones in question are to be deprived of employee status because of the nature of their duties. * * *

These cases effectively dispose of any contention that the collective-bargaining rights of professional employees will be destroyed or diminished. In fact, the Board now has ample statutory authority to confirm its position. Likewise disposed of is the misconception that the provisions will operate to the undue advantage of employers. The above cases clearly indicate that although the employers in these cases opposed collective-bargaining rights for the professional employees, the Board had no difficulty in applying the act to support such rights.

It is recognized that the professional sections could be misapplied and misused if there were loose application of the professional definition so as to cover those who are not truly professional employees. A study of the cases discloses that this has not occurred. The Board has been properly strict in applying the professional definition. There is no reason to assume that the Board will not continue to apply the definition with due care and caution.

In the *Jersey Publishing Company* case (76 N. L. R. B. 70) the Board declined to grant professional separation to editorial employees. This opinion was confirmed in *Free Press Company* case (76 N. L. R. B. 152) which also involved a claim for professional status for editorial employees.

That the Board has been careful not to stretch the definition of "professional employee" to cover classes of employment not intended is demonstrated in *Clayton Mark & Company* (76 N. L. R. B. 33), wherein the Board said:

> It is equally clear, in our opinion, that the amended act and its legislative history do not authorize the classification of inspectors as "professional employees" merely because, by the exercise of individual judgment and discretion, they may sometimes affect the earnings of production employees.

Starrett Brothers & Eken, Inc. (77 N. L. R. B. 37) illustrates that the Board will not include technical employees or employees with professional titles without proper proof of true professional qualification. In that case the Board declined professional separation to employees classified as chief of surveying party, instrument men, front chainman, rear chainman, estimator, draftsman, inspector, mechanical engineer, and assistant mechanical engineer.

In *George A. Fuller Company* (78 N. L. R. B. 34) the decision in Starret Brothers & Eken, Inc., case was confirmed and professional status was denied to members of a construction surveying party.

In *Southern Bell Telephone and Telegraph Company, Inc.* (78 N. L. R. B. 100) the Board found the engineers, junior engineers, and student engineers to be qualified under the professional definition but excluded the engineering fieldman from that classification as lacking the professional qualifications.

In *Automatic Electric Company* (78 N. L. R. B. 146) the accountants did not come within the Board's application of the professional definition and they were denied treatment as professional employees. To the same effect is the decision in *American Window Glass Company* (77 N. L. R. B. 162) wherein accounting employees were found not to be professional.

That the Board is not impressed by a professional title per se is again illustrated in *Inter-Mountain Telephone Company* (79 N. L. R. B. 96) wherein three employees with the title of "engineer" were found to lack the necessary professional qualifications to meet the definition. Also excluded in the same case was the accountant.

Artistic or literary talent alone is not sufficient to warrant a finding of professional qualifications for the purposes of the act. In *West Central Broadcasting Company* (77 N. L. R. B. 56) the Board denied professional separation to the radio announcers, singers, and continuity writers. An attempt to bring auto and Diesel mechanics into the professional classification was rejected by the Board in *Ferguson-Steere Motor Company* (76 N. L. R. B. 159).

A striking illustration of the fact that an employee claimed to be professional must actually be engaged in professional work as distinguished from merely having professional qualifications, is the decision in *Charles Eneu Johnson & Company* (77 N. L. R. B. 3), wherein a professional chemist by training was performing maintenance electrical work and, at times, unskilled labor. The Board properly placed him in the appropriate unit as a maintenance employee.

Enough has been cited in this line of cases to demonstrate that there has been no abuse of the professional sections of the law. The Board has had a clear definition to guide it and has acted within that definition as indicated above. It is apparent that the employees involved must be truly professional employees, on the basis of appropriate education, training, and duties, to come within the strict limitations of the professional test.

The professional provisions have not operated to the advantage of the employer or to the disadvantage of nonprofessional labor organizations. The rights of the professional employees have been fully protected and their actual bargaining strength greatly enhanced. As distinguished from splinterization, the professional sections have instituted a proper and workable solution to the problem posed by employee organizations containing divergent elements.

We submit that developments to date have demonstrated the need for, and the desire of, professional employees to take advantage of the provisions of the present law which are directed toward affording them the freedom of association and choice so properly proclaimed in the old Wagner Act but which so often proved in fact to be but an empty promise to them.

During the relatively brief time since the enactment of the Labor-Management Relations Act, 1947, material advances have been made in the promotion of harmonious relations between management and professional employees. The trend is toward minimizing the costly and disruptive turmoil that previously existed in professional ranks and the resulting loss of productive service and effective industrial relations. We are not aware of anything about the existing professional provisions of the law to which exception can be taken by anyone who has at heart the best interest of the country and of this large group of employees who are so vitally important to advancement of the general welfare.

We respectfully request your committee to include in its recommendations to the Congress a continuation of the legislative provisions contained in section 2 (12) and in section 9 (b) (1) of the present labor-management relations law.

That is the end of the prepared statement, Mr. Chairman.

I might add just a few remarks to explain the position of these professional and technical societies in the matter.

These organizations, of course, are not labor organizations; they cannot be, from their very nature, under the law; and the reasons why the societies are taking this stand stems from the urgent request, almost agonized pleas, that came from our employee members during the years under the old law, appealing to their professional societies to find if there was something could be done to relieve them from the embarrassment and continued harassment to which they were subjected.

Speaking for my own society, the American Society of Civil Engineers, we have a committee on employment conditions, and other societies have corresponding committees, and those are continuing committees, but the personnel changes from year to year as one man goes out and another comes in, and there has been substantial representation of employees and employers in an effort to work out a balanced adjustment of the matter. This stems from a long study and close relationship with professional employees who have had difficulties in the past years.

The Engineers' Joint Council, through which this panel was organized, has at very considerable expense published a manual on collective bargaining, which is particularly intended for our engineering employees, to indicate to them the best way in which they may look after their own interests if they have any occasion at all for collective bargaining, and my own society, in one case, expended a considerable sum of money appearing as a friend of the court to try to get out of a difficult situation, an organization in which many of our young members were enrolled.

So the societies have a real and earnest interest in this proposal. We who appear here are not speaking for our own selfish interests—I probably will never in the world have any interest in the collective bargaining on either side—but these societies are sincerely interested in seeing that young engineering employees, and other professional employees along with them, have the opportunity to stand on their own feet, and if by their own desire they do not care for any collective bargaining negotiations they can say so, and refrain, but if they do find a need for collective bargaining—and I think that there is that need in some of the larger companies on the west coast—for instance, some of the large airplane companies in which they have many of the technical engineers working for them—and under the provisions which we are discussing those men can, by their own choice, have a unit of their own with their own representation, and if by some chance they prefer to unite with a nonprofessional group, they have that right also, under the law.

Mr. Bailey (presiding). I want to thank the gentleman for an able and concise presentation of this problem at this time.

Mr. Chandler, if you will, the commtitee will be pleased to hear your associates and have them present their problems.

Mr. Chandler. I do not know that they care to add anything. This statement I have just read is a joint effort to present our views.

Mr. Bailey. Do they want to present a statement?

Mr. Chandler. No; I am speaking for the panel. We will not take up your time, unless you would care to have us discuss it further.

Mr. Bailey. I might ask you a question, in that case, Mr. Chandler.

Your primary object in appearing before the committee was to protect the provisions in the present act insofar as it concerns your group?

Mr. CHANDLER. That is right, Mr. Chairman; those specific provisions.

Mr. BAILEY. You are alarmed that there is no provision in the proposed legislation as concerns your group?

Mr. CHANDLER. That is the whole concern. We are afraid maybe this particular phase of the legislation may disappear, and they will be back where they were under the previous law.

Mr. BAILEY. I am sure the committee will give serious consideration to your request.

Do you have any comments, Mr. Burke?

Mr. BURKE. Yes; I would like to clear up some misunderstandings, more than anything else.

Your experience in collective bargaining is generally among the professional people, and has been confined almost exclusively to the varying categories of engineering; is that not true?

Mr. CHANDLER Naturally, that is so. Yes, because we have closely observed the other law. In the case that I mentioned, the Shell Development case, those were largely chemists. Of course, they are quite closely related to engineers, too.

Mr. BURKE. There have been no difficulties so far as, for instance, legal departments of some of the large corporations—there has been no contention that I know of that the attorneys for a corporation should be included within the unit proper for collective bargaining?

Mr. CHANDLER. The case we mentioned in the statement which I read, the Lumberman's case out at Chicago, did involve a group of attorneys. I cannot say for certain whether they had been previously denied any collective bargaining privileges, but I judge the employer in this case was taking the stand they were not entitled to collective bargaining rights, but under this definition and the other provision which I read, the National Labor Relations Board ruled even though they were professional people they still were employees and were entitled to their position.

Mr. BURKE. Is it your understanding of the present act that it is mandatory, where there is contention, that a professional unit be set up within the plant, and that the representation vote be taken within that unit itself, and that no vote then would be allowed as to whether the employees within that unit would care to be affiliated as a part of the production and maintenance unit?

Mr. CHANDLER. When you said "that unit," do I understand you to mean the professional group, now?

Mr. BURKE. The professional group; yes.

Mr. CHANDLER. No; it does not work that way. The act prohibits the National Labor Relations Board from arbitrarily including professional employees in a heterogeneous bargaining unit, but if the professional people want to form a unit of their own they can by a majority vote affiliate with the production workers' unit, if they desire, or they can select their own representatives, or they can refrain from collective bargaining at all.

Mr. BURKE. It may be the same union that has the bargaining rights, but in any event they would be required to vote for representation as a professional unit and thereby bargain and consummate their contract for that professional unit only; is that not right?

Mr. CHANDLER. If, by a majority vote, the members of the professional group elected to have the production workers representation, let us say, represent the professional group, that is quite within their rights, and that would be their sole approach to management.

Mr. BURKE. Although there was not specific language in the Wagner Act, the Labor Board was not foreclosed from making that type of decision?

Mr. CHANDLER. That is correct. It was not impossible, but in the first place, the Board had no statutory definition of professional employees, and when the case was presented, naturally it was up to the members of the Board to decide whether or not those who were petitioning were professional employees, just like it is within our circle here; there might be a variety of opinions. For the first time, we have a workable definition to guide the Board, and so far as I know the Board has been well pleased with that.

Mr. BURKE. That is all.

Mr. BAILEY. Any questions, Mr. Smith?

Mr. SMITH. Where does the resistance come from in your organization; does it come from management, or unions, or where?

Mr. CHANDLER. There is no resistance from management that I know of, because we are convinced that developments under present provisions have been favorable to management and employees both. There was a statement presented on the Senate side which pretended to say that most everything we had said was not so, but it was not a good statement, and in turn I would say the statements in that one were not so. I do not want to take your time, but I could read one paragraph from that other statement in which the speaker stated his desires and objective, and it is as perfect a statement as we are placing before you, or as I could state myself.

In closing, Mr. Chairman, I would like to put into the record telegrams from two other engineer organizations, endorsing the attitude and statement of the Engineers' Joint Council.

Mr. BAILEY. Without objection, they will be received and made part of the record.

(The telegrams are as follows:)

LOS ANGELES, CALIF., *March 18, 1949.*

E. L. CHANDLER,
Care American Society of Civil Engineers,
New York, N. Y.:

The committee on employment conditions of the Southern California Professional Engineering Association has read and approved the EJC panel statement to the Senate Committee on Labor and Public Welfare and has asked me to commend the panel for its efforts in behalf of professional engineering employees. We hope you will continue to urge congress to retain the sections of the Taft-Hartley Act which insures to professional employees the privilege of free choice in selecting their collective bargaining agent and in determining the scope of their bargaining units. Our present membership of 813 engineers is approximately 85 percent of those eligible for membership and indicates overwhelming approval by engineers of the principle that an organization of professional engineers is best suited to represent engineers in collective bargaining matters. Since the passage of the Taft-Hartley Act, labor unions have made no serious attempt in this area to unionize professional engineers, but have tried to organize subprofessionals. These attempts ceased when SCPEA offered to represent those subprofessionals if they desired this service. We sincerely hope that the threat of labor-union organization of engineers is not allowed to return by repeal of the Taft-Hartley Act.

STERLING S. GREEN.

SEATTLE, WASH., *March 17, 1949.*

E. L. CHANDLER,
Assistant Executive Secretary, American Society Civil Engineers, New York, N. Y.:

Seattle Professional Engineering Employees' Association, which bargains for 2,000 engineering employees at five concerns in Seattle, has had much experience under the Taft-Hartley law of 1947. We have had two elections under the law and one hearing on representation in the Austin Co. engineers' case. We have one petition for election pending before regional board now.

The SPEEA membership has unanimously voted approval of the statement made by the council legislative panel on behalf of all engineers employees and we feel that our viewpoint has been truthfully and adequately presented by these representatives of our profession. We are most sincere in our wish that stipulated provisions in the law be retained in any new legislation to guarantee freedom of action for the professional engineering employees.

RICHARD A. HENNING,
Chairman, Seattle Professional Engineering Employees Association.

Mr. BAILEY. I want to thank the gentleman and his associates for appearing before the committee.

The subcommittee will adjourn until 2 o'clock, at which time we will hear Mr. Lyle H. Fisher, director of industrial relations.

(Whereupon, at 12:10 p. m., a recess was taken until 2 p. m. of the same day.)

AFTERNOON SESSION

(Pursuant to the recess, the subcommittee reconvened at 2 p. m.)

Mr. BAILEY (presiding). At this time the committee will be in order, and we will be pleased to hear from Mr. Lyle H. Fisher, director of industrial relations in charge of labor relations for Minnesota Mining & Manufacturing Co.

The witness will proceed.

TESTIMONY OF LYLE H. FISHER, DIRECTOR, INDUSTRIAL RELATIONS, MINNESOTA MINING & MANUFACTURING CO., ST. PAUL, MINN.

Mr. FISHER. My name is Lyle Fisher. I am director of industrial relations, in charge of labor relations, for Minnesota Mining & Manufacturing Co. Our company, with headquarters in St. Paul, has 20 manufacturing plants in the following States: Minnesota, Wisconsin, Illinois, Ohio, Michigan, Pennsylvania, New York, New Jersey, Maryland, Arkansas, and California; we have collective-bargaining agreements with many unions, including affiliates of the American Federation of Labor, the Congress of Industrial Organizations, and the United Mine Workers of America.

I sincerely hope that my remarks will be helpful to this committee in its efforts to maintain a workable balance in labor-management relations in the United States. I honestly believe that everyone here wants to accomplish this, insofar as the law can do this. I humbly submit that what management and labor are striving for in this country cannot be legislated. For industrial harmony is a job that must be done at the grass roots on a man-to-man basis. I am sure you will agree that this is where mutual respect and confidence must be built.

To achieve this mutual respect and confidence, all we ask is that the rules of the game assure equal status to both management and labor under the law and in the eyes of the American people. This matter of equal status is a most important one; when status is gone, distrust and disrespect take its place. Under the Wagner Act we learned how easy it was for a union to harass management. Anyone who had his feet under the collective-bargaining table in those days knows that to be true. But some people today would have you believe that the present law has reversed this position, that workers are oppressed. If this is true, how can we explain what has happened since its enactment—the sharp reduction in man-days lost through strikes, for example? Their right to strike had not been taken away. The right to strike for economic reasons continues just as clearly and as affirmative as before, notwithstanding the fact that under the present law both sides are expected to live up to the terms of their agreement. Surely this is a reasonable request in view of the fact that the entire economy of this country can be thrown out of gear by a few people.

It is certainly difficult for me to see where the present law places management in a position to harass labor. Only recently we had an unfair-labor-practice charge placed on the doorstep of our Little Rock plant. It appears now that we did wrong in telling our employees about the company's policies. And this occurred under the present guaranty of free speech to the employer. The Board's interpretation of this was strictly ad hoc. It would seem to me that this right of free speech should be more clearly spelled out; an employer should know whether he is within or outside the law.

Based on my own experience, I submit that you cannot conduct successful labor-management negotiations through lawsuits, nor can you, on the other hand, negotiate with irresponsible unions any more than you could reason with a bunch of dead-end kids hell-bent for trouble they know they can get out of. It is my humble opinion that, if the Congress enacts a law that places either side at a disadvantage, surely it is not interested in sound collective bargaining, or collective bargaining has no meaning.

Successful labor-management relations cannot be conducted under laws that favor one side or the other, no more than one could expect two football teams to play the game fairly if the rules were to place one or the other at a disadvantage. Placing either one at a disadvantage can only result in added belligerence on the part of those who have lost status. This has been the problem between management and labor for years. This is what we are all endeavoring to improve.

The greatest benefit of the present law is that it has brought collective bargaining up to a high level. The same set of rules exists for each party. We have noticed a better attitude on the part of unions, a more sincere attitude of willingness to bargain, a recognition of responsibility to employees. This obligation of both parties to abide by the contract is in the best interests of everyone; it is in the public interest. In view of these developments, it is difficult to see whose interests would be served by enacting any law without including provision for the following:

First, representatives of management should be excluded from the act. Employers should not be required to bargain collectively with foremen or supervisors who are a part of management. It doesn't make sense to say that a foreman can be both management and labor. To attempt this by law will only make it necessary to place management responsibility elsewhere. Surely the foreman in industry today deserves a better fate than that. The foremen in our company have always been a responsible part of management, and we do not want to be compelled to change our type of management organization in a way that would reduce the status of our foremen. From our experience we are certain that the American method of spreading managerial authority and responsibility among foremen, so that management is constantly in close contact with the employees, is the only sound way of handling a large production organization. Anything that would require a change in this organizational structure would likewise affect employee-employer relations as well as production.

Second, the right of free speech should be protected and strengthened both for employers and for unions. This right should be clearly spelled out for both management and labor. It is our experience that enforcement is not in keeping with the law's intent. Many Minnesota employers are still somewhat shaky and uncertain as to the rights conferred upon them by the present law, and particularly have they been hesitant to break away from the inhibitions and prohibitions within which the old Wagner Act restricted them. It is our firm belief that the best possible management-worker relations require free, frank, and fair exppression on all sides.

Third, Federal conciliation and mediation should be entirely independent of the Department of Labor. The very reason for the existence of the Department of Labor would cause employers certainly to regard those under the supervision of the Department with suspicion. The Department of Labor would still be the directing force, not the Conciliation Service. The Department has never had a reputation for impartiality, and it is doubtful if the Conciliation Service could change this attitude.

Fourth, the right of individual employees to join a union or refrain from joining should be protected. Compulsory union membership, against the wishes of the individual employee, is just as un-American as it would be to require that all Republican members of the House and Senate join the Democratic majority, or take a walk.

Fifth, employers and unions alike should be required to abide by the terms of collective-bargaining agreements. Strikes and lock-outs in violation of agreements should be prohibited.

Sixth, no strike should have the protection of law if it involves issues which do not relate to wages, hours, working conditions, or demands which the employer is powerless to grant. This would include jurisdictional strikes, sympathy strikes, strikes to force employers to ignore or violate the law, strikes to force recognition of uncertified unions, and strikes to enforce secondary boycotts. I need cite only the Northern States Power Co. case of St. Paul, where a strike of 2½ months' duration involved two unions.

Seventh, unions which have been certified as the bargaining agent, as well as employers, should be obligated to bargain collectively in good faith.

And, eighth, the act of their agents should be binding upon unions, the same as acts of their agents are binding upon employers.

From a legislative point of view, it has been our experience that a workable balance has been more nearly attained during the past 2 years than at any time previously. I am confident that this committee is determined to preserve a workable balance, and I appreciate that you have a grave responsibility in deciding what inequities, if any, exist under our present law.

Surely, there is no desire to becloud management's effort to convince its people that it wishes to pay them well, surround them with the best working conditions possible, and to make their jobs secure and their futures safe so far as it lies within management's power to do so. By the same token, there should be no desire to relieve labor of its responsibility to cooperate wholeheartedly with management in every way to bring about a stronger, more efficient economy to the end that these United States may continue to stand out above all others as a desirable and hopeful place in which to earn a living.

Mr. BAILEY. The chairman has no desire at this time to question the witness. I will defer to Mr. Jacobs, and he may use a part of my time if he cares to.

Mr. JACOBS. Thank you, Mr. Chairman.

Mr. Fisher, as to the general objective you stated in your prepared statement, I can say that I am in agreement, but as to the detailed provisions by which we will accomplish the objectives, we may have some differences of opinion, and we may not; but I would like to explore the details a little further.

You state that the results of the past year and a half or so, while the Taft-Hartley law has been in effect, discloses that there has been less stoppage of work through strikes; and I think that is correct according to the statistics; is it not?

Mr. FISHER. Yes; according to the statistics, I feel it is correct.

Mr. JACOBS. Do you attribute that solely or in part to the Taft-Hartley law, or do you think there may have been other factors that entered into the picture?

Mr. FISHER. I do not think any single factor contributed solely to that type of condition.

Mr. JACOBS. It, of course, would be a little difficult, would it not, to determine just how much bearing any one factor might have had upon it?

Mr. FISHER. That is correct.

Mr. JACOBS. For example, you are probably aware of the fact that after the First World War work stoppages declined about three times as rapidly as they did after the Second World War; or have you studied those statistics?

Mr. FISHER. I have not studied the statistics. I have heard that.

Mr. JACOBS. Do you not think it would be a little difficult to know how much, unless you examined other statistics?

Mr. FISHER. We have had no differences in our attitude, certainly, on the part of organizers and negotiators which has contributed to this.

Mr. JACOBS. We will arrive at that later.

Would it be true, if labor knew it could not win at the bargaining table under the Taft-Hartley Act, that there would naturally be a more docile attitude on the part of labor?

Mr. FISHER. That is where you lose your status; yes.

Mr. JACOBS. I will ask you, if labor felt it had no chance to win, would it naturally be more docile, and that would create more peace?

Mr. FISHER. I do not think so unless the law is absolutely unfair.

Mr. Jacobs. We are going to arrive at that in a few minutes and see whether it is or not.

I am simply asking you whether or not you agree that, if labor felt the law had deprived it of any opportunity to win a strike, that that would cause it to be less prone to call a strike?

Mr. Fisher. I do not feel there is any less chance for the unions to lose a strike today than there was previously.

Mr. Jacobs. The question is whether or not that situation would exist, assuming that to be the case?

Mr. Fisher. I think you are right; if you make it impossible for them to win. If that were the case, but I do not think it is.

Mr. Jacobs. In reference to the matter of statistics, you obviously were referring to statistics which refer to more peace in the labor field in the last year and a half. Have you ever examined the statistics for 1930?

Mr. Fisher. No; I have not.

Mr. Jacobs. Do you not know the lowest strike records in this country were in 1930?

Mr. Fisher. I presume that strike history will follow depressions and recessions.

Mr. Jacobs. That is right. In other words, if a man had a job, he did not take a chance with it then?

Mr. Fisher. Yes, but that has not been true during the last 2 years, though, I do not believe.

Mr. Jacobs. That, again, only proves the point that other factors have considerable bearing upon statistics.

Mr. Fisher. I will go along with you on that.

Mr. Jacobs. Have you studied the record for 1937 and 1938?

Mr. Fisher. I have seen those statistics.

Mr. Jacobs. Do you remember the strike record for 1938 was only about a third of what it was in 1937?

Mr. Fisher. That is correct, and so was busines down at that time.

Mr. Jacobs. And the Wagner Act was validated in 1937?

Mr. Fisher. Yes.

Mr. Jacobs. Of course, some one favoring the Wagner Act would claim that the situation was the result of the Wagner Act, but if you examined the record and found out the automobile industry was organized in 1937, you would get another factor to consider, would you not?

Mr. Fisher. I think that is probably correct.

Mr. Jacobs. In other words, do you not agree that all this argument about statistics, until you examine the records and examine all the factors, does not amount to anything?

Mr. Fisher. Except this: You will find in most depressions, and in recession years, the amount of labor unrest is less than it is during full employment. That is a natural conclusion you will find from your statistics. Actually, there was no recession or depression in 1947 or 1948, and yet the labor unrest is still at a lower rate than previously.

Mr. Jacobs. It was following the war, though; you understand that, do you not? And that is another factor?

Mr. Fisher. But our war period—you are going back long before my time—but following this war period industrial production held up much longer than it did after the last war.

Mr. Jacobs. You had better read your statistics again. Do you happen to know what the percentage of strikes following World War I was as compared to statistics following World War II?

Mr. Fisher. No; I do not.

Mr. Jacobs. I mean the number of people who went out on strike after the World War I as compared to World War II.

Mr. Fisher. No; I do not.

Mr. Jacobs. If you will read Fortune magazine for the month of November 1946, page 121, you will find that there were five times as many people went out on strike immediately after World War I as there was after World War II. Get it and read it, and see if I am not correct.

As I understand you, you feel that the Taft-Hartley law has brought a better balancing between labor and management than we had before, is that correct?

Mr. Fisher. That is correct.

Mr. Jacobs. You have a feeling that the Taft-Hartley law does not, you might say, load the deck against a union in an economic strike?

Mr. Fisher. No; nor against the employer.

Mr. Jacobs. Do you have a copy of the Taft-Hartley law there?

Mr. Fisher. Yes, sir.

Mr. Jacobs. Will you examine section 9 (a)?

I do not want you to read it. I just mean to refer to it so you will know what we are talking about.

This is identical with the one I am referring to, and in that way I can give you the page number.

Mr. Fisher. What is the page number, sir?

Mr. Jacobs. That is at the top of page 9.

You recognize that, do you, as the section that provides for the certification of the union for collective bargaining purposes?

Mr. Fisher. That is correct.

Mr. Jacobs. I want you to follow in your mind the train of events that I am going to lead you through with reference to sections of the Taft-Hartley law. If you will drop down now to section (c), just a little below the middle of that same page, section (c) (1) (A) and (B); do you see that?

Mr. Fisher. Yes.

Mr. Jacobs. Do you recognize that as the provisions of the Taft-Hartley law whereby a union may be decertified?

Mr. Fisher. That is correct.

Mr. Jacobs. That is, a union that has been certified for more than a year there can be an election called, and that union can be decertified; is that correct?

Mr. Fisher. That is correct, with a majority of those voting.

Mr. Jacobs. Will you turn to section 9 (3) on the following page 10:

> Employees on strike who are not entitled to reinstatement shall not be eligible to vote.

You remember that provision of the law, do you not?

Mr. Fisher. That is correct.

Mr. Jacobs. So, that, in effect, means this: That if a union calls an economic strike, that if the employer can put a token force into the plant, and someone calls for an election to decertify the union, there can be an election held by them while the strike is going on, and the employees on strike are not entitled to vote? You recognize that as being a provision of the law, do you not?

Mr. FISHER. I recognize that.

Mr. JACOBS. In reference to the next provision, I want to call your attention to page 7. I call your attention to section 8 (b) (4), which commences at the top, almost at the top, the third paragraph from the top of page 7. Do you recognize that under (B) and (C), section 8 (b) and (4), that it is an unfair labor practice for a union to attempt to require an employer to bargain with it before the union has been certified as the bargaining agent; you recognize that, do you not?

Mr. FISHER. That is correct.

Mr. JACOBS. So the union we are talking about, which was originally certified, if it eventually called an economic strike and later was decertified, is now in position it cannot demand the employer to recognize it any further; is that correct?

Mr. FISHER. That is correct.

Mr. JACOBS. If you will look at section 8 (b) (4) (C) you will also recognize that it is unlawful—or maybe it is the reverse—no, it is not—you will also recognize that it is unlawful for the employees who are on strike to even ask or encourage those who took their jobs for a lower wage to join them in the strike; do you recognize that as being the law under the Taft-Hartley Act?

Mr. FISHER. You say that is spelled out in (4) (C)?

Mr. JACOBS. It is spelled out in this way: If you will back up to the language under (4) itself, it pertains to the provision in (C); if you will read both of them together. I assume if you were familiar with the first language up there, that qualifies all of the provisions.

Mr. FISHER. That is right.

Mr. JACOBS. Do you agree to that?

Mr. FISHER. That has been ruled, I think.

Mr. JACOBS. That has been ruled, and that is the law.

So, as we arrive at that point, we have a union that was certified, and later, after negotiations break down, calls an economic strike and replacements are called in, and a decertification election is held, and the old union is decertified, and now it becomes unlawful for that old union to even ask the new employees to join with it in holding up the wage scale; is that about what it amounts to?

Mr. FISHER. There is a little difference in sequence of events that take place, I think.

Mr. JACOBS. Do you not admit the sequence of events could occur?

Mr. FISHER. They could occur, and I do not think it is bad.

Mr. JACOBS. Maybe it is not. There are some provisions here that pertain to the same situation.

If you will turn to page 15, and look at section 10 (l). Do you have section 10 (l) on page 15? It is down at the last paragraph on the page.

Mr. FISHER. I have it.

Mr. JACOBS. I will ask you to examine that and see if you do not recognize that as being a provision that calls on the regional counsel of the Labor Board to bring an action for injunction, such injunction to issue, at times, without notice, which forbids these old employees whose union has been decertified from even asking the new employees to join in the strike. If you will read the language at the top of page 16.

Mr. FISHER. I am not familiar with that provision.

Mr. IRVING. I yield all of my time to Mr. Jacobs.

Mr. JACOBS. What was your answer?

Mr. FISHER. I am not familiar with that provision.

Mr. JACOBS. If you will read the provision I have in mind, please, and then tell me whether you recognize that as being a provision having that effect. That is a very important provision that you should be acquainted with if you speak of the Taft-Hartley law.

Mr. FISHER. It is not one that occurs very frequently, however.

Mr. JACOBS. It is not likely to occur until there is some unemployment where the replacements can be procured?

Mr. FISHER. Except the Board, to my knowledge, does not step in.

Mr. JACOBS. Does not the law say there at section 10 (l) that when there is a violation of section 8 (b) (4) (A), (B), or (C)—that is the one we just referred to a minute ago—that if the attorney, after an investigation, finds there is reasonable cause to believe that such charge is true and that a complaint should issue—not that he may, or that he shall in his discretion—but the attorney for the Board shall, on behalf of the Board, petition any district court of the United States where the unfair-labor practice in question has occurred, for appropriate injunctive relief. Is that not what it says?

Mr. FISHER. I agree that where unfair-labor practice takes place that provision should remain.

Let us start over again.

Mr. JACOBS. We have a union which is certified, and that union engages in an economic strike against the employer, and the employer brings in replacements—and I will agree with you that the employer should always be entitled to bring in replacements; otherwise, he would be at the mercy of the union, just like the union should always have a right to strike—but I do not stop at that point. I will not disagree with you up to that point, but he has brought the replacements in, and now these replacements are the only ones who are permitted to vote in a decertification election to decertify the old union——

Mr. FISHER. Isn't it also true——

Mr. JACOBS. Just a minute, until I finish the sequence of events.

Mr. FISHER. Pardon me.

Mr. JACOBS. The old union is decertified, but we are going to keep adding to it and see where we get. The old union is decertified, and the old union then is forbidden, under sectioi 8 (b) (4) (B) or (C) from even going to these new employees and saying, "Look here, Bud, you took my job for two bits an hour less than I was working for. Do you not know you are cutting the wage scale and hurting yourself, and do you not think you should join up with us and try to hold the wage scale up?" They are forbidden from doing that under this law, is that not true?

Mr. FISHER. That is true. On the other hand——

Mr. JACOBS. Not on the other hand. Let us just take the one case, and see where we get on that.

Mr. FISHER. That is correct on this one case.

Mr. JACOBS. You and I will agree that that situation could not happen until there is some unemployment whereby the employer could get replacements, do we not?

Mr. FISHER. That is correct.

Mr. Jacobs. It has become an unfair labor practice for these employees to go and ask the working employees to join them, to hold up their wage scale. Do you know, as a matter of fact, that is a right that was recognized by the courts? That is, the right to ask workers to join with them to hold up the wage scale, that that right was recognized by the courts even when the yellow-dog contract was upheld as a sacred obligation?

Mr. Fisher. I am familiar with that.

Mr. Jacobs. Then, we are almost back before the days when the yellow-dog contract was outlawed?

Mr. Fisher. In that particular instance, yes.

Mr. Jacobs. In that particular instance we are back to the days before the yellow-dog contract was outlawed, but we have some other provisions to think of. We come over to 10 (1). We have an unfair labor practice, now, in doing a thing that was allowed under the yellow-dog contract, and then we come back to 10 (1), and does that not provide the United States Government can come in and enjoin these men from doing the very thing they could have done even in the last century? That is, to ask a fellow not to cut under the wage scale?

Mr. Fisher. I do not know it actually occurs in that way.

Mr. Jacobs. I do not think it has occurred in that way very often, because there has not been the unemployment whereby that situation could be implemented, but you will agree if the union is decertified, then it becomes mandatory for the attorney for the Labor Board to get the injunction; do you or do you not agree with that?

Mr. Fisher. I agree with your trend of events, in parts.

Mr. Jacobs. In the particular case we are talking about, is that what happens?

Mr. Fisher. That possibly could happen.

Mr. Jacobs. And it could happen where there is unemployment, could it not?

Mr. Fisher. Wherever employers can hire employees that are willing to work, but you are placing the emphasis on the right to strike rather than the right to work, and that is where I differ with you.

Mr. Jacobs. We will get to the right to work in a few minutes. Let us talk about the right to hold up the wage scale by concerted economic force.

We have the United States Government issuing an injunction against the former employees of this plant, forbidding them from even going and encouraging those who took their job for less money, to hold up the wage scale. You will admit that, will you not, under this case we are talking about?

Mr. Fisher. I think that could be done.

Mr. Jacobs. Do you not know that Senator Taft has conceded (Columbus Citizen, Feb. 27, 1949) that is the effect of those sections, and do you not know that Life magazine, in an editorial in the November 29, 1948, issue conceded that?

Mr. Fisher. Yes, sir.

Mr. Jacobs. Do you not know Fortune magazine in its November 1948 issue conceded that?

Mr. Fisher. Yes, sir.

Mr. Jacobs. Did you read Business Week for December 18, 1948, where it conceded the same thing?

Mr. Fisher. I have not seen that one number.

Mr. JACOBS. There are three publications, and the senior author of the act, who admit that is the effect, so that is it not a fact that the United States Government itself becomes an absolutely strike-breaking force just by virtue of the circumstances whereby an employer can employ replacements, and put them to work, and cause them to decertify the union by virtue of law to exercise the right that was exercised even when the "yellow dog" contract was upheld as valid, and it becomes an unfair labor practice that the United States Government must enjoin? Do you admit that, now, in the case that we are talking about?

Mr. FISHER. I do not have quite the same impression.

Mr. JACOBS. I thought you had conceded all the factors.

Mr. FISHER. I concede that could happen, individually, but not in the way you have outlined.

Mr. JACOBS. You agree they could come to the same result, regardless of the things I pointed out? Do you agree that it can come to that result?

Mr. FISHER. No; my understanding is that the decertification has to be issued long before the strike takes place—I mean the request for decertification has to be issued.

Mr. JACOBS. Will you point out to me the language in the Taft-Hartley law that requires that?

Mr. FISHER. I have not the clause before me, but that is the understanding I have.

Mr. JACOBS. Will you take it from me, as one who has read it very carefully, that I find no such language to that effect, and if you find it will you write me and tell me where it is?

Mr. FISHER. I shall do so.

Mr. JACOBS. There is another section here that has quite a bearing upon the same question. I want you to turn to section 8 (d).

Mr. FISHER. Is that page 8?

Mr. JACOBS. It is section 8 (d). It is on page 8.

Now, we are going to talk about the right to bargain collectively, and we have arrived at that point where the replacements or strikebreakers, or whatever you want to call them, have come in, and they have formed a new union, and have voted and decertified the old union, and now I want to examine the Taft-Hartley law and see what are the rights of the employees under this decertification.

If you will go below the indented portion on page 8, and see if you find these words——

Mr. FISHER. You are talking about 8 (d)? Section 8 (d) is on page 7.

Mr. JACOBS. I am sorry, but you are mistaken. You are looking at the wrong (d). This law is so involved, and there are so many subsections and sub-subsections that it is hard to follow. It is hard for a lawyer to follow, much less a layman; but I am talking about section (d), on page 8. It commences with the second paragraph on page 8, and that is the section which outlines the duty to bargain collectively, and it outlines what must be done by each party in order to bargain in good faith.

Have you found it?

Mr. FISHER. That is correct.

Mr. JACOBS. Go below the indented language on page 8 and see if you do not read these words, and remember when you read them, that they apply to this new union that was formed out of the replacements or strikebreakers, and who now have the bargaining rights, so to speak, in this plant.

Let us read it:

> The duties imposed upon employers, employees, and labor organizations by paragraphs 2, 3, and 4—

Those are the provisions that require collective bargaining—

> shall become inapplicable upon an intervening certification by the Board under which the labor organization or individual which is a party to the contract has been superseded or ceased to be representative of the employees.

Did I read it correctly?

Mr. FISHER. That is correct.

Mr. JACOBS. I have pointed out to you and made reference to approximately 13 separate provisions in the Taft-Hartley law, and I will ask you to state if it is not a fact that we have not only arrived at a point, from the examination of those 13 separate provisions—not 13 sections, but 13 provisions—whereby a union calls an economic strike, where there is any unemployment, is subjecting itself to a chain of circumstances whereby eventually the United States Government must enjoin that union from even asking the people who took its members' jobs, from joining with them in trying to hold up the wage scale?

Through that chain of circumstances, do you agree with me that that can very easily be the result, if the employer chooses to use it?

Mr. FISHER. I do not think the employer chooses it. I think the National Labor Relations Board is the one that is the motivating force.

Mr. JACOBS. The Board must follow the provisions that we in Congress write in the law; is that not correct?

Mr. FISHER. That is correct.

Mr. JACOBS. Then, Congress did write those provisions in the law that I have called your attention to, did it not?

Mr. FISHER. Yes, sir.

Mr. JACOBS. Then, do you not agree that any employer in the United States can demand that the Labor Board follow those provisions, and that the courts follow the provisions?

Mr. FISHER. Only if they find an unfair labor practice existing.

Mr. JACOBS. But does it not become an unfair labor practice for me, as an employee, to say to you, "Will you not come out and help me hold up the wage scale, other factors being present?"

Mr. FISHER. That is also true if the employer should tell that employee not to join that union, is it not?

Mr. JACOBS. You are talking about the economic coercion of the employer against the employee in the manner of organizing. I am not talking about that. I am talking about what the employer can do legally.

Is it not a fact, by virtue of your decertifying my union, that it then becomes unlawful for me to go to you and say, "Mr. Fisher, you are working for two bits an hour less than I was getting, so why do you not come out and join me in trying to hold up the wage scale?" Is that not correct? Do you agree that that is correct, or do you dispute that analysis of the provisions?

Mr. FISHER. I agree with your general statement, but I am not in sympathy with the fact that that is not a right provision.

Mr. JACOBS. That is all right. In other words, if you like the provision, that is all right; but I am going to lay it bare.

What I want to do is to lay it bare so the people can see what it is, and you have a perfect right to like the provision if you want to, if you think it is fair; but it is our duty to find out what the provision is.

One more step: Then, under 8 (d) we have a new union. You belong to the new union that was formed of the replacements who took the place of my union, and its members took my jobs in the plant, and now you are in there. What are your rights, as defined under section 8 (d)? Does not the law then relieve the employer even of the duty of bargaining, according to the outline of collective bargaining in good faith, of even bargaining in good faith with this new union that is formed of the replacements; is that not correct?

Mr. FISHER. I do not believe that is the way it is interpreted at all.

Mr. JACOBS. Let me ask you to interpret this language:

> The duties imposed upon employers, employees, and labor organizations by paragraphs 2, 3, and 4, shall become inapplicable.

What does that mean?

Mr. FISHER. It means, of course, that those provisions are not applicable in this particular case.

Mr. JACOBS. That means that they shall become inapplicable; it means they do not apply? In what sort of situation? Is it not where intervening decertification of the Board, under which the labor organization or individual, which is a party to the contract, has been suspended? Is that not what it says?

Mr. FISHER. Under those three provisions, 2, 3, and 4, where they are suspended.

Mr. JACOBS. And that is exactly what we have been talking about here all the time, is it not?

Mr. FISHER. I am not familiar with that actually happening at any time.

Mr. JACOBS. I am not saying whether it happened or not. I am talking about what can happen as we coast into unemployment.

Mr. FISHER. I do not think the employees under this act are designated as being inapplicable.

Mr. JACOBS. In spite of the language which says they are?

Mr. FISHER. I do not think the language, in the first instance, says that.

Mr. JACOBS. What does the word "inapplicable" mean?

Mr. FISHER. That is probably true of those three sections, but I do not think yet that that is true of the law itself, and there are other sections that provide that you may bargain.

Mr. JACOBS. I think I will agree with you on that, and I think your answer is very good; but you will agree with me on this, that at least under those circumstances, the employer is relieved of at least three separate obligations in bargaining with a union that has been decertified, the union that called the strike?

Mr. FISHER. There appears to be some modification of the previous responsibilities.

Mr. JACOBS. I think you are a fair man, and I think you came up here to be helpful to this committee, and I want to ask you a fair question as one man to another: Did you have any idea before you sat down here to testify that under these various intricate provisions of this act any such result could have ever been obtained under any type of a case?

Mr. FISHER. I am familiar with the right of strikers, or the disallowance of the strikers, to vote in a certification election.

Mr. JACOBS. Were you familiar with the fact that it was under those circumstances, though, that the United States district court was forced to issue an injunction?

Mr. FISHER. That is correct, where the unions have caused an unfair labor practice to exist.

Mr. JACOBS. But the unfair labor practice being merely one employee asking another not to take his job for less money; did you know that when you came here to testify?

Mr. FISHER. That is correct.

Mr. JACOBS. You knew it when you came here to testify?

Mr. FISHER. That is correct.

Mr. JACOBS. And did you know that after that had occurred the United States Government could say to me, "You cannot try to encourage Fisher to help you in holding up the wage scale"?

Mr. FISHER. That is correct.

Mr. JACOBS. And did you know, regarding the new union that was formed, that the company did not have to bargain with it insofar as section 8 (d) (2), (3), and (4) was concerned?

Mr. FISHER. Those particular sections.

Mr. JACOBS. You knew that?

Mr. FISHER. That is correct.

Mr. JACOBS. And you still think it is a fair law?

Mr. FISHER. I do.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Wier, do you have any questions?

Mr. WIER. I would like to talk to my townsman, yes.

You and I will not go out of Minnesota.

Mr. Fisher, how long have you been employed in Minnesota, or how long have you lived in Minnesota, or St. Paul?

Mr. FISHER. About 8 years, Mr. Wier.

Mr. WIER. Have you been in charge of labor relations for Minnesota Mining & Manufacturing Co. all of those 8 years?

Mr. FISHER. Seven of those 8 years.

Mr. WIER. From your presentation here, I am assuming that you are here primarily to point out that the Taft-Hartley Act has done and accomplished more in the field of industrial relations than was formerly done under the Wagner Act?

Mr. FISHER. Our experience has been that, yes.

Mr. WIER. From your experience?

Mr. FISHER. Yes.

Mr. WIER. During the 8 years you have been in Minnesota, let me ask you, Do you know of any State in the Union that per capita had less labor controversy than the State of Minnesota all during the 8 years?

Mr. FISHER. I know of none.

Mr. WIER. You know of none?

Mr. FISHER. That is correct.

Mr. WIER. And most of that was under the regime of the Wagner Labor Relations Act?

Mr. FISHER. I did not get that.

Mr. WIER. I say, most of the 8 years you have been in industrial relations work, was spent under the Wagner Act?

Mr. FISHER. And the State labor laws.

Mr. WIER. But under the Wagner Act, too?

Mr. FISHER. That is correct.

Mr. WIER. And Minnesota enjoyed a very fine labor-management relationship under the Wagner Act?

Mr. FISHER. I think the State has had a remarkable labor record; that is correct.

Mr. WIER. Since the inception of the Taft-Hartley Act, would you try to enlighten me as to what the benefits have been to all people in the State of Minnesota? We will speak of the three or four large industrial centers, as to what the benefits have been under the Wagner Act.

Mr. FISHER. I think the actual relationship between the employer and the men with whom they are doing business today has greatly improved. I think there is a greater harmonious relationship between them, and I think there is a better feeling, and so far as the personal contacts I have had with the men we deal with, certainly the caliber of the people has improved, and the attitude of those people has improved immensely.

Mr. WIER. Do you interpret that statement to mean that you feel the workers of Minnesota want the Taft-Hartley Act maintained?

Mr. FISHER. I have not had very many that I have dealt with indicate a very bitter feeling toward the Taft-Hartley Act in the same relationship as it is published and as given wide discussion in publications and other union organizations. I do not think the feeling is nearly as strong among the employees I have contacted, as you would be led to believe.

Mr. WIER. On that point let us refer to the Minnesota Sunday Tribune of Sunday, January 23. That is after the election, and that is since Congress convened.

They had taken a poll prior to the election. I will submit this to the committee. It is a copy of the poll that they sent out by their method and I am not always in sympathy with it, because I do not think the poll reaches too many of our people in the working-class status, or the lower status—and I gather that because they made a poll on my election to Congress, and they were away off.

This poll was sent out by the Minnesota Sunday Tribune under the heading "Disapproval of Taft-Hartley Act Rises Since Present Election Period."

And they quote the figures down in the story of the poll they took prior to the election, and the poll that they took on January 23, and it indicates here that a majority of the people answering this poll on the disapproval or approval of the Taft-Hartley Act showed a disapproval; do you feel that way?

Mr. FISHER. I think that all the polls that I have had any acquaintance with have indicated a disapproval of the Taft-Hartley Act as such and in toto. However, by the same token, all the polls which I have seen, which do not number a great many, indicate that the individual features of the Taft-Hartley Act are not in disfavor generally by the people in industry; I mean, the workers in industry.

Mr. WIER. Then we will drop the Minneapolis Sunday Tribune—and I am not here giving a commercial for it, because there are too many for me—but I use that as evidence of a poll that they took recently and of those that they canvassed. As representative of the Third Congressional District of Minnesota, it is natural for people to display to me their sentiments, sometime with some misgiving.

Now, I have had some petitions following the very dramatic appeals sent out in behalf of the law, one by Fulton Lewis, Jr., and I have one of the polls sent out by General Electric to their stockholders. But when I add them all up, they show overwhelming sentiment for the repeal of the Taft-Hartley Act. And some of these are your employees, Mr. Fisher. Every one of these pages has 15 signatures, and their addresses, requesting the repeal of the Taft-Hartley Act and the reinstatment of the Wagner Act. I weigh that against the opposition that I received, and I will also submit those to the committee when we get a full committee in support of my position for repeal.

Mr. Bailey. The gentleman has 2 minutes of time.

Mr. Wier. Two minutes. I see a word down here. I cannot discuss this legally as Mr. Jacobs discusses it. I can only talk in the language of the union hall. So I find a new word after 50 years of life and being on the school board.

In your statement here it says, "And this occurred under the present guaranty of free speech to the employer. The Board's interpretation of this was strictly ad hoc." Now, I know what "in hock" means, but I do not know what "ad hoc" means. What was the standing of the case when they said that?

Mr. Fisher. That was an improvised ruling that was not consistent with the previous rulings, in our opinion, nor was it consistent with the intent of the law.

Mr. Wier. I think the labor movement will agree with you in that position, and we get the same interpretation.

Mr. Fisher. You will be amazed how often we do agree.

Mr. Wier. Yes, that is right. But we do not agree on the repeal of the Taft-Hartley Act.

Mr. Fisher. I can even get some to agree with you on that.

Mr. Wier. I only have 2 minutes?

Mr. Bailey. You have only 1 minute now.

Mr. Wier. I was going to go into the question of free speech that has been dwelled upon, but I want to say to you, and you can take it back to Minnesota, that Roy Wier stands, after 2 years of experience, under the Taft-Hartley Act, for absolute repeal and the reinstatement of the Wagner Act with such amendments as Congress deems advisable.

That is all.

Mr. Bailey. Mr. McConnell?

Mr. McConnell. Have you heard the men in your plants discuss the check-off requirement?

Mr. Fisher. Yes, sir; we have had a considerable period of time over which that problem has been prevalent in our plants throughout the country. Incidentally, we have had no plant where there has ever been any compulsory union membership. And our relationship with our employees has been fine. We have never had a work stoppage at any time that I have been with the company, and our relationship with our employees had been exceptional, and with our union officials.

We have never had any difficulty. I think Mr. Wier can bear that out. We have a reputation for having splendid relations. The check-off provision has been a stumbling block, or the closed shop, or the union shop. Any form of compulsory union membership has been a stumbling block in those relationships, however.

Mr. McConnell. Have the individual employees expressed themselves in regard to the check-off? I mean, do they want the present requirements, or do they want them dropped? Or what would you say?

Mr. Fisher. As far as the comments that have been made by our employees, you will find those who are really strong unionists favoring, of course, the check-off and the compulsory features of the membership. The others are opposed to it. They do not want to be compelled to do anything of that nature. They feel they ought to have the right to join or not join the labor organization as they see fit, and that their individual rights should be protected.

Mr. McConnell. How does the written-consent provision work out that is in the Taft-Hartley Act?

Mr. Fisher. The written?

Mr. McConnell. The written consent of the employee to have his dues checked off out of his wages?

Mr. Fisher. That has been working out fairly well. We do have check-off provisions in our plant, but they are strictly voluntary. The individual voluntarily signs a card, and he has a right to withdraw his membership at any time that he so sees fit.

Mr. McConnell. That is right.

Mr. Fisher. We have had a few instances where employees have decided to withdraw their membership after having belonged for a while, and we get the withdrawal notice, and within a day or two after that, we get the notice also to reinstate the dues deductions.

Mr. McConnell. How about welfare funds and requirements to have a strict accounting, and so on? Do they object to those provisions in the Taft-Hartley Act?

Mr. Fisher. I have heard no objection as far as requiring the unions to account for those funds. Of course, we are not involved specifically with that type of welfare fund; so probably they would not comment on it. But we have had no comment or indication of any objection with regard to those requirements. I think most of the members of our employee group feel that there is no objection to having employee representatives report the conduct of their business the same as employers are required to report their business conduct.

Mr. McConnell. That is all, Mr. Chairman.

Mr. Bailey. Mr. Smith?

Mr. Smith. No questions.

Mr. Bailey. Mr. Nixon?

Mr. Nixon. Mr. Fisher, Mr. Wier made mention of the labor conditions in the State of Minnesota, and was particularly referring to what I think he said was one of the most outstanding eras of labor peace in the entire country during the period of the Wagner Act immediately preceding the passage of Taft-Hartley. I wonder if you would describe to the committee, if you are familiar with them, the conditions which preceded the passage of the Minnesota Labor-Management Relations Act, which incidentally was in effect during that period?

Mr. FISHER. I was agreeing with Mr. Wier from the standpoint of my experience in the State of Minnesota. There has been a terrific amount of trouble in the State of Minnesota prior to that, and those of you who are acquainted with the labor movement in the State of Minnesota will certainly recall the trouble with 544.

Mr. NIXON. In fact, the reason the Minnesota Labor-Management Act was passed was that prior to that time, there were abuses which had grown up, abuses which were as bad as any in the country, and the Minnesota act was passed to correct those abuses, and as much as anything else, that was probably responsible for this era of peace which Mr. Wier referred to.

Mr. FISHER. The history of the labor relations of Minnesota will certainly bear that out.

Mr. NIXON. And as a practical matter, also, is it not true that several of the provisions of the Minnesota Labor-Management Act in principle are contained also in the Taft-Hartley Act?

Mr. FISHER. That is correct.

Mr. WIER. Will you yield there?

Mr. NIXON. You gentlemen have had 50 minutes, and I have 10. If you do not mind, I would like to continue my questioning.

Mr. BAILEY. The gentleman does not yield.

Mr. NIXON. If when I finish I have time, I will be glad to give you the time, Mr. Wier.

Now, you also did not during the time that Mr. Jacobs was questioning you, I think, have an opportunity to present your answers to his questions in detail. As I recall, from having listened to the questions that he asked, he gave you his version of the interpretation of the act, but your answers were more or less monosyllabic, you really did not go into anything.

I would like to go into this matter which Mr. Jacobs has gone into in regard to the decertification of unions where the employer replaces so-called economic strikers with so-called employer stooges. That in effect, I think, is the gist of his argument. Did I understand that it is your opinion that that is something that has been happening under the act?

Mr. FISHER. I do not know. I do not think that that happens. I do not think that they are employer stooges.

Mr. NIXON. As a matter of fact, there has not been any case that you are aware of, has there, in which that has happened to date, where economic strikers have been replaced by the employer, where the employer has manipulated a decertification election, and therefore has shut out the former union and put in its place one which is under his control?

Mr. FISHER. It has always been my opinion that the decertification has to be issued or filed prior to the strike and prior to the beginning of negotiations. In other words, it is my opinion and has been my understanding that if you have a strike situation, you cannot then proceed with the decertification.

Mr. NIXON. I think in order to get this thing in the record and get both sides of it in the record, the argument which Mr. Jacobs made, and which is being made quite generally along this point is briefly this: First of all, a union which is in a plant and which is an independent union—I mean, not employer-controlled—strikes for economic reasons—for higher wages, for example—then the company during that period replaces the strikers with what he terms strikebreakers. That is the word which Mr. Jacobs has used in his argument. Then these replacements, the so-called strikebreakers, which, of course, are company-controlled, by his own statement, since he uses the term "strike-breakers," then petition for an election to obtain decertification of the union which formerly was in the plant and whose members are now out for economic reasons. And obviously, of course, they will succeed, because under those circumstances, and I quote from the statement which Mr. Jacobs put in the record—

> The precise effect of the Taft-Hartley law up to this point is to permit the struck employer * * * to manipulate the decertification of the union of his old employees. * * * Thus—

going further in his statement—

> without regard to merit, if the employer can procure plant replacements, he can force the Government to enjoin even peaceful persuasion, picketing, boycotting, etc.

Now, the reason that I read that is that you noted the words "plant replacements." You have noted the words "manipulate the decertification of the union." And I think from Mr. Jacobs' own statements, it is quite clear that what he was referring to here was a case in which an employer was able to control the second union, or at least control it to the extent of getting it to vote the other union out of existence, because he also used the word "strikebreakers."

In reference to that, I think also you attempted to get this answer in to one of Mr. Jacobs' questions, but he shut you off. But I have the provision which you are referring to, and I would like to read it so that there will be no question about it, because I do not think you have a copy there that is available. I am reading from section 8 (a) (1) of the act—domination of unions. I am not reading from the section itself, but from the commentary on the act and on this section by the Congress Clearing House:

> Under the amended act as under the original NRLA, it is declared an unfair labor practice for an employer to dominate or interfere with the formation of any labor organization or contribute financial or other support to it.

Under that provision as interpreted under the original Wagner Act, and particularly under that provision as interpreted at the present time, because in this case the Taft-Hartley Act went even further than the Wagner Act went. The Wagner Act originally provided that company domination—at least in effect the Wagner Act through interpretation by the NLRB provided that company domination could not occur in the case of an affiliated union.

Mr. Fisher. Yes.

Mr. Nixon. And the Taft-Hartley Act made it clear that was to apply both in the case of an affiliated union as well as an independent union, and I think that all of us will agree that there is a great likelihood in many cases where even affiliated unions can be company-dominated. But among the interpretations which have been handed down, these particular acts are prohibited: Solicitation on behalf of a labor organization by company officials and supervisory employees; linking of benefits arising from group insurance or similar employment benefits with membership in a favored labor organization; advancements of money for purposes of newspapers in favored labor organizations; discriminatory rules with respect to solicitation and other organizational activities favoring one union over another; financial aid to a union—and then even this—use of company facilities such as bulletin boards, mimeograph machines, and stenographic services granted to a union.

In effect, in other words, as we see from this section of the act, if an employer were to manipulate the decertification of the union, if he were to employ strikebreakers and set up a phony union under the circumstances which Mr. Jacobs has pointed out in his statement and questions to you, if he were to procure plant replacements, in that case, I think you will agree with me that those actions would fall right within the provisions of section 8 (a) (1) and section 8 (a) (2) in regard to company domination of that union.

Would you not agree with that?

Mr. FISHER. That is right.

Mr. NIXON. In fact, an employer, of course, as we know, cannot file a decertification petition, and if the petition was filed, as it must be, by the employee, it must first be investigated by the Board; is that correct?

Mr. FISHER. That is correct.

Mr. NIXON. And if any manipulation were attempted, or had been attempted, the petition would have to be dismissed, would it not?

Mr. FISHER. And I think that the other union also has the right to bring charges of unfair labor practices against the employer at that time.

Mr. NIXON. Yes. And another point should be made at this time and that is this: Is it not true that until decertification of the striking union actually occurs, picketing, of course, is permitted?

Mr. FISHER. That is correct.

Mr. NIXON. Until decertification is handed down, the picketing can continue right up to that time.

Mr. FISHER. If the previous bargaining agent prevailed.

Mr. NIXON. That is correct. In place of putting these questions, I simply wanted to bring forth the fact that in reading this act, as in reading any act, you can pick out any specific section of it and say this word, this phrase, or this section, combined with other sections, could result in practices which would be very detrimental to labor or very detrimental to the employer, and what have you. But I think that this showed the necessity of reading this act, and in the course of interpreting it, to read all of the sections of the act and to consider them in relation to the other sections which might be applicable.

Mr. FISHER. Yes, that was my point with Mr. Jacobs, and I think it is right.

Mr. NIXON. That is the point you were trying to make?

Mr. FISHER. That is right.

Mr. NIXON. That is all.

Mr. WIER. Will you yield now, Mr. Jacobs?

Mr. NIXON. Yes. Go ahead.

Mr. WIER. I have no questions.

Reference was made by you and Mr. Fisher to labor disputes existing before the so-called State Conciliation Act. Are you familiar with the date of that 544 strike?

Mr. NIXON. Are you talking to me or to the witness?

Mr. WIER. To you. I was asking you.

Mr. NIXON. Well, ask the witness the questions. The witness is on the stand.

Mr. WIER. All right.

Are you familiar, Mr. Fisher, with the year of the 544 strike?

Mr. FISHER. It was in 1934, I think.

Mr. WIER. 1934. Are you familiar with when that great liberal former Governor, Mr. Stassen, in his first term set up the Labor Regulations Act of Minnesota?

Mr. FISHER. I am familiar with that; yes.

Mr. WIER. What year was that?

Mr. FISHER. That was in the latter part of the 1930's.

Mr. WIER. 1939. That was a considerable length of time after the 544 strike—5 years.

Mr. FISHER. I do not think that the 544 strike alone caused that to come about. There were many others that fostered the need for such a law.

Mr. NIXON. Has the gentleman finished?

Mr. WIER. Yes.

Mr. NIXON. In other words, the net result of what you are saying is that as a result of the 544 strike, and of other abuses which are common knowledge, which had grown up in the State of Minnesota; the Minnesota law in 1939 was enacted, and the 8-year period which Mr. Wier referred to of this unprecedented industrial peace and very cordial labor-management relationships under the Wagner Act took place after 1939 when the new act of Minnesota was passed?

Mr. FISHER. That is my understanding. That is right.

Mr. NIXON. That is all.

Mr. FISHER. Then I can vouch for what happened in 1939.

Mr. BAILEY. Mr. Velde?

Mr. VELDE. Mr. Fisher, I am not going to ask you very many questions. I see that you have been put through a very, very hard grilling here for the last half hour. There are just one or two points that I would like to bring out with respect to the act which I think you missed. One of them was the anti-Communist affidavit clause.

Mr. FISHER. I am glad you brought that in. I did not cover all the points in my presentation.

Mr. VELDE. I was just going to ask you if in your work that you had come across the actual operation of that clause.

Mr. FISHER. Yes, we have. We have had a union representing our employees in St. Paul that had considerable difficulty with regard to that problem of the Communists in their particular union, particularly at the top of their union. They did not take action on this particular situation until the Taft-Hartley Act had been passed and gave them, in my opinion, courage to do so.

Now, I was talking to the regional director of the Gas, Coke and Chemical, CIO, which any of you can check, just before I came to Washington, regarding that particular point. He agreed that the Taft-Hartley Act and its anti-Communist provision had certainly given them the tool that they needed actually to correct a situation that should have been corrected a long time ago, in their union as well, and has enabled their union to be sounder, in his opinion.

Mr. VELDE. Do you think that the present Taft-Hartley Act is fair to require an officer of a union to sign an affidavit without requiring his employer to sign an affidavit?

Mr. FISHER. I can see no reason under the sun why anyone would refuse to sign such an affidavit, for myself. I am sure that I speak for the employers that I am familiar with in Minnesota, that they would have no objection, either, to signing such an affidavit. I believe the law was designed to take care of needs that were recognized and existed. There had not been recognized the need for the employers to sign it.

However, on the basis of my argument for an equal balance and a workable balance between labor and management, I would see no objection at all of putting the law into effect requiring all employers to sign such an affidavit. The Supreme Court Justices sign it; the postal officials sign it. I see no reason why anyone else would object to signing it. It is a simple proposition.

Mr. VELDE. Have you in your work come across some officials of unions who refused to sign affidavits? And if so, what explanation did they give?

Mr. FISHER. We have had none at all with regard to those that I am directly in contact with. The only thing that the unions have said that they disliked about it was that it was a nuisance.

Mr. VELDE. Just a nuisance to sign your name?

Mr. FISHER. You see, as they explained it——

Mr. VELDE. I think they have forms for that purpose.

Mr. FISHER. That is right.

Mr. VELDE. And all they would have to do would be to sign their names, of course.

Mr. FISHER. That is all.

Mr. VELDE. What generally do you think is behind this so-called demand to repeal the Taft-Hartley Act in toto and reestablish the Wagner Act? What is your idea?

Mr. FISHER. I think we would be definitely making a step backward, so far as good labor relations are concerned. I do not think that any law that protects one side and not the other is ever going to provide for good relations. It is going to have to treat both sides properly in order to make for good relations, and once you do that it will work. If you do not, I believe it will continue to work up to a point where you just cannot legislate laws that protect one party and cause the other to be guilty no matter what he might do or what his desires are.

Mr. VELDE. I might say that I have had experience in talking to the workingman and the ordinary union man and that I will agree with you when you say that they agree with all the points of the Taft-Hartley Act but disagree with it as an act itself. Now, what do you think is the reason?

Mr. FISHER. I take Minnesota Labor and Victory, the CIO paper, and all the labor publications principally to know what is going on in that particular field, and I do not think that you can possibly spend as much money and put as much effort into condemning a name, condemning an act generally, and actually pinpointing every effort in the book against a particular thing without making it effective. I would be willing to grant that there are not 25 percent of our employees who have ever read the Taft-Hartley Act.

Mr. VELDE. I would agree with you on that, but I think the percentage is a lot lower than that.

Mr. FISHER. I am being conservative, I agree. But the fact is that they have never read the act, they are following the leadership by rote, and that is, I believe, borne out by the fact that they do agree with the principles of the act if you talk to them along that line.

Mr. VELDE. Along that line, do you think that there are any parts of the Taft-Hartley Act that should be repealed?

Mr. FISHER. There is one section, particularly, that stands out in my opinion from an industrial-organization viewpoint that is not applicable, nor is it conducive to proper relations within the ranks of labor and management, and that is the provision that enables the craft unions to break away from a plant union. We have a situation that has not occurred, but it is very possible to have happen, where we will have probably eight men in a boiler room. Now, those men, of course, can determine what bargaining agent they wish to have represent them. We also have probably five or six machinists or four or five electricians, all of them separate units. This could happen, and it does exist so far as the boiler-room employees are concerned in our St. Paul plant, with 4,500 employees involved.

If those eight men in the boiler room decide they no longer feel the relationship exists that should exist and they wish to terminate their employment by striking, or if they wish to strike, that means that the 4,500 people are completely out of work as a result of the wishes of those eight men. I do not believe from an industrial standpoint that the segregation of craft units is sound, nor is it actually workable insofar as large units are concerned.

Mr. VELDE. That is all I have. Thank you for coming here. You have presented a very fair and honest statement, and I appreciate it.

Mr. BAILEY. Thank you, Mr. Fisher.

The committee at this time will be pleased to hear David Roadley, American Cotton Manufacturers Association.

Mr. BURKE. Mr. Chairman, while he is getting ready to speak, I would like to present an editorial from the Seafarers Log of the Seafarers International Union to be placed in the record at this point.

Mr. BAILEY. Mr. Burke asks at this point in the proceeding that he be permitted to place in the record an editorial from the Seafarers Log. If there are no objections, it will be placed in the record at this point.

(The editorial referred to is as follows:)

TAFT-HARTLEY ACT IN ACTION

A situation which developed in New York early this week clinches the argument that the Taft-Hartley Act must be consigned to the bottom of the deep blue—and quick. On Monday morning, after contract negotiations between the giant Continental Baking Co. and the AFL Teamsters, who deliver the company's products, failed to produce an agreement, the 200 drivers involved walked out.

Immediately, the five other of the city's largest bakeries, who were not at all involved, locked out their employees. Close to 8,000 employees, most of them bakers, were thrown out of work. And the city of 7,000,000 people were shut off from 70 percent of their daily supply of bread. Schools as well as homes were affected. The people were shut off from 70 percent of its daily supply.

Purely and simply, the action of the big bread companies is a secondary boycott. The five companies, who along with Continental maintain a "union" representing management, took economic action against their employees by locking them out, although neither the companies nor their workers are involved in Continental's dispute. The Taft-Hartley law expressly forbids labor unions from using this weapon.

By carefully allowing employers immunity from the secondary boycott prohibition, the Taft-Hartley law says to management, in effect, "Go ahead, boys; use anything in the books to put the boots to your workers. If the public happens to get kicked in the breadbasket in the process, that's their tough luck."

Organized labor long ago learned not to expect anything from the Nation's press. None of the so-called public guardians has yet uttered a single word in condemnation of the big dough boys' rank abuse of the 8,000 employees who had been locked out. Nor have they pleaded a syllable in behalf of the city's 7,000,000 men, women, and children. The big baking combines are heavy advertisers, you see.

In fact, on the very morning that its news columns announced that the company combine "threw 7,700 persons out of work," the New York Times cautioned Congress not to be too hasty about getting rid of the Taft-Hartley law. "The public," said the Times, "has a vital stake in the outcome * * *"

And for once, the New York Times said a mouthful, even if it didn't mean to. For the public always has a vital stake in issues between management and organized labor, especially when labor is on the short end of the stick. Because, no matter how hard the Times and the rest of the "go-easy-on-management crowd" tries to conceal the fact, the public and labor in this country are one and the same.

Let Senator Taft and his backers understand that in a democracy, management rates no special privileges and immunities aimed at hurting the Nation's working men and women—the public, that is.

(News item: Bread prices have gone up despite decreases in the prices of wheat and flour, results of a United States Department of Agriculture survey reveal.

(The Government agency found that between January and October 1948, farmers were getting 30 percent less for their wheat and the retail price of flour was down 15 percent. During the period the retail price of bread rose 0.7 percent to an all-time high of 14.5 cents a pound. Out of the 14.5 cents the consumer pays, 9.4 cents goes to the baker and retailer.

(The Securities and Exchange Commission announced that during the third quarter of 1948 the six big baking companies showed profits of $103,606,000 compared with $95,430,000 for the same period in the previous year.)

TESTIMONY OF DAVID T. ROADLEY, PERSONNEL DIRECTOR, KENDALL MILLS, CHARLOTTE, N. C.

Mr. Roadley. I am David T. Roadley, of Charlotte. N. C. I am personnel director for the Kendall Mills which operates cotton spinning and weaving mills in North and South Carolina.

I am speaking today for the American Cotton Manufacturers Association, which, as some of you know, represents the largest portion of this country's cotton textile manufacturing industry. The headquarters of the association are in Charlotte. Most of the units represented in the association are in the southeastern States and these mills employ upward of 500,000 workers. This makes them from the standpoint of employment, one of the country's largest industries.

For the past 14 years, with the exception of 31 months spent in the Navy during the war, all of my work has been in the industrial relations field. I spent 3 years as a conciliator with the United States Conciliation Service in the mid-thirties. Later, I was labor relations counsel for two large midwestern industrial concerns. During this period I had extensive experience in the negotiation of labor contracts and feel that I am familiar with the problems involved, both from the standpoint of the employers and employees. I have been in my present capacity since April, 1946, and, as indicated, my work in the South is directly concerned with labor matters.

My company has seven mills in North and South Carolina. Four of these mills are nonunion; three are unionized, two being CIO unions and one an AFL union.

Our experience under the Labor-Management Relations Act, commonly known as the Taft-Hartley Act, has been that of most industries. The cotton textile industry has lost fewer man-days from strikes during the life of this act than in the comparative period preceding the act. There has been a decline in the number of unfair labor practice cases filed, even taking into account these provisions of the Taft-Hartley Act which authorize unfair labor practice complaints against unions. Summed up, the association feels that the dire predictions of industrial strife and injury to the labor movement of the Taft-Hartley Act have not been borne out. This, in view of the hostile attitude of union labor officials towards the act, is extremely significant.

Your attention is called to the fact that spokesmen for organized labor have leveled broad and generalized charges against the Taft-Hartley Act. They have called it a slave labor act and have characterized it as detrimental to union interests without being specific.

It is our considered judgment that the act must be examined carefully and in detail, and it must be scrutinized, not in the light of vague generalities, but in the light of what its provisions are intended to do and what they actually have done.

I would like briefly to summarize, from my experience, the differences in the labor contract negotiations under the Wagner Act and under the Taft-Hartley Act. I think I can say categorically that, under the Wagner Act most employers entered into collective bargaining negotiations with the feeling that they were unarmed and the unions were armed. In other words, the Wagner Act gave the unions, figuratively speaking, a loaded gun, already cocked, to be fired at the employers when and if the union representative wanted to pull the trigger.

I do not need to emphasize that this situation was not conducive to good labor relations. While the employers felt they were at a disadvantage, the union felt definitely that they had the advantage. Thus, time and again, bargaining began in a hostile atmosphere. Under such circumstances, the agreements reached oftentimes constituted simply an armed truce and further conflict was inevitable.

Let me illustrate some of the circumstances to which I refer. One of the announced purposes of the Wagner Act was to encourage "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions."

But the Wagner Act imposed an obligation upon the employer to bargain in good faith; it imposed no such obligation on the part of the union.

The Wagner Act listed five specific unfair labor practices on the part of employers; it listed no unfair labor practices on the part of unions, not a single one.

The Wagner Act encouraged free speech for union representatives, it gagged employers.

Under the Wagner Act, the employers came to feel that the National Labor Relations Board was an ally of the unions.

This, in part, grew out of the union bias on the part of some Government officials, but primarily it went back to the obligations and restrictions imposed on employers under the Wagner Act, without corresponding obligations and restrictions being imposed upon unions.

Employers with whom I have had experience came to feel that Government was standing by, not in the position of an impartial agent, but as a policeman with a club, ready, if necessary, to swing upon their heads.

For example, let me quote the provisions of the Wagner Act with regard to the obligation to bargain collectively:

Section 7 of the Wagner Act is as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Furthermore, section 8 of the Wagner Act states:

> It shall be unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

You will note that the provisions refer only to the rights of the employees to organize; the act is significantly silent upon the rights of employers.

Section 7 of the Labor-Management Relations Act of 1947 is as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

This language, as can be seen, takes nothing away from the rights of employees but it does give the individual employee the right to refrain from union activities, a right which he should have.

Furthermore, section 8 (b) (3) of the Taft-Hartley Act makes it an unfair labor practice on the part of a union—

> to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

I have quoted these passages from the Taft-Hartley Act because they are representative of many other changes in the act; changes which simply are intended to put both employer and employee on the same footing and to protect not only employers and employees but the rights of the individual workers. The foundation of any stable and constructive relationship between employers and employees is equality under any law which is designed to govern industrial relations.

These charges to which I have referred restore balance to the Federal law regarding labor-management relations, balance to which union officials object and which, when examined in detail, are at face value fair and equitable.

There are many provisions of the Taft-Hartley Act which we consider important. We know of none that we would discard entirely, unless it can be clearly shown they are inequitable. Today, however, I want to point out and dwell upon several provisions which, in our opinion, are absolutely vital to sound labor-relations legislation.

In this connection, I want to mention first the provision which restates the employer's right of free speech. This provision is found in section 8 (c) and is as follows:

> (c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expressions contain no threat of reprisal or force or promise of benefit.

Please note that these rights apply both to employers and employees.

It is amazing to find that Congress, in the Taft-Hartley Act, had to enact language which gave the employer something that is specifically granted him by the first amendment to the Constitution.

Some of the reasons why this provision came into being are found in House Report No. 245 (80th Cong.) during consideration of labor legislation. This report said:

> Although the Labor Board says it does not limit free speech, its decisions show that it uses against people what the Constitution says they can say freely, Thus, if an employer criticizes a union, and later a foreman discharged a union official for gross misconduct, the Board may say that the official's misconduct warranted his being discharged, but "infer," from what the employer said, perhaps long ago, that the discharge was for union activity, and reinstate the official with back pay. It has similarly abused the right of free speech in abolishing and penalizing unions of which it disapproved but which workers wished as their bargaining agents.

Obviously, if one side may say what it wishes to workers, and the other side is restrained, the group which is given the right to talk freely has an overwhelming and unfair advantage in collective bargaining, or in any matter related to employer-employee relations.

We feel that the equity of the free speech provisions are so clear that extended argument, pro or con, is not required.

I have touched already upon the obligation on the part of both employers and employees to bargain collectively and in good faith, and have told you that this obligation was a one-sided one under the Wagner Act.

From my experience, I would like to tell you what often happened before the Taft-Hartley Act. The unions took the position that the employer had to make a counter offer to a "demand" made, no matter how unreasonable it was. Many, many Board decisions supported this position. The union came in, made its proposals, and sat back to watch the unhappy employer squirm, and if he failed to make a satisfactory counter offer, he was charged with being unfair, or failing to bargain in good faith.

I mentioned earlier that the employer oftentimes felt, when he approached the bargaining table, that the other side had a gun already cocked and ready to fire at him.

Collective bargaining is a travesty unless both parties know that there can be mutual give and take.

We urge you therefore to retain, in their present form, the collective-bargaining provisions and definitions of the Taft-Hartley Act.

We agree with the premise, found in the Wagner Act, that employers should be liable for violations of contracts and should be subject to suits for damages in the Federal courts. We also feel—strongly so—that unions should also be similarly liable.

Section 301 of the Taft-Hartley Act makes unions—and employers—liable for suits for breach of contracts. We contend that the equity of section 301 is clear and warrants retention in its entirety.

In this connection, House Report 245, which I have previously referred to, said in part:

> Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his.

At the time of the passage of the Taft-Hartley Act, union leaders predicted there would be a multiplicity of suits against unions as a result of the provisions which put unions on the same basis as employers, so far as suits for damages are concerned. Those predictions have not been borne out. The record shows that around 60 lawsuits have been brought thus far under the provisions of section 301 and at least 19 of these have been brought by unions.

Again we say that equal treatment of both parties so far as the right to sue for breach of contracts is concerned seems eminently fair. The provisions referred to are violently opposed by union leaders. The only justification for this opposition, as we see it, is that it restricts their power.

May I digress for a moment to point out that the rights of free speech in the case of employers, the obligation to bargain collectively in good faith, and the mutual obligation for the observance of contracts, all would be restored to their previous one-sided basis if H. R. 2032, the Lesinski bill, is enacted. This bill would restore the original Wagner Act in all its essentials.

I am not here today arguing theories. I am contending for rights which we feel are justified by all the rules of equity and fair play. We would remind you that the Wagner Act became law in 1935. Very soon, it became apparent that the act was lopsided and demands began to be made for changes. In fact, no act of its scope could be expected to stand very long without the revisions which time and experience demanded.

Nevertheless, when the Taft-Hartley Act was under discussion, union leaders had no suggestions for changes. They stood adamantly behind the provisions of an unfair law. Now, we find them striving to restore the act, disregarding the fact that it operated without amendments for 14 years. We submit that this is a most unreasonable and arbitrary attitude and furnishes sufficient grounds for a most careful and searching inquiry into their attacks upon the existing law. In other words, we feel this committee should demand that the unions bring before it a bill of particulars and not be permitted to sway this committee with blanket charges and dire predictions of what may happen in the future—predictions which have not been borne out in the record of labor-management operations under the Taft-Hartley law thus far.

In view of the trend the world over towards totalitarianism and its results as exemplified in Fascist Germany and Communist Russia, to name only two instances, we think you will agree that the extension of Federal power in this country should be only upon the showing of urgent need.

Yes, H. R. 2032 contains a new provision which would invade the State field of legislation and would expressly prohibit the rights of the States to legislate on the subject of the right to work. In other words, State laws which prohibit the closed shop and which put other legitimate restrictions upon union powers should be outlawed. The provision in H. R. 2032 would set aside statutes and constitutional provisions in 17 States. Thrice recently, the Supreme Court of the United States upheld the rights of the States to enact such statutes.

The rights of States to legislate in the labor relations fields should be carefully protected. In this connection, it might be pointed out that the States can well serve as laboratories in this fluid and still uncertain field. From State experience with labor legislation may come data invaluable to the Government itself, when and if it later is determined that the Congress should again legislate in this field.

We think also that almost everyone will agree that the closed shop is wrong in principle. It discriminates against the rights of the individual to work. The unions do not defend the closed shop on principle. They argue for it on the basis of practicality. Rarely do they meet the fundamental issues—protection of the right of the individual to a job.

We hope this committee continues the prohibition in Taft-Hartley against the closed shop. The union shop is permitted by the act. We think this goes far as even the unions should desire to go in restricting the right to work.

In conclusion, let me mention briefly some other provisions of the Taft-Hartley Act which we think should be retained in their present form, or with only minor modifications.

It seems evident that unions should not be permitted to coerce their own members. The list of other unfair labor practices on the part of unions seems reasonable. As we have indicated, they correspond to a list of unfair labor practices on the part of employers.

The procedural changes which the Taft-Hartley Act makes in the administration of the National Labor Relations Board are important. The act provides that an election may be ordered only after a prehearing to determine matters in dispute. Under the Wagner Act, the Board oftentimes held a hearing after the election itself, and after the union had been certified. There was little an employer could do under such circumstances.

We think, as is the case at present, that a Board certification should issue only after a valid election has been held, and one in which a majority of the employees have designated the specific union certified.

There can be no legitimate quarrel, in our opinion, with the provisions in the existing law which require that the NLRB decide cases on the basis of substantial evidence. Nor should there be disagreement with that section of the act which permits circuit courts of appeal, before enforcing Board orders, to examine the entire record to see that the Board's decisions as to facts are based on substantial evidence, rather than upon a fragment of the evidence.

Before the passage of the Taft-Hartley Act, the Board had the power to levy monetary judgments without making them subject to review in the courts on the question of the facts—if there was any evidence whatever to support the findings. This is an authority that no other similar agency had.

Other procedural changes which are intended to protect the rights of both parties in a labor controversy should be kept in the law. We would very much like to see the Office of General Counsel remain independent. As the present law stands, the counsel has the same relation to the Board that a district attorney has to a Federal court. The general counsel, at present, is not employed by the Board and does not feel the necessity of justifying prosecutions unless they are supported by the evidence.

The association recommends that the Federal Mediation and Conciliation Service remain an independent agency. When the Service was under the Labor Department, many employers felt it had become an arm of the unions and that its entrance into a labor dispute meant additional pressure for a settlement favorable to the union.

Jurisdictional strikes have almost entirely ceased under the Taft-Hartley Act. Under the present law, jurisdictional strikes constitute an unfair labor practice. Even the Lesinski bill, H. R. 2032, would make certain jurisdictional strikes an unfair labor practice and would empower the NLRB to settle them. We see no reason to change an act which has virtually done away with jurisdictional strikes, strikes which unions themselves do not attempt to defend.

In conclusion, let me state again that the burden of proof is upon those who want to repeal the Taft-Hartley Act and return to the situation which prevailed before its enactment.

The Taft-Hartley Act became law after hearings on labor-management relations which extended over a long period of years. There is ample testimony before your committee and in the record on the abuses which flourished under the Wagner Act, abuses which contravened the rights of both employers and workers.

On the basis of our experience and the evidence presented, we feel that the existing law has gone a long way toward establishing the balance in labor-management relations which is necessary to effective and peaceful collective bargaining. To scrap the Labor-Management Relations Act of 1947, simply because of the opposition of union leaders, would hurt employers, workers and that great body which suffers when either employers or unions have unwarranted powers—the public at large.

Mr. Bailey. Mr. Roadley, I believe you testified that you are a native of Charlotte, N. C.

Mr. Roadley. No, sir, not a native. I believe I said I am from Charlotte, N. C.

Mr. Bailey. I take it that you have knowledge of the fact that there has been rather an intensive drive on the part of the American Federation of Labor and the CIO to organize textile mills themselves.

Mr. Roadley. Mr. Chairman, I have read in the newspapers that there has been for some 2 years a so-called Operation Dixie, which is intended to organize all industry in the South.

Mr. Bailey. Do you as an individual or a member of your associations have anything to do with the distribution of rather inflammatory literature that might stir up ill feelings at the time strikes were on in any of those plants in the South?

Mr. Roadley. Mr. Chairman, I can honestly say that I have no knowledge of what that printed matter is you are referring to. In my own mills, the mills that I deal with day in and day out, we do not permit that sort of thing, let alone subscribing to those things.

Mr. BAILEY. Have you ever heard of the Constitutional Educational League?

Mr. ROADLEY. No, sir; I do not believe I ever have.

Mr. BAILEY. That is the group that publishes the Communist Carpetbaggers in Operation Dixie. I believe a fellow by the name of Joseph P. Camp is the editor of it.

Mr. ROADLEY. I do not know the publication, sir.

Mr. BAILEY. What about the publication Militant Truth that is published by Sherman A. Patterson, Chattanooga, Tenn.

Mr. ROADLEY. I have heard of it, but I have never seen a copy of it.

Mr. BAILEY. Do you think that it makes for good public relations and labor-management relations to stir up racial hatreds in these strikes?

Mr. ROADLEY. Certainly not, Mr. Chairman. I not only think it is bad, I do not subscribe to those tactics. I think that we have more effective ways of dealing with labor unions, and of dealing with employees, through this collective-bargaining process.

Mr. BAILEY. Do most of the members of your association have collective-bargaining agreements with their employees?

Mr. ROADLEY. No, sir, I do not think that. I think that most of the employees in the southern textile industry are not organized.

Mr. BAILEY. Mr. Perkins, do you have a question?

Mr. PERKINS. Mr. Roadley, how long have you been located in Charlotte?

Mr. ROADLEY. Since April 1946, sir.

Mr. PERKINS. And what type of business were you engaged in prior to that date?

Mr. ROADLEY. For 31 months, I was a gunnery officer in the United States Navy.

Mr. PERKINS. Before that time?

Mr. ROADLEY. Before that, I was director of industrial relations for a steel fabricating company in Cleveland, Ohio.

Mr. PERKINS. You were in Cleveland?

Mr. ROADLEY. Yes, sir.

Mr. PERKINS. Why do you say that the burden of proof is on the people who are seeking to repeal the Taft-Hartley law, in your statement?

Mr. ROADLEY. Mr. Congressman, I think that on the basis of the evidence as I see it, the Taft-Hartley Act has very definitely accomplished its original intention in reestablishing harmonious labor relations. It has always been my reasoning that those who advocate something should put forth some reasons.

Mr. PERKINS. I take it from your testimony in regard to section 8 of the Taft-Hartley law that you are an experienced attorney.

Mr. ROADLEY. Yes, sir.

Mr. PERKINS. You make the statement that section 8 (c), as you termed it, I believe, the free-speech clause, shows just how fair the Taft-Hartley law is. Am I correct in the substance of your statement?

Mr. ROADLEY. I think you are, sir.

Mr. PERKINS. You also read section 8 (c) here to the committee, did you not?

Mr. ROADLEY. That is right.

Mr. PERKINS. I will ask you if section 8 (c) does not prohibit any expression made by an employer from being used against the employer in a court proceeding, just as long as he does not go to the extent of using coercion on his employees?

Mr. Roadley. I think it does not, sir. I think that the evidence which was referred to in that section means real, factual evidence of the employer's hostility by his acts, by his conduct, by his labor relations policy toward unions or to employees who attempt to join unions.

Mr. Perkins. You know that it is a rule of evidence that any statement that a man makes may be used against him for contradictory purposes in our Federal courts and in our State courts. It that not a general rule of evidence?

Mr. Roadley. It is, sir, as long as it is part of the res gestae.

Mr. Perkins. You said, contradictory purposes.

Mr. Roadley. Yes, I think it would be admissible. But I think there must be definitely shown to be some relationship between the act and the statement made.

Mr. Perkins. Now, any statement that a man may make in the ordinary course of events may be used against him as an admission at the time of the trial. That is a well-founded rule of evidence in our law, is it not?

Mr. Roadley. I have to go back again, sir, to my previous answer, so long as it is part of the res gestae.

Mr. Perkins. I am not talking about the res gestae. I am just asking you if it is not a well-known and well-established rule of evidence that any statement that a party makes that operates against him at the time of the trial may be used against him?

Mr. Roadley. So long as it is relevant, I would say that it could be.

Mr. Perkins. I notice you are very evasive in your answers.

Now, you also realize that section 8 (c) outlaws a well-established rule of evidence in our law and makes it lawful for an employer to use any statements that he cares to use just as long as he does not coerce his employees; am I correct in that statement?

Mr. Roadley. I do not believe so, sir. I do not think it has quite that broad interpretation, and I do not believe, personally, that that was the underlying reason for putting that section in those precise words into the Taft-Hartley Act. If I may, I think I could elaborate to give you a clearer answer. I think that perhaps that language was incorporated in the Taft-Hartley Act in those precise words to overcome some of the gross abuse of the administrators of the National Labor Relations Act, the Wagner Act, in applying the old Wagner clause, such as the example I used in my presentation, where the correlation of events was nothing, that as long as a man had ever declared himself or had ever made a statement contrary to the principles of the Wagner Act and some action later followed, whether it was relevant or not to be material, he was then subjecting himself to unfair labor charges, or charges of unfair labor practices, and things of that sort.

Mr. Perkins. Why do you think it was necessary to legislate on an established rule of evidence?

Mr. Roadley. For the reason, sir, that I think that in the hearings prior to the time of the enactment of the Taft-Hartley Act, it became pretty evident that many of the abuses which had crept up through the Wagner Act in its many abuses had to be legislated to be corrected.

Mr. Perkins. Do you not think that section 8 (c) shows how oppressive and how unfair certain sections of the Taft-Hartley law are?

Mr. **Roadley**. Mr. Congressman, I sincerely do not, and I think that I can base that conclusion on some of my own experiences by indicating to you that many, many times in negotiating contracts, prior to the enactment of the Taft-Hartley Act, I personally was faced with situations where I knew that the whole story of the negotiations was not getting back to employees. I personally know from my own experience of many situations where strike votes were taken on only part of the employers' last offer, so to speak, and I believe that under the provision that we are now discussing, which is in the Taft-Hartley Act, we had that right under the Wagner Act to go to our employees, not by mediums of hand-outs or by newspaper advertisements or by citizens' committees, but merely by the posting of a notice on the bulletin boards in our plants, telling our people what the status of negotiations was, I think that perhaps that specific clause would not have been necessary in the enactment of the Taft-Hartley law.

Mr. **Perkins**. Do you not believe that it would have been much fairer if the law had provided that any statement that an employer may make in his negotiations could be used against him to show his motive and intent, as to whether or not he intended to be in good faith?

Mr. **Roadley**. Mr. Congressman, I think that those acts still can be used under the Taft-Hartley Act, and I am positive that those statements or acts of an employer which in themselves are unfair labor practices can be brought out under the Taft-Hartley Act and under this section.

Mr. **Perkins**. Does not section 8 (c) outlaw that very thing?

Mr. **Roadley**. In my opinion, it does not, sir.

Mr. **Perkins**. I want to say that if it does not, I certainly do not understand the English language.

That is all.

Mr. **Bailey**. Mr. Jacobs?

Mr. **Jacobs**. Mr. Roadley, I think I am somewhat in agreement with you that there has been too much effort to condemn this act by the use of names and, we will say, catch-phrases. I also am of the opinion that there has been a little too much effort to sustain it upon the same basis. I believe you and I as lawyers can start off agreeing that the way to determine whether the provisions of this act are fair or unfair is by examining the provisions.

Mr. **Roadley**. I agree with that, and I said so.

Mr. **Jacobs**. I simply want to say this as to the last sentence in your statement, which says in effect, scrap the Labor-Management Relations Act of 1947, simply because of the opposition of union leaders. That, of course, is not very complimentary to the committee or to Congress.

Mr. **Roadley**. It was not intended as that, sir.

Mr. **Jacobs**. And I do not accept it as a compliment to myself as a member of the committee.

Now, let us go back to some of the catch-phrases that have been used in connection with the act. It has been called a slave-labor act. But on the other hand, it has been called a bill of rights for labor, has it not?

Mr. Roadley. I do not recall, sir, that I have ever heard it called a bill of rights for labor.

Mr. Jacobs. Well, I have. There are a lot of Congressmen out in my State that signed the manifesto stating that it had emancipated the workingman.

Mr. Roadley. The workingman, yes, sir, but not labor. I had never heard that expression used for labor.

Mr. Jacobs. You think it is an emancipation of the workingman?

Mr. Roadley. For the workingman; I will agree with that, sir.

Mr. Jacobs. Are you aware of the fact that there is no provision requiring the election of union officers? You agree with me on that, do you not?

Mr. Roadley. No provision where, sir?

Mr. Jacobs. There is no provision in the Taft-Hartley Act requiring the election of union officers, is there?

Mr. Roadley. I believe that is right.

Mr. Jacobs. That is right. Are you aware of the fact that this was proposed and rejected?

Mr. Roadley. I believe that there was quite a considerable amount of discussion on that.

Mr. Jacobs. Yes. Nor is there any provision to afford a remedy to any man that is capriciously expelled from the union, is there?

Mr. Roadley. Not in those precise words, Mr. Congressman. I do not believe there is; no, sir.

Mr. Jacobs. In any words, is there a provision where a man can appeal to a governmental tribunal and cause himself to be reinstated in the union if he had been capriciously expelled? There is a provision, I think, where he can work without being a member of the union.

Mr. Roadley. That is right.

Mr. Jacobs. But there is no provision where he can be reinstated, is there? Do you agree with me on that?

Mr. Roadley. I do not know, sir.

Mr. Jacobs. You have examined the act. Do you remember any such provision?

Mr. Roadley. I do not remember any such provision.

Mr. Jacobs. Well, neither do I, and I have read it trying to find such a provision.

Now, let us go to the free speech. Take section 8 (c). Section 8 (c) provides that the expressing of views, et cetera, shall not constitute or be evidence of an unfair labor practice unless there is an express threat of coercion, and so forth, does it not?

Mr. Roadley. That is correct.

Mr. Jacobs. What do you think the four words "or the evidence of", mean?

Mr. Roadley. I think that the wording, sir, is pretty clear.

Mr. Jacobs. So do I.

Mr. Roadley. I think that indicates very definitely that the employer has a right to do these things.

Mr. Jacobs. To do what things?

Mr. Roadley. Present his views, express them, argue, state his opinions, and it also indicates the various forms that he can express those views and opinions in as long as there is no threat of reprisal or force or promise of benefit, and it is not evidence of an unfair labor practice.

Mr. JACOBS. Do you think the expression that unions are bad for the workers should be excluded from the evidence in an unfair labor practice hearing?

Mr. ROADLEY. I believe that I would say that I do.

Mr. JACOBS. Do you think it should be?

Mr. ROADLEY. Yes, sir.

Mr. JACOBS. Suppose I had expressed my dislike for you and you were found injured somewhere, and I was accused of being the man who had injured you. Let us say I threw a brick out of the window and hit you. Do you not think the fact that I had expressed a dislike for you might be some evidence that maybe I intended to hit you and that it was not an accident?

Mr. ROADLEY. When was the expression made and when was the brick thrown?

Mr. JACOBS. Let us just say any time you want to say it was made. Let us say the day before; the same morning; or an hour or two before; or 6 months before.

Mr. ROADLEY. Mr. Congressman, to answer your question, I honestly believe that if a heated argument took place and you expressed that view and immediately followed through with that argument with the act of a brick falling on me, that evidence should be introduced. But on the other hand, if you and I had that argument on January 1, 1948, and on October 1, 1948, I was injured, I hardly think that the evidence of your statement would be permissible, or should be permitted to be introduced to establish the fact that you could have been the man that threw the brick.

Mr. JACOBS. You mean, 9 months later?

Mr. ROADLEY. Yes, sir.

Mr. JACOBS. You mean because you think it could not be a part of the res gestae?

Mr. ROADLEY. I agree with you completely.

Mr. JACOBS. Now, let us examine that view that you have of the res gestae. You are a lawyer. Are you sure you know what a res gestae is?

Mr. ROADLEY. I believe I do, sir, although I must admit that my practice has been confined to administrative law and not to trial work.

Mr. JACOBS. Let us go back to law school for a minute.

Mr. ROADLEY. All right.

Mr. JACOBS. It seems to me I remember my professor of evidence telling me that the matter of res gestae was something that was effected with a degree of spontaneity; that is, it had to happen under such circumstances where the facts were speaking through the man rather than the man narrating the facts. Is that not what you remember?

Mr. ROADLEY. Yes, and two more things, that it had to be part of the thing, and that it had to be material and revelant.

Mr. JACOBS. That is right. And is it not true that a man may offer his own words in evidence in defense of himself if it is a part of the res gestae?

Mr. ROADLEY. I believe that is correct; yes, sir.

Mr. JACOBS. Is there not quite a distinction between res gestae, which in English means a part of the thing——

Mr. Roadley. The thing; that is true.

Mr. Jacobs. Is there not quite a distinction between res gestae and the matter of offering the other fellow's words in evidence to characterize his motive in doing a thing? Is there not quite a distinction? Are you not confused about res gestae? Think about it a minute.

Mr. Roadley. I do not believe I am confused, Mr. Congressman. I think that what is confusing me is the conclusion that you were trying to arrive at through this hypothetical arrangement.

Mr. Jacobs. I will tell you how I avoid being confused on those things: By just trying to arrive at the correct conclusion. I do not worry very much about what I am thinking about at the moment. I just keep thinking about the correct principle.

Mr. Roadley. That is correct.

Mr. Jacobs. And see what kind of conclusion I arrive at.

Mr. Roadley. That is correct.

Mr. Jacobs. That is the way I avoid confusion. Now, we all get confused, of course. But do you not recognize a distinction between your res gestae theory and the matter of offering declarations against interest?

Mr. Roadley. Yes, sir; there is a definite distinction.

Mr. Jacobs. All right. Is it not true that on the rule of evidence regarding declarations against interest, you can offer only the other fellow's words in evidence against him, and he cannot offer his own words in evidence to support himself?

Mr. Roadley. I do not believe he can, sir.

Mr. Jacobs. Would you agree with the statement I made there?

Mr. Roadley. Your last statement, sir?

Mr. Jacobs. Yes.

Mr. Roadley. Yes, I will.

Mr. Jacobs. That is a correct statement of the law, is it not?

Mr. Roadley. To the best of my knowledge it is, sir.

Mr. Jacobs. All right. When you speak of res gestae, you have already admitted that anyone can offer it in evidence. If I exclaim something at the instance that a thing occurs, or for example if I cry out and say, "Bill Jones hit me with a rock," as a man runs up to me as I lie on the sidewalk, that is a part of the res gestae, is it not?

Mr. Roadley. It may not be, unless there was some definite interest on the part of Bill Jones.

Mr. Jacobs. If the degree of spontaneity is there, where a man more or less exclaims a thing occurs, then it is a part of the res gestae?

Mr. Roadley. If it was relevant to the issue at trial, of course.

Mr. Jacobs. Then the res gestae is something that comes rather as an exclamation on the part of a person almost simultaneous with the occurrence of the events; is it not?

Mr. Roadley. Yes; it is.

Mr. Jacobs. Now that we have that res gestae bug isolated, let us now go over to our self-serving declaration and examine it.

What a man says to serve his own point of view cannot be offered in evidence by him; can it?

Mr. Roadley. No; I do not believe it can.

Mr. Jacobs. That is the self-serving declaration, but when we go to the declaration against interest, the other fellow in the lawsuit can always put it in evidence against the other fellow who spoke?

Mr. Roadley. That is correct.

Mr. JACOBS. If it be a statement that casts light upon what the other fellow did, his motives, et cetera; is that not right?

Mr. ROADLEY. I believe that is so.

Mr. JACOBS. Now we are down to where we can examine 8 (c). The section says that what the man says shall not constitute or be evidence; is that not right?

Mr. ROADLEY. That is correct.

Mr. JACOBS. Do you not think that if an employer made a statement that he thought unions were bad for the community and bad for his employees tonight, if he made that statement in a speech, and the next day he went up to the office and fired all the union officers, do you not think what he said tonight might cast some light on his motives next morning?

Mr. ROADLEY. No; I do not, sir. I think, first of all, you have to establish what the man fired the union leaders for.

Mr. JACOBS. Wait a minute. We are having a trial, and you are the lawyer for one side, and I am the lawyer for the other side, and you are trying to prove——

Mr. ROADLEY. That there was a justifiable reason for discharge, which was not an unfair labor practice.

Mr. JACOBS. And I am trying to prove that there was no justifiable reason for discharge, and there we have the issue.

Mr. ROADLEY. That has been joined.

Mr. JACOBS. And closed, and we are on trial.

You come in and offer evidence that the employer found the man loitering on the job.

Mr. ROADLEY. Yes.

Mr. JACOBS. And, therefore, he was fired. And I come in and I offer evidence that the man had been complimented by his foreman, we will say, and you come back and offer evidence that he had been reprimanded by his foreman, and we are trying to find out what your client had in mind when he fired the man; is that not right?

Mr. ROADLEY. That is correct.

Mr. JACOBS. And I come in and I say, "Look here, Judge: This man made a speech and said these union fellows were a menace to the community, and I want you to listen to the evidence. I do not offer it as proving absolutely that he fired the man because of union activities."

Mr. BAILEY. The gentleman has two minutes.

Mr. BURKE. I yield 5 minutes of my time.

Mr. JACOBS. Thank you.

I offer it as proof tending to establish the fact—you know what I mean?

Mr. ROADLEY. Yes, sir.

Mr. JACOBS. Do you not think it would tend to prove the motive?

Mr. ROADLEY. No; I do not.

Mr. JACOBS. In other words, you do not think the man making a speech the night before and saying the union is a menace to the community would tend to prove that, when he fired the union officer the next day—you do not think it would tend to prove it was because the union activities were as he said?

Mr. ROADLEY. No; I do not, sir.

Mr. JACOBS. I just wanted to get your viewpoint.

If you think that is not what it meant, and if you think it was not put in there to create a fair rule of evidence, or if you think it was not to create that rule of evidence, will you explain to me why, in section 9 (b), the last words in section 9 (b)—if you will examine your act, the very last sentence.

Mr. ROADLEY. Of the Taft-Hartley?

Mr. JACOBS. Of the Taft-Hartley Act.

Mr. ROADLEY. Is that the beginning of subparagraph 3?

Mr. JACOBS. No; it is section 9 (b).

Mr. ROADLEY. (b) for boy?

Mr. JACOBS. B for boy or boycott, either.

Do you have this print?

Mr. ROADLEY. I have it here, sir.

Mr. JACOBS. Did I say 9 (b)?

Mr. ROADLEY. Yes.

Mr. JACOBS. It is 10 (b). I am sorry.

It is the first paragraph on page 13.

Mr. ROADLEY. Section 10 (b)?

Mr. JACOBS. Yes. The words "Any such proceedings—" that is, referring to the proceedings before the Labor Relations Board——

> shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the District Courts of the United States under the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934. (U. S. C., Title 28, secs. 723-B, 723-C).

Would not that seem to establish a pretty fair set of rules of evidence for the governing of the Labor Board?

What do you say?

Mr. ROADLEY. That these rules of practice that were adopted by the United States Supreme Court are fair rules?

Mr. JACOBS. Would you not think so?

Mr. ROADLEY. I would think so.

Mr. JACOBS. Would you not think that would be sufficient without inserting the four words in 8 (c), that what the man said should not be evidence, which means to me it shall not be received to tend to prove that his motive in firing the man was because he was——

Mr. ROADLEY. No; I do not think this last sentence of section 10 (b) should stand alone. I think there must be the parallel language in section 8 (c).

Mr. JACOBS. In other words, the rules of evidence of common law, as adopted by the Supreme Court of the United States, are not enough; you want an additional rule to apply in unfair labor-practice cases, as laid down in 8 (c)?

Mr. ROADLEY. Yes, I do; and I am suggesting that perhaps when there has been a sufficient build-up of cases under the interpretation of that section it will be shown that there are more than one definition to the word "evidence," as you and I have been discussing them here this afternoon.

Mr. JACOBS. You mean more than one——

Mr. ROADLEY. Definition of evidence. If I understood you correctly, I think you said those words meant to you the receiving into—or the receiving of evidence?

Mr. JACOBS. In other words, what is received as evidence is not conclusive evidence; is that what you are trying to say?

Mr. ROADLEY. It could be.

Mr. JACOBS. It does not have to be?

Mr. Roadley. Not necessarily.

Mr. Jacobs. One item of evidence sometimes will prove a case, but not often?

Mr. Roadley. That is right.

Mr. Jacobs. Do you agree with me now that your doctrine of res gestae is not very applicable to what we are talking about?

Mr. Roadley. No; I do not.

Mr. Jacobs. Have you seen the General Electric questionnaire?

Mr. Roadley. I saw a copy of it unanswered. I skimmed through it, but I have not studied it.

Mr. Jacobs. I presume you would agree with this, would you not, that it is pretty difficult to answer some of the questions "Yes" or "No"?

Mr. Roadley. You bet it is!

Mr. Jacobs. You have not answered any of them "Yes" or "No"?

Mr. Roadley. I have not evaded answering "Yes" or "No," but I tried to answer the best I could.

Mr. Jacobs. In fact, you could not do that?

Mr. Roadley. I agree with you.

Mr. Jacobs. And I have not tried to get you to answer them "Yes" or "No"?

Mr. Roadley. No; you have been very fair.

Mr. Jacobs. Do you think it is fair to ask the general public to answer "Yes" or "No" to the 18 questions?

Mr. Roadley. I think those are the ones I saw, that attracted my eye, and could be given "Yes" or "No" answer; but, of course, in any of those opinion polls it would seem to me that someone was trying to conscientiously answer the questions, and felt he could not answer "Yes" or "No" he would amplify his answer on the reverse side.

Mr. Jacobs. If I told you one of the questions involved 13 separate provisions in the law, you would not think it was a very fair question to a layman: would you?

Mr. Roadley. I certainly would not.

Mr. Jacobs. That is all.

Mr. Bailey. Mr. Burke, you have 5 minutes of your time remaining.

Mr. Burke. Mr. Roadley, I do not want to delve into your background, or anything like that, but have you ever been employed by a labor union?

Mr. Roadley. I am sorry, sir, but I did not hear you.

Mr. Burke. Have you ever been employed by a labor union?

Mr. Roadley. No; I have not.

Mr. Burke. And, according to your statement, you spent 3 years as Commissioner of Conciliation with the United States Department of Labor?

Mr. Roadley. Yes, sir.

Mr. Burke. During that time did you feel that you were constricted or restrained to act as a Commissioner of Conciliation in favor of the labor side of the table?

Mr. Roadley. Mr. Congressman, when I was a Conciliator for the United States Conciliation Service, I believe there were 54 men covering the entire United States. I was one of the first tribunals, so to speak, as a young man without previous labor affiliation. When I was put out into the field by Hugh Kirwin, and later by John R. Steelman, I had been told the biggest job I had to accomplish was to sell my personal abilities to employers and to unions, and I found it most difficult in some instances to be able to convince unions or employers that I was impartial, and that I was unbiased, and that I was not there as the agent of one or the other.

Mr. Burke. But, in your service as a commissioner of conciliation, did you not find that the other commissioners came pretty much from all walks of life?

Mr. Roadley. No; I did not. I think most of the men came from the ranks of labor and, as I indicated a moment ago in answering your other question, one other chap and myself were the first two that had ever been appointed as commissioners of conciliation without some previous experience and without some prior background in the labor movement. That would be a subject for verification, but that is my impression at this late date.

Mr. Burke. The personnel of the Conciliation Service, largely under the Department of Labor, was carried over under the National Labor Relations Board when it was transferred under the terms of the Taft-Hartley Act?

Mr. Roadley. I believe it was, sir; yes.

Mr. Burke. And then, can you see any reason why, especially in the light of recommendations of combining departments for the purposes of economy and better efficiency, that we should not send the Department of Conciliation back to the Department of Labor?

Mr. Roadley. Mr. Burke, my own personal opinion is that the conciliator can, and has been able to, do a better job as a mediator away from the influence of the Department of Labor; particularly since his own function in labor disputes, strikes, threatened strikes, is one of an intermediary. I think that when the conciliator begins to carry the burden of a conference or begins to carry the messages of one side, that certainly destroys his confidence and his efficiency and, I think, as an independent agency, he has about 50 percent of that burden taken away from him, than he would under the Department of Labor.

Mr. Burke. As a matter of practical working, have not the members of the Department of Conciliation, or the Conciliation Service, operated actually as conciliators and mediators, regardless of what department of the Government they were employed by?

Mr. Roadley. That is true. They have acted as conciliators, Mr. Burke, but I do understand from my own knowledge as a conciliator that there were many men who could not get into certain situations because they were definitely earmarked as being for one side or the other, and they could not demand the respect of both parties.

Mr. Burke. That is pretty much inevitable, no matter what department or what branch of the Government this individual might be working under; there might be prejudices against that individual on one side or the other, and there has always been plenty of men available to come in where that situation existed; is that not true?

Mr. Roadley. I think it probably could be, Mr. Burke; but, on the other hand, again getting back to my personal exeperience when I was a conciliator, we only had the authority which was provided for in the act under the Department of Labor. Under the Taft-Hartley Act there are definite duties and obligations imposed on the Director of Conciliation, and he, in turn, through his conciliators and mediators. It is my opinion if the the Federal Conciliation Service was placed back in the Department of Labor there would be a much greater chance, and a much greater risk, if I may use that word, of the principles and philosophies of the Department of Labor trickling down through the Conciliation Service, and ultimately to the men in the field, to the extent at least, in my opinion, it would then be more difficult for a conciliator to do the effective job as an impartial, neutral and unbiased man that he should be.

Mr. BURKE. It has been my experience that the commissioners of conciliation have been pretty well thought of.

Mr. ROADLEY. I think that is correct.

Mr. BURKE. They have had a pretty good reputation all the way through.

Mr. ROADLEY. I think that is correct.

Mr. BURKE. That is all.

Mr. BAILEY. Mr. McConnell?

Mr. MCCONNELL. Mr. Roadley, what provisions of the Taft-Hartley Act would you change?

Mr. ROADLEY. Mr. McConnell, we have given some very serious thought to that. In the southern textile industry—and I want to say this very honestly and frankly—we have had very little experience under the provisions of the Taft-Hartley Act. In my own home State of North Carolina where our offices are, we have a State law governing the right to work and governing check-off. In South Carolina we have no such law.

On the other hand, I have personal knowledge of one decertification proceeding in North Carolina which was not successful, but taking all of those things into consideration, and giving them the weight which they are due, I cannot for the life of me see what good it is to maintain the imbalance of this communistic oath. Personally, I have taken it about three times, and I cannot see where any employer would have any hesitance—as the witness who preceded me said—as Justices of the Supreme Court, and on down, are required to take it. I think any of the "isms" are diametrically opposite to our way of life, and I cannot see that this election which has to do with the determination of whether or not a majority of the employees desire union-shop conditions is too material. I believe those are the two provisions that I care to express an opinion on, sir, to answer your question.

Mr. MCCONNELL. Is there any part of the national emergency strike section that you would change?

Mr. ROADLEY. Mr. McConnell, I do not feel that I am qualified or competent to testify on that part of the act. In our industry I doubt that we would ever be considered qualified under those provisions, and I honestly have not studied that to an extent that I would care to make a recommendation on it.

Mr. MCCONNELL. What changes would you make in the union shop provision, if any?

Mr. ROADLEY. The one I mentioned, sir. I think it would not be necessary to have this so-called prenegotiation election to determine whether the majority of the employees wanted it, or not. I think that that particular phrase of working conditions, probably, should not be more singled out for a vote than anything else.

Mr. McConnell. Do you think there should be any alteration in the closed-shop ban?

Mr. Roadley. No, sir, I think the closed-shop ban as contained in the Taft-Hartley Act is adequate. I think it is justifiable, and I think it should have been in the original Wagner Act.

Mr. McConnell. A certain very prominent labor lawyer made the statement to me just about 2 weeks ago when I asked "Just what is wrong with the Taft-Hartley law? I would like to know what your view is, as you have dealt with labor exclusively?" I said, "I just want to know for my own information."

He said, "Congressman, speaking to you frankly, I say this: There are parts of the Taft-Hartley law that are superb, in my judgment, and other parts I think are really bad," but he said, "The one objection I have is the way it was all put on top of labor at one time. If it had allowed them a little opportunity to become adjusted to it, you would not have had the trouble."

Would you subscribe to that?

Mr. Roadley. I certainly would. I think the gentleman was absolutely right. When we take a look at the ramifications of the Taft-Hartley law, and the scope of the things it covers, it is a wonder that it is in inself a workable instrument. I think, as you have explained to me, if this law had been brought amendment by amendment over a period of several sessions, and as the needs came about for them, I think they would not be experiencing the complete resistance by labor to the changes.

Mr. McConnell. The law is not completely bad, is the idea I am getting to. I have checked in many different places. That being so, I have never quite understood the reason for the complete repeal. No perfect law exists; I realize that. I think we would be incorrect to say that our work was just right, and should remain so, as the Wagner Act did for 14 years without any amendment. That was an unusual procedure.

Mr. Roadley. I agree.

Mr. McConnell. Certain groups were working on the assumption it was just right the way it was. I can recall a witness sitting just where you are, and making the statement, "Make no changes; leave the law just as it is." Yet, it was admitted there was considerable strife throughout the labor-management field. I get the feeling from the labor end there is more of a desire to compromise on some changes in the Wagner Act. I hope so, because only with that attitude can you accomplish anything.

Mr. Roadley. I agree.

Mr. McConnell. The world is so affected by our fundamental natures that an injustice does rebound and we get trouble from it.

Mr. Roadley. Absolutely.

Mr. McConnell. I have nothing further.

Mr. Bailey. Mr. Smith?

Mr. Smith. I appreciate your questions and your answers. I have no further questions. I will give the balance of my time to Mr. Nixon.

Mr. Nixon. Speaking of the Conciliation Service, you indicated you felt it had done a good job under the present set-up as an independent service?

Mr. Roadley. Yes, sir.

Mr. NIXON. Do you think anything could be gained from the standpoint of conciliating labor disputes by transferring it to the status we had before in the Department of Labor?

Mr. ROADLEY. No, I do not, Congressman Nixon. As I expressed an opinion in my statement about the entire Taft-Hartley Act, I honestly believe there has not been enough experience, enough water gone under this dam, so to speak, to find out what all the rights and wrongs and bad things are. I think the Conciliation Service, during the time it has been an independent agency, has done a good job on reestablishing itself. I think that is demonstrated very clearly through its regional set-up, and I think it has been demonstrated it is a capable organization, and I think that so long as that record stands, it should be given that chance to continue.

Mr. NIXON. As far as you are concerned, you would oppose just as much the transferring of the Conciliation Service to the Department of Commerce, as you would to the Department of Labor?

Mr. ROADLEY. I certainly would.

Mr. NIXON. You believe in the Department of Commerce there might be a tendency to favor management?

Mr. ROADLEY. Yes.

Mr. NIXON. And labor would be very suspicious of the conciliators appointed by the Department of Commerce?

Mr. ROADLEY. I believe they would.

Mr. NIXON. If they transferred it to the Department of Labor the conciliators appointed by the Department of Labor would not have the same degree of acceptance by management as independent conciliators would have?

Mr. ROADLEY. That is exactly right.

Mr. NIXON. So for that reason you feel it should be an independent service?

Mr. ROADLEY. That is far more preferable.

Mr. NIXON. Incidentally, have you read the Lesinski or the Thomas bill?

Mr. ROADLEY. I have read both bills.

Mr. NIXON. Did you see any provisions in there guaranteeing union members the right to democratically elect officers and the right not to be expelled from the union without cause?

Mr. ROADLEY. I did not.

Mr. NIXON. In other words, the matters which Mr. Jacobs raised as weaknesses are not covered by the Taft-Hartley Act?

Mr. ROADLEY. I do not believe they are.

Mr. NIXON. And if he wishes to cover those, he is going to have to amend it?

Mr. ROADLEY. I believe so.

Mr. NIXON. You may recall the original Hartley bill as passed by the House did not have all the provisions Mr. Jacobs mentioned, but it did have some of those.

Mr. ROADLEY. Some of them, yes.

Mr. NIXON. And in conference those provisions were stricken out due to the fact union leaders opposed them because they did not want to have what they called government interference in their own business?

Mr. ROADLEY. Yes.

Mr. Nixon. Is it your opinion that if this committee were to attempt to write in provisions laying down the rules by which union elections were to be held, rules governing union officials, their conduct of the internal affairs of the union, do you think the union officials would support that act any more than they are supporting the Taft-Hartley Act?

Mr. Roadley. I do not think so. As a matter of fact speaking for our association, I do not think it is any concern of ours what the union does, so far as the internal affairs are concerned.

Mr. Nixon. At that point, I want to say I share Mr. Jacobs' concern over some of the practices he has mentioned. Through this line of questioning I only want to establish that we are faced here with a problem which is extremely difficult, and a problem which, if it is a weakness in the Taft-Hartley Act, is also to even a greater extent a weakness in the new bill.

Mr. Roadley. I agree with you.

Mr. Nixon. And speaking on that point, Mr. Jacobs asked you whether or not there was any provision of the bill which denied to a union a right arbitrarily to expel a member, and your answer was there was no such provision?

Mr. Roadley. That is right.

Mr. Nixon. As a matter of fact, from a practical standpoint, where a union has a union-shop agreement, is it not true the effect of the Taft-Hartley Act is to deny the union that right?

Mr. Roadley. It is.

Mr. Nixon. Because under the union-shop agreement an employer cannot discriminate against an employee by reason of his nonmembership in a union?

Mr. Roadley. That is exactly right.

Mr. Nixon. If the employee has been expelled from the union it can be only for nonpayment of dues?

Mr. Roadley. That is correct.

Mr. Nixon. The unions apparently have assumed that is a restriction upon their right to expel members, because that is one of the points which has been brought out in statements of union leaders, one of the points which they think in the Taft-Hartley Act should be changed, because they say the present act, in effect, denies them the right even to expel the Communists from their membership?

Mr. Roadley. I agree with you.

Mr. Nixon. In other words, theoretically, we will agree with Mr. Jacobs as to the act because if the union was under a union-shop agreement and expelled a man, the employer could keep that man on the pay roll?

Mr. Jacobs. Will you yield?

Mr. Nixon. Yes; if I have the time.

Mr. Jacobs. There is also this particular application of that rule, that in the case of intermittent work, like in the construction industry where a man does not work steadily on the same pay roll all the time, that his lack of membership does not protect him on a job which does not last. You know on that?

Mr. Nixon. Yes; and I do not question the gentleman's statement. My point is, as a practical matter, unions now and union officials, particularly, are objecting to the Taft-Hartley Act because they say the act, in effect, denies the right to expel members other than for the non-payment of dues.

Mr. JACOBS. That goes back to the last sentence in the gentleman's prepared statement, which I wish to say does not apply to my position in regard to this matter.

Mr. BAILEY. I believe that is all, Mr. Roadley. We appreciate the time you have given us.

Mr. ROADLEY. Thank you, Mr. Chairman, for the privilege of being here.

Mr. BAILEY. The committee at this time will hear Joseph R. Barnes, of the Illinois Manufacturers' Association.

TESTIMONY OF JOSEPH R. BARNES, DIRECTOR, INDUSTRIAL RELATIONS, ILLINOIS MANUFACTURERS' ASSOCIATION

Mr. BARNES. I am director of industrial relations for the Illinois Manufacturers' Association, and I appear here today to speak for that association.

The Illinois Manufacturers' Association has in its membership over 4,000 manufacturing concerns of all sizes, engaged in almost every type of industrial production.

The views of the Illinois Manufacturers' Association regarding H. R. 2032, now under consideration before this committee, are these: This bill would return both employers and employees to the jeopardy of unrestrained and unregulated labor union monopolies that were chartered and protected by the Wagner Act, and that operated so arrogantly under it.

The enactment of this bill will result in greatly increased costs to the public.

Because ultimately the public will pay the cost resulting from the type of demands and activities that unrestrained labor union monopolists make and enforce against employers and employees, this bill, for all practical purposes, will take us back to the situation that Congress recognized was intolerable 2 years ago, and which it undertook to correct with the Taft-Hartley Act.

The amendments which this bill makes in the old Wagner Act are of little value in correcting the conditions that existed under that act. We feel that the adoption of this bill would be equivalent to the issuance of a license by Congress to labor union leaders and to the National Labor Relations Board to resume their joint program to make all industry and all employees subject to the control of labor union monopolists, without regard for the best interests of either, and without regard for the public interest.

We believe this bill should be defeated.

We believe that if this bill is not to be defeated, it should, at the minimum, be amended to provide the following:

First, the so-called closed-shop proviso, which gives employers and labor unions authorization to combine to force unwilling workers to become members of the union and to submit to the labor union monopoly, should be eliminated.

This closed-shop proviso, very simply stated, makes it possible for employers and labor unions to agree to force unwilling employees to become members of the union, or lose their jobs. It is a strange and abnormal provision in a law which pretends to guarantee freedom.

The only justification for the closed-shop proviso is that the Government approves of the coercion of individual employees if that coercion will further labor union monopoly.

Second, the majority rule provision, which compels unwilling employees to handle all of their affairs with their employers through labor unions, should be changed to allow the individual employee to handle his own affairs with his employer if he chooses to do so.

This bill would prohibit the individual employee from dealing directly with his employer in any plant where the union had a majority.

And the union has a majority in a great many plants today.

This bill gives any union which has secured majority status in a plant the exclusive right to sell the personal services of all of the employees in that plant.

Is it freedom if a man cannot bargain for and sell his own labor, and cannot deal with his own employer regarding his own personal affairs? We submit that a proposal to grant such power to the President of the United States, that is, the exclusive right to bargain for and to sell the services of all of the people of this country, would be universally denounced and opposed. Yet this bill gives to labor union leaders power and authority over individual American citizens which few would think of giving to the President of the United States.

Third, the freedom of speech of both employer and employee should be protected from abuse by the National Labor Relations Board. This bill does not protect that freedom.

Employers should be free to say or write what they think about a labor union, or its acts, or its leaders, or its philosophies.

Experience makes it seem probable that the National Labor Relations Board would be tempted to again use its powers to coerce employers into silence, and to effectively bar any real freedom of speech on the part of employers.

And this would be especially true, since the Board, under this bill, is not bound by the rules of evidence which prevail in our courts, and can make decisions on the facts which are practically beyond review, even by the Supreme Court.

Fourth, foremen and supervisors should be made free from the requirements of this bill. They are the arms and the fingers of management; they constitute the means by which management functions in the plant, and they cannot function effectively if they are to be dominated by labor unions, which in turn are controlled by the very men whose direction and regulation is the responsibility of those foremen and supervisors.

Fifth, a statute of limitations which would provide protection against the misuse of stale evidence by the National Labor Relations Board should be provided. A charge may be filed against an employer in January of this year, and then bits and pieces of evidence purporting to support that charge may be picked from the employer's actions for years back.

The Board should be limited as to the time during which it may examine the past actions and conduct of the employer.

Just suppose that we were to throw out all of the rules of evidence in the courts, make the court prosecutor, judge, and jury, cut off the right of appeal where a decision on facts is supported by any evidence, even though contrary evidence might be preponderant, and then provide that court with a great many biased assistant prosecutors? If we did that, could the other side ever win a case?

Yet, that is what this bill will do to the other side, to industry.

Sixth, the bill should be specific in that the requirement "to bargain collectively in good faith" shall not include the making of agreements or proposals which the parties to the negotiations do not wish to make. Government agencies have shown a strong disposition to force labor unions and employers into agreement.

It should be made clear in the law that both labor unions and employers are free to agree or not to agree to what the other demands, and free to make or not to make counterproposals or concessions.

One of the foundation stones in the institution of private ownership of property is the freedom to refuse to give away what another demands of you, and that right should be protected.

Seventh, the bill should allow the courts to set aside any findings of the Board which is contrary to the greater weight of the evidence.

Under this bill, the National Labor Relations Board has the power to base its findings of fact upon evidence which may be clearly outweighed by contrary testimony.

And no matter how much evidence there was to the contrary, the courts could not disturb a finding of fact by the Board if there is any evidence to support the findings of the Board.

This bill makes the National Labor Relations Board an institution above and outside the ideas of justice that we have evolved over the centuries—an institution, in fact, which bars even the Supreme Court of the United States from seeing that justice is done by the Board, if there is any evidence to support the findings of the Board.

Eighth, all jurisdictional strikes and secondary boycotts should be outlawed. Certainly, it is against public interest for employers not involved in a dispute—innocent bystanders, as it were—to be the victims of a dispute.

Ninth, labor unions should be liable, as everyone else is, to suits for damages for breach of contract.

Is there any inducement for anyone to enter into a contract if he knows that he cannot legally enforce that contract against the other party? This bill would require employers to enter into binding written contracts covering any agreement reached with the union. But that same employer, having entered into such an agreement, would be entirely unable to legally enforce the contract against the union.

Is it fair to require employers to be bound by a contract, and yet allow labor unions to break that same contract without liability?

Tenth, the bill should require all labor union leaders to file anti-Communist affidavits, and if they do not so do, to deprive their unions of the benefits of the bill. Shall we allow Communists to use labor unions as tools in their efforts to destroy the United States?

We submit that the unions employing the machinery of an agency of the Government—the National Labor Relations Board—should give some assurance that they are not using the mechanism of that agency to destroy that same Government.

Perhaps this suggested proviso should even be extended to deny the facilities of the Board to any union that has committeemen or other officials whose affiliations show them to favor destruction of our Government, regardless of statements and affidavits by the union's officers; and

Eleventh, the Federal Mediation and Conciliation Service should not be returned to the United States Department of Labor. It should remain an independent agency.

If Conciliation Service is to be of value, it must be entirely free of bias. And the Department of Labor is regarded by those in labor relations work as purely and simply prolabor union.

In conclusion, we do not ask that labor unions be shackled or injured in any way. We do ask that if we are to have a law favoring labor unions, let it be a law that is sufficiently reasonable so that employers can live under it and with it, and not the kind of a law that will throw employers and labor unions into an extremely costly cold war.

The present bill, we believe, would do just that.

Thank you.

Mr. Bailey. Mr. Jacobs, have you any questions?

I want to yield my time, or whatever part of it Mr. Wier might need, and I will call on you, Mr. Jacobs.

Mr. Jacobs. I have one or two questions, Mr. Barnes.

From your statement, on page 5, I gather you are under the impression that the right to sue a union was nonexistent until the Taft-Hartley law was enacted?

Mr. Barnes. I am not a lawyer, Mr. Jacobs, and I cannot argue points of law with you, but I believe there were some States where it was possible to sue a union.

Mr. Jacobs. What State are you from, Illinois?

Mr. Barnes. Illinois, sir.

Mr. Jacobs. Are you aware of whether or not you could under the laws of Illinois?

Mr. Barnes. Unless I am very much mistaken, the laws of Illinois do not permit that. It has never been done there with any degree of success.

Mr. Jacobs. What business are you in? Are you a manufacturer?

Mr. Barnes. I work for the Illinois Manufacturers' Association.

Mr. Jacobs. You have the lawyer for that association write a letter, and I will tell him how he can sue the union without the provisions of the Taft-Hartley law, and always could, and I think that I will say the same as to the other 48 States in the Union. I think I will be able to tell any lawyer in any State how he can bring a suit against any union without the Taft-Hartley law, and always could.

I yield the rest of my time to Mr. Wier.

Mr. Bailey. Mr. Wier.

Mr. Wier. In your closing statement you say:

> The present bill, we believe, would do just that.

That is, give considerable advantage to the unions? What do you mean by that? Have you read the new bill?

Mr. Barnes. Yes.

Mr. Wier. What is in the new law that you feel is unjustified?

Mr. Barnes. You mean in H. R. 2032?

Mr. Wier. That is right, the bill that is under consideration by this committee.

Mr. **Barnes.** We feel the reenactment of the Wagner Act would be a license to unions to go ahead on their organizational activity, and the forcing of agreements upon employers, and costly strikes.

Mr. **Wier.** What do you mean by "forcing agreements" on employers?

Mr. **Barnes.** Mr. Wier, the union has a lot of economic power in that they can force employers by threatening them with strikes, to agree to a lot of things.

Mr. **Wier.** You do not mean to infer that the employers do not have any force of action?

Mr. **Barnes.** No; certainly not.

Mr. **Wier.** As a matter of fact, historically, and fundamentally, and socially, the advantage of the employer controlling the job, and making the job possible, and helping the conditions of employment, do you not think that is quite an advantage to the employer?

Mr. **Barnes.** Certainly.

Mr. **Wier.** Sure; it is.

Mr. **Barnes.** However, he must have labor to run his plant.

Mr. **Wier.** That is right.

Mr. **Barnes.** And to produce his product.

Mr. **Wier.** That is right.

Mr. **Barnes.** Without that he has nothing.

Mr. **Wier.** Do you feel that the workers in any of these plants feel that they, on their own, can control the management of that plant and dictate, or do dictate?

Mr. **Barnes.** In what respect, Mr. Congressman?

Mr. **Wier.** In the operation of the plant and the maintenance of the job that every worker has to have.

Mr. **Barnes.** I think industry has made great strides in that direction. During the war we had the labor-management committee established in many plants where management and labor sat down to work out certain new procedures of production, and you have widespread suggestion systems where workers have really had a hand in developing new products and short-cuts in production.

Mr. **Wier.** Let me ask you this: You criticized some of the sections of this proposed bill here, as against the Taft-Hartley Act. You come from Illinois?

Mr. **Barnes.** Yes, sir.

Mr. **Wier.** Then you should be familiar with that 18- or 20-month old strike that has taken place there in the newspaper business.

What caused that strike?

Mr. **Barnes.** The newspapers are not, a strictly speaking sense, manufacturers, and we are not too close to them, nor do we know their policies. All I know is what I read in the newspapers about the strike.

Mr. **Wier.** You represent the Manufacturers' Association, and I assume it represents generally the policies of the employer in the State. They may not be dues-paying members.

Mr. **Barnes.** No; I would say, strictly, we represent industry, manufacturers, producers.

Mr. **Wier.** Do you know anything about the typographical strike in Chicago, and what led up to it, and what has caused it to continue, and what created the strike?

Mr. **Barnes.** Not too much.

Mr. WIER. Are you familiar with the fact it was not a question of wages or any attempt on the part of the union to take over management; it was the result of the Taft-Hartley Act proposing a situation that had been in force for years and years in this country, the abolition of management and labor to enter into a closed-shop agreement, and that was nothing new; is that correct?

Mr. BARNES. The signboards, the sandwich-board signs on the pickets in front of the Herald-American office, in front of which I walk twice a day, have among other things—and I am quoting from memory, now—"Hearst has raised wages in 16 cities. Why does he not do it in Chicago?"

Mr. WIER. Why does he not do what?

Mr. BARNES. He has raised wages in 16 cities. Why does he not do it in Chicago? Those are the signs on the pickets. So, evidently, they believe that wages are a consideration in the dispute.

Mr. WIER. The strike is over the closed shop; is that not correct?

Mr. BARNES. I am not familiar enough with the issues involved to answer that.

Mr. WIER. You represent a State that is highly organized, the State of Illinois, and on the basis of the industries that are in the State of Illinois, a substantial part of them have been under closed-shop conditions in union contracts over a long period of time, have they not?

Mr. BARNES. What do you mean exactly by "closed shop"? Do you mean the closed shop in which an employee must belong to a union before he goes to work?

Mr. WIER. I mean the closed shop they attempted to take out of the Taft-Hartley Act and did put in the Wagner Act. If you are representing employers, you should know what a closed shop is.

Mr. BARNES. There are relatively few manufacturers who have what is known technically as the closed shop. A great many of them have union contracts which provide the employee shall become and remain a member of the union 30 days from the date of hire.

Mr. WIER. In the State of Illinois, enumerating a few industries, your building and construction industry is almost completely a closed shop, is it not?

Mr. BARNES. That is not a manufacturing industry. We are not speaking for them.

Mr. WIER. Then, let us go to the mining field.

Mr. BARNES. All right.

Mr. WIER. They have been operating for a long period of time under the closed shop?

Mr. BARNES. Right.

Mr. WIER. Your trucking industry in the State of Illinois generally operates under a closed shop, and the teamsters' international?

Mr. BARNES. Truckers again are not manufacturers, and we do not purport to speak for them. I think when you say "industry" and "manufacturers" you have to differentiate.

Mr. WIER. Then I will ask you this: Where management and labor organizations have over a period of time demonstrated the feasibility and the advisability and good relationships under closed-shop conditions, do you feel that it would be justified to remove that?

Mr. BARNES. I do not feel there is too much fundamental difference between a closed shop, which is imposed at the moment of hire, and one which is imposed 30 days later. You may, under the Taft-Hartley Act, have a closed shop, except that its execution in the case of a new employee is postponed for 30 days, and that type of an agreement is perfectly legal.

Mr. **Wier.** Is that your impression of a closed shop?

Mr. **Barnes.** It is a closed shop 30 days later.

Mr. **Wier.** Speaking of the union shop under the Taft-Hartley Act, you made some reference here in your statement to the workers having freedom of action, and I think most of Congress has agreed sometime in the past that they made a mistake in injecting that compulsory 50 percent of election for a collective-bargaining agreement, and to carry on a union shop; is that correct?

Mr. **Barnes.** We are not recommending that provision. If you will look you will find it is not in there.

Mr. **Wier.** Do you not think on the basis of the results of the short time in which that has been operating, that the workers of the United States have demonstrated beyond a question of a doubt their desire by democratic elections for the unions' protection the jurisdiction of the union to cover hours and working conditions, and so on?

Mr. **Barnes.** We are not recommending that the union-election provision be retained in the act.

Mr. **Wier.** I see you lay quite a bit of stress here on the Communist situation that developed under the Taft-Hartley Act. Is it not presumptuous to assume that under the Taft-Hartley Act they attempted to legislate the union out of existence, or an officer of the union, provided he did not sign the Communist affidavit?

Mr. **Barnes.** He could still remain an officer of the union. It merely denied the union the right of machinery of the National Labor Relations Board.

Mr. **Wier.** I said to qualify under the provisions of the Taft-Hartley Act.

Mr. **Barnes.** Right.

Mr. **Wier.** Then, why did they turn around and protect the shop by denying the right of the dismissal of that Communist?

Mr. **Barnes.** I do not believe the Board has ever held or any court would hold that an employer could not discharge a man simply and solely because he was a Communist.

Mr. **Wier.** The law states specifically if, in our candy factory, the union makes a charge that one of the persons has caused a lot of difficulty by stirring up prejudice against union officers, the union, even upon finding him guilty, cannot insist on or demand his dismissal.

Mr. **Barnes.** I venture to say, Mr. Congressman, that the employer would be very anxious and willing and ready to cooperate with the union in discharging that man. I do not believe the unions have experienced any difficulty in getting employers to do that.

Mr. **Wier.** Some statement has been made here about the freedom of speech that was returned to management under the Taft-Hartley Act. I have had some experience with that. The typographical unions have had some experience with it, and other unions have had some experience with it—freedom of speech. I do not think anybody is going to deny that, but the act was put on the statute books and accepted by the National Labor Relations Board and brought about a situation where that is quite broad, not only the freedom of speech, but the freedom of action.

I tried to present some unfair labor practices in our region before our regional board against an employer—not because of free speech, but an employer who had penalized his employees because he discovered they were organizing. He was working overtime—this was in a dental laboratory and, I think, they were working overtime. He called his workers in and and used his right of free speech and talked to them, but he still failed to stop the organization, and so then he began using the second step, and that was those workers who were actively participating in the organization of the group lost their overtime privileges in spite of the fact that he needed them for overtime work. He gave the more loyal employees the added overtime. Eventually, his actions in that avenue of freedom of speech brought him a strike which lasted 9 weeks, and we preferred charges in 12 cases, and the Labor Board said we did not have justifiable evidence of a violation, and we were discouraged from filing or carrying through the unfair labor practice charges. That, to me, is a clear-cut violation, and way beyond the scope of freedom of speech. That is one of the things people say when you ask them if they object to the Taft-Hartley Act. They say, "Do you think we have a right to object to that qualification of freedom of speech?"

Mr. Barnes. It would seem to me that if there had been discrimination on the part of the employer in awarding overtime to certain employees, and discriminating against others, that the Board might well have found so without the question of freedom of speech coming into it.

Mr. Wier. That is what we had hoped for.

There are a number of outstanding examples of that I could call to your attention, but I will not go any further.

I think that is all, Mr. Chairman.

Mr. Bailey. Mr. McConnell?

Mr. McConnell. When a person is out on a strike which lasts for quite some time, for how long a period should he be considered an employee?

Mr. Barnes. I would hate very much to generalize on that one. I said that the manufacturers must have labor to run their plants. No manufacturer can shut his plant down and pay rent and take depreciation on it and obsolescence on his machinery forever, without going broke. In some plants the process would be faster than in others. I would not attempt to answer that question. You will find in union contracts the seniority rights which an employee has, and which he retains even, though he may be laid off, varies all the way from 3 weeks to 2 years, so I think you have to figure that one on the basis of the individual situation involved.

Mr. McConnell. I have no other questions.

Mr. Bailey. Mr. Nixon?

Mr. Nixon. I do not have any questions.

Mr. Bailey. Thank you, Mr. Barnes, for appearing before the committee.

The next witness will be J. W. Keener, vice president of the B. F. Goodrich Co.

The witness will please proceed.

TESTIMONY OF J. W. KEENER, VICE PRESIDENT, THE B. F. GOODRICH CO., AKRON, OHIO

Mr. KEENER. I am Ward Keener, vice president of the B. F. Goodrich Co., Akron, Ohio. The B. F. Goodrich Co. has manufacturing operations in 12 States and sales operations and employees in every State.

We employ approximately 40,000 people in the United States. About 90 percent of our production and maintenance employees are represented by unions. Eighty-one separate bargaining units are dealt with in manufacturing and sales locations. The majority of union-represented employees deal through the United Rubber, Cork, Linoleum, and Plastic Workers of America, CIO, which holds bargaining rights in seven of the company's rubber-products plants.

My purpose today is to present some experiences from our company's relationships with unions that will cast light on the legislation now before your committee. These experiences, though not dramatic, are typical of union-management relationships in much of American industry.

Employee representation: Opponents of the Taft-Hartley law have made many broad charges against the law as it affects employee representation. They have said that efforts to organize the unorganized would be crippled; that the free-speech provisions would unjustifiably interfere with organizational activities; that the unfair labor practice sections would be used by employers to harass, delay, and otherwise interfere with the organization of employees; that the anti-Communist affidavit requirement to qualify for the services of the Board gave unequal treatment; that the law would develop an antiunion attitude on the part of the Board's agents; and that the Board would be flooded with decertification petitions.

Unionization has increased under the act. To promote free expression of employee choice, and to avoid jurisdictional problems, it has been the B. F. Goodrich policy, under both the Wagner Act and the Taft-Hartley law, to bargain with unions only after Board certification. Since the Taft-Hartley law became effective 10 representation elections have been held in our operations, resulting in 7 new certified bargaining units, and 3 "no union" choices.

Free speech has aided free employee choice. Both the unions concerned and the company have freely presented their views on the elections to employees, and we are confident that election results accurately reflected employee opinion. The organizational drives have been vigorous, but we have never filed an unfair labor practice charge against a union and have had no charges by the Board against us.

The attitude of the Board's agents has been more impartial. In handling election and other problems, the attitude of the Board's agents has been more nearly impartial than under the Wagner Act, but certainly not antiunion.

We have had one recent case, however, that reflected the old Wagner Act attitude. Upon losing a representation election at one of our plants, the petitioning union filed objections to the conduct of the election. Examination of five officers of the union and four members of management by the Board's agent was followed by his indicating that several members of management were obviously lying, that the union officers were all truthful, and that he would see that a new election was ordered. The company urged that he investigate further by talking with rank and file employees and he reluctantly agreed. He then examined some 20 employees—about one-third of the total—whom he reported as supporting management statements, but indicated that they, too, were lying. He recommended to the regional office that a new election be held, but the Director, and later the National Board, upon review of the evidence, validated the election.

Union members have been given a means of identifying Communist leadership: All of the unions with which we deal have, we believe, filed the anti-Communist affidavits and other information required to qualify for the services of the Board. The Taft-Hartley law has forced many of the Communists in the labor-union movement out in the open. By identifying them, it has given American working men and women the means of expressing their contempt for those who would use American unions to further the national interests of a foreign power.

A nonqualified union, generally said to be Communist-dominated, organized one of our warehouses and called a recognition strike. As soon as the employees learned of the Communist reputation of the union they stopped the strike, transferred to a qualified union, and are now under contract as a certified bargaining unit.

It pleases me to know that union officers want management representatives to sign a non-Communist affidavit, if union representatives must do so. This appeal for equality is a just one and can be sympathetically understood by management people who have asked for equality under the law for more than a decade. To accomplish equality, we will sign anti-Communist affidavits. We shall be glad to declare our loyalty to our country and to our form of government.

Fears of decertification petitions have proven unfounded: Our company has never been involved in a decertification election. Fears that unions would lose ground because of this provision of the Taft-Hartley law have proved baseless, except in the cases of a few Communist-led unions. We are firm in our belief that employees should, however, have the right to reject, as well as to select, bargaining agents. To tie them forever to the originally certified representative, or to prevent a return to a "no union" status, is to violate their right of free choice, an avowed purpose of the Wagner Act, of the Taft-Hartley law, and of the bill before your committee.

Employees have been free from coercion: Complaints by individual employees about union coercion have practically disappeared. Employees need protection from union and employer coercion as provided by the present law. The proposed bill does not give this protection and says, in effect, that Federal law condones goon-squad activity, threats to individuals and their families, and other forms of union coercion.

The proposed bill does recognize—and the Wagner Act did not—that unions can commit unfair labor practices in the forms of jurisdictional strikes and limited secondary boycotts. But to say that unions do not commit other unfair labor practices against employees, companies, and the public is totally to ignore the facts of experience.

The typical experiences and views on employee representation which I have presented show that the law has been an aid, rather than a hindrance, to the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing.

Contract negotiation: Opponents of the Taft-Hartley law have claimed that the law would place great hurdles in the way of contract negotiation; that it would result in severe cuts of contract standards; that it would force strikes to gain union objectives; and that the duty which it placed on unions to bargain collectively with representatives chosen by management was unnecessary.

Real collective bargaining has accelerated, union gains increased; Since the Taft-Hartley law went into effect, our company has negotiated 78 contract and wage agreements. Of these, 76 were negotiated peacefully and, instead of resulting in "severe cuts in contract standards," brought substantial gains to employees. Typical are these benefits granted the United Rubber Workers: An 11-cents-an-hour wage increase in 1948; pay for six holidays not worked; 3 weeks paid vacation for 15-year-service employees; severance pay for mental or physical disability cases and for retiring employees; increased incentive wage guaranties; and other significant, though less important, changes.

Union gains were achieved without industrial strife. We have experienced only two legal strikes over contract issues under the Taft-Hartley law. These occurred in plants employing 2½ percent of our employees, and both were settled by vote of employees in union meetings on the basis of the company's prestrike offers.

Duty to bargain has been recognized. Our unions have not refused to bargain and, I believe, generally recognize that equity requires that unions, as well as management, have equal responsibility to bargain in good faith. By eliminating the duty of unions to bargain, the proposed bill would encourage high-handed tactics and stimulate strife. By eliminating the clear-cut definition of "to bargain collectively," which is a part of the Taft-Hartley law, the proposed bill invites the return of the confusion which characterized Wagner Act history in this respect.

The representative experiences of the B. F. Goodrich Co. in contract negotiations under the Taft-Hartley law do not substantiate the charges made by union critics.

Union security: Opponents of the present law have claimed that union security would be jeopardized; that the closed shop ban would interfere with stable collective bargaining; that the union-shop-election requirement would affect efforts to gain union security; and that the voluntary check-off provision would encourage "free riders" and adversely affect union finances.

Union security rests on foundation of performance. The B. F. Goodrich Co. has a long-standing policy that the question of membership or nonmembership in a union is a matter for the individual employee to decide. We do not believe it is right for us to bargain away our employees' freedom of choice. Except in two instances which have a background of Government compulsion, our union agreements do not require union membership as a condition of employment.

It is our experience and belief that stable collective-bargaining relationships are promoted when unions are fully accountable to their memberships. Where compulsory unionization exists the members do not control and, in fact, depend upon the pleasure of union officials to continue to hold their jobs. In the hands of Communists and racketeers, compulsory union membership is a powerful tool for the permanent subjection of American working people.

Real union security has increased. Our company has agreed to voluntary check-off of union dues wherever requested. Our experience is that unions that properly represent the real interests of employees have no difficulty in selling their membership on payment of dues by the voluntary check-off method. During 1947, 93 percent of the employees in our Akron production union paid over $250,000 into the union treasury on a voluntary check-off basis. In 1948 we deducted dues of approximately $230,000 from over 97 percent of the employees in the bargaining unit. This represents real union security with protections of individual rights that should be retained in the proposed law.

Handling employee problems: Opponents of the Taft-Hartley law have claimed that employers would become more adamant and uncooperative in settling grievances; that work stoppages would increase to achieve satisfactory adjustment of grievances; and that unions would be harrassed by damage suits arising from stoppages in violation of agreements and other unauthorized acts of union agents.

Bargaining on grievances has continued as usual. Our experience is that we have few grievances or work stoppages in plants other than Akron, which is our largest operation. During the last 12 months of the Wagner Act's existence, 1,120 grievances were filed in Akron. During the 12 months following the effective date of the Taft-Hartley law, 1,102 grievances were filed. This is business as usual.

Work stoppages have been greatly reduced. To eliminate any excuse for work stoppages during a contract period, our agreements with URWA have provided for arbitration as the terminal point in the grievance procedure. Nevertheless, work stoppages do occur, mostly in connection with grievances that have not been referred to or negotiated under the established grievance procedure.

During the last 12 months of the Wagner Act, 104 such illegal stoppages occurred in our Akron plants causing 122,000 man-hours of lost time. During the first 12 contract months under the Taft-Hartley law, only 19 stoppages occurred involving 25,000 man-hours of lost time.

Arbitration has been substituted for stoppages. This 80-percent reduction in stoppages and lost hours is directly related to greater use of peaceful means of settling differences. During the last year under the Wagner Act 24 arbitration decisions were received against 71 in the 16 months following under the Taft-Hartley law. This experience is an accurate reflection of the influence of the Taft-Hartley law on responsibility and accountability for union actions.

Stoppages have increased since the election. It is significant that during the first 4 months following the November elections, 14 work stoppages occurred in our Akron plants with work losses of 69,000 man-hours, nearly 3 times the losses of the entire year preceding. Does this indicate an expectation that restraints will soon be off and responsibility and accountability no longer required?

Union-company relations have been free from legal actions. We have never sued a union, and we do not believe damage suits ordinarily further improvement of labor-management relations. Unions can and do commit acts for which money damages should be a remedy.

We know the deterring effect on union excesses which the presence of such a remedy can have. Financial responsibility of unions for acts of their agents should be retained in the new law.

The position of supervisors: The Taft-Hartley law insures to supervisors the right of self-organization, but it does not extend to them the special privilege of NLRB certification. The B. F. Goodrich Co. has had specific experience with foremen's organization, including a 4-week organizational strike in 1945.

Foremen's unions are subservient to direct workers' unions. From our experience we have learned that foremen cannot serve both a labor organization and their management organization; that a foremen's union cannot be effective except through the cooperation of the workers' union; and that a foremen's union must, therefore, be subservient to the direct workers' union, making the effective supervision of the workers impossible.

Our experience during the organizational efforts of the Foremen's Association of America and the 4-week strike of September 1945 clearly demonstrated that the independent nature of the Foremen's Association of America was a myth. Leaders of the Foremen's Association sought and obtained the cooperation of certain officers and members of the productive workers' union. During the early days of the strike, officers of the production workers' union encouraged production employees to work only for their normal supervisor and to refrain from working for members of factory management which were replacing foremen then on the picket line. Production employees refused to continue at work until the supervisory situation had returned to normal.

This approach and cooperation by the production employees completely closed the Akron plants which otherwise would have remained in partial operation. During this strike many coercive tactics were used. Threats were made against individual foremen who were unsympathetic to the strike. The strike was eventually terminated when the organized minority of striking foremen gave way to the unorganized majority who wanted to fulfill their responsibilities as members of management.

Foremen have true management status: Our first line foremen have real management status, are responsible for hiring, discipline and firing, handle employee problems on their own authority, are paid salaries well above the earning level of those they supervise, averaging more than $4,000 a man in 1948, and are classified as executive employees under the Fair Labor Standards Act and the Public Contracts Act.

Industrial management cannot succeed in its efforts to further American productivity and standards of living unless it is operated as a closely knit team. It cannot function if divided into separate units of diverse interest. Failure of new legislation to clarify the true management status of supervisors would be a great disservice.

Bargaining on insurance and pension program: We are greatly concerned with recent decisions which require compulsory bargaining on insurance and pension programs. The B. F. Goodrich Co. has had voluntary joint contributory life, hospitalization, and disability insurance for many years.

Since 1934, an insured retirement plan has been available to all employees. The company pays about two-thirds of the total cost of an employee's retirement benefit. Approximately 76 percent of all employees are members and on December 31, 1948, the insurance company held more than $20,000,000 in reserve for future employee retirement benefits. Company contributions to these employee benefit plans exceeded $3,200,000 in 1948 alone.

It would be virtually impossible to provide a sound, adequate plan of this nature if we were required to bargain on this subject. The problem of coordinating the thinking of our 81 bargaining units under one program would be insurmountable. To break up the present plan into numerous smaller plans to satisfy the diverse wishes of unions would severely limit the effectiveness of the program.

Collective bargaining on retirement plans would restrict rather than accelerate progress. Employers would hesitate to liberalize programs knowing that the granting of union demands this year would simply result in greater demands next year.

To be effective, retirement plans must continue in force for decades. Subjecting such long-term obligations to the hazards of annual negotiations, and to changing union representation, would seriously jeopardize their stability and permanence.

In addition, they are definitely related to whatever action Congress may take in the broad field of social security. We suggest that bargaining on such matters be made permissible, but that it not be made compulsory, pending adequate Congressional investigation and study of the problems involved. Otherwise, unsound, fly-by-night programs, poorly conceived, inadequately financed, and unable to perform on their promises will be created to the present pleasure, but future disillusionment of many who will place false dependence upon them.

There are other major problems to be considered by your committee which I have not mentioned. I have talked in terms of those elements of labor legislation that affect the day-to-day job of managements and unions of living together peacefully and productively.

The specific provisions of a new labor law are of less importance than are the principles upon which the law is based. If the approach is one-sided and based on power without responsibility, privilege without obligation, then the great and costly excesses that occurred in Wagner Act days will likely recur. If the approach is in terms of the protection of fundamental American freedoms; equality of rights and privileges, obligations and responsibilities, and the provision of competent impartial administration, then neither management, nor labor, nor employees, nor the public have anything to fear.

Mr. Bailey. Mr. Jacobs, have you any questions?

Mr. Jacobs. I have two or three questions that I would like to ask, Mr. Keener. I have been quite intrigued about this question of foremen. How many foremen does the B. F. Goodrich Co. employ?

Mr. Keener. Across the country, approximately 1,500. In our Akron plant where this problem occurred, about 600.

Mr. Jacobs. About 600 in the Akron plant. Can you tell me in approximate terms what your foremen's pay is in ratio to, we will say, the highest production worker in your plant?

Mr. Keener. In general, the foremen will average anywhere from 10 to 25 percent more pay on a straight-time hourly basis than do the direct workers. In addition, the foremen are on a 40-hour week and the direct workers are on a 36-hour week. So there is a further differential caused by a 10-percent differential in hours.

Mr. Jacobs. Well, let me see. Four hours difference in a week of 36, that would be approximately 10 percent, and some of them go 10 to 25 percent higher than the production workers?

Mr. Keener. That is correct. And I am referring to the first level of supervision. We have higher levels of foremen who are higher paid.

Mr. Jacobs. I understand. I meant that. You correctly got the sense of my question.

Is this percentage differential of 10 to 25 percent above the average production worker, or is it above the highest paid production worker?

Mr. Keener. We look at it generally in terms of the highest 10 or highest 20 percent of the production workers.

Mr. Jacobs. I see. I have a problem in my mind on this subject. I have received a lot of correspondence from employers about it, and with a feeling that perhaps they were a little more in earnest, a little more sincere about that particular phase of it than they are some of the other phases.

Mr. Keener. I want to assure you, Congressman, that we are sincere on that phase and on the other phases.

Mr. Jacobs. I thought I detected a little more earnestness. We will put it that way.

Here is the problem that is presenting itself to me. Now, take the B. F. Goodrich Co. I know it is a large company, and there are 600 foremen in one of your plants. You are probably ahead of me. It seems to me that the foreman is pretty small when he sits down across the table to bargain with the company. I recognize the other side of it that you have given me, but as a representative of all the people, I feel that I must try to find some solution and urge it on my colleagues that will protect all of the people. So on the one hand, I recognize what you say, that with the possibility of foremen being a union, they might become subservient to the production union and become too closely allied in their interests. I recognize that. But on the other hand, when I think of foremen—I suppose I have foremen who are constituents, too—I think of a large number of foremen who sit down and try to make a bargain with their employer.

Now, how do you think we can balance that up so as to reserve your right on the one hand and at the same time protect the foreman in his bargaining power on the other side? I am not putting that to you as a twister; I am in dead earnest mysef on that question.

Mr. Keener. I think that answer to that question lies in the policies and the practices of the companies that are concerned. Now, American industry is certainly very conscious of the problem that exists in connection with the unionization of foremen, because if they unionize, then what is there to keep the next level of foremen from unionizing? And I think, as a matter of fact, under the interpretation of the NLRB, prior to the passage of the Taft-Hartley law it would have been legal if we vice presidents had organized into a union to bargain with the president.

Mr. Jacobs. You probably do belong to some, do you not? I do not know whether you would call it a union or not.

Mr. Keener. I do not know the name or the nature of it if I do belong. But we make every effort to keep our foremen in line with other levels of people, those above whom they work and those for whom they work. We have a job-evaluation program which determines the relative levels of jobs, and there is a rate range applied, each man in a particular job classification getting the minimum or higher than the range, the normal range, which is about a mid point, being that of the average man in that group, and the top of the range having space for merit increases for those who show exceptional ability. We also attempt to promote as rapidly as we can.

Mr. JACOBS. What you are telling me is this, that almost any company by treating its employees pretty well—and it goes even with respect to production employees—could keep them from organizing in the first place. That is almost true, is it not? If you treat your employees well enough, they are not liable to organize.

Mr. KEENER. I think that is probably true. I think this is also true, however, that one of the biggest jobs there is in American industry is finding enough competent people to take over added responsibility. And each company, I think, recognizes that it is in its own self-interest to develop the employees at each level so that you will have adequate replacements for promotion as promotions are needed.

Mr. JACOBS. Of course, the real point you are making here is that they should not be given the right to process unfair-labor-practice-charges against the employer because the employer would refuse to bargain with the organization they form, and not that they cannot form the organization. That is your point.

Mr. KEENER. They have the right under the present law to form the organization, but that——

Mr. JACOBS. You recognize the problem that I am thinking about, I presume.

Mr. KEENER. I think I do, sir.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Burke?

Mr. BURKE. Mr. Keener, it is my understanding from the general tenor of your testimony that you feel that the Taft-Hartley Act makes union leaders more responsible.

Mr. KEENER. I think that has been the outstanding contribution of the law.

Mr. BURKE. I have talked with some of the officials of the United Rubber Workers who have your plants organized, largely.

Mr. KEENER. They have seven of our plants. We have 20 plants in the country.

Mr. BURKE. They negotiated the contract this past year without a strike, did they?

Mr. KEENER. We negotiated our present contract with the United Rubber Workers in September of 1947, without a strike. We had a wage negotiation in 1948 without a strike.

Mr. BURKE. And that was since the Taft-Hartley Act became law?

Mr. KEENER. Both of those contracts became effective since the Taft-Hartley law went into effect.

Mr. BURKE. Well, these officers inform me that they have complied with the law all the way through, that they have given the required notices as to the cancellation of contracts or whatever it might be, notices of negotiations, and therefore they could lawfully have struck the plant during the time that they were bargaining with you.

Mr. KEENER. At the time we were bargaining, that was an understanding on the part of the union people and on the part of ourselves that so long as a contract was in force there could not be a strike. Mr.

Patterson, who is general counsel for the URWA, I think, is quite firm in his belief on that score. Later, there came a case under the NLRB which held that there could be. But I think there is still some uncertainty as to the question of whether, when a contract is continuing, a union have a wage reopening clause can strike to enforce that wage reopening negotiation.

Mr. BURKE. I would like to address myself to this statement on page 7 of your statement. You have noted that there have been several stoppages. I presume you mean unauthorized stoppages, or departmental stoppages.

Mr. KEENER. All stoppages of that sort we classify as unauthorized, because the union does not tell us that they authorize them.

Mr. BURKE. In those stoppages, could there possibly be the item or the factor that possibly the company could create a situation which, although the union may have the right to file grievances against it and go through the grievance procedure, might make it far better to take up with the union the change of the method or change of piece rate, or whatever it might be that created the grievance in the first place, with the union rather than just putting it into effect. It would seem to me that would be better, and I know that sometimes where companies do that, when they contemplate a change in piece rate, for instance, or a change in method, they put it into effect and say to the employees in that particular department, "That is it. Take it or leave it."

Then they can file a grievance against it, and usually it sorts of heats them up.

Mr. KEENER. That procedure is set out in very complete detail in our agreement with the United Rubber Workers, and in the case of a change in a standard or the establishment of a new standard, the agreement says that the standard shall be posted and become effective upon being posted and that it shall be worked on for a period of 10 days before a grievance can be filed, and that thereafter a grievance can be filed during the next 5 days and any adjustment which is made in the grievance procedure will be retroactive to the date the standard was posted. That is all set forth in language that is understood by both sides and has been acted upon in arbitration on a number of different occasions.

In addition to that, Mr. Congressman, we have an addition in our agreement which provides that there shall not be any discussion of a problem over which a work stoppage has occurred until after the work stoppage has ended; so there is absolutely nothing to be accomplished by a work stoppage, and the problem is always settled later in the procedure, anyway. And the only thing that is accomplished by a stoppage is to delay the handling of the grievance by the amount of time the men are out.

Mr. BURKE. I do not want to criticize the type of agreement that the union and yourself arrived at, but I have always found in practical working that if there is any basic change in the standard, it is usually best to take it up first and argue it out before putting it into effect.

Mr. KEENER. As a matter of fact, we do both of those things. We have a procedure known as a standardized operating procedure where the job method is worked out between the foremen, the technical people, and the direct workman, and it is set up and proposed to them, and generally speaking standards are established on that job.

Mr. BURKE. How do you arrive at the standards? By time and motion study?

Mr. KEENER. By time and motion study.

Mr. BURKE. That is all, Mr. Chairman.

Mr. BAILEY. Mr. Wier?

Mr. WIER. No; I do not find anything that I can put my hand on.

Mr. BAILEY. Mr. McConnell, do you care to ask any questions?

Mr. MCCONNELL. No.

Mr. BAILEY. Thank you very much, Mr. Keener. We appreciate your patience.

Mr. KEENER. Thank you, sir.

Mr. BAILEY. The committee will stand in recess until 9:30 o'clock in the morning, at which time we will hear representatives of the Timber Products Manufacturing Association.

(Whereupon, at 6 p. m., an adjournment was taken until the following day, Friday, March 11, 1949, at 9:30 a. m.)

NATIONAL LABOR RELATIONS ACT OF 1949

FRIDAY, MARCH 11, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 9:30 a. m., Hon. Cleveland M. Bailey presiding.

Mr. Bailey. The committee will be in order.

At this time, the committee would be pleased to hear from George J. Tichy and John G. Curren, of the Timber Products Manufacturers Association.

The gentlemen will state their names.

Mr. Tichy. Mr. Chairman and members of the committee, my name is George J. Tichy, and the gentleman on my right, which would be to your left, is Mr. John Curren.

TESTIMONY OF GEORGE J. TICHY, MANAGER, TIMBER PRODUCTS MANUFACTURERS ASSOCIATION, SPOKANE, WASH.

Mr. Tichy. Mr. Chairman, I am the manager of the Timber Products Manufacturers Association, located at Spokane, Wash., an industrial relations association representing timber producers in eastern Washington, Idaho, and Montana. I am also a practicing attorney.

I appear here today at the request of the National Lumber Manufacturers Association. I also speak in behalf of Timber Products Manufacturers Association, Spokane, Wash.; Plywood and Door Industrial Relations Committee, Tacoma, Wash.; Industrial Conference Board, Tacoma, Wash.; and Washington Employers, Inc., Seattle, Wash. These organizations, exclusive of the National Lumber Manufacturers Association, represent considerably more than a thousand employers employing at least 35,000 persons.

I would like to file for the record not only my full statement, but also statements for R. I. Studebaker, manager, Tri-County Loggers Association, Inc., Bellingham, Wash.; Charles S. Hoffman, manager, Oregon Coast Operators, Coos Bay, Oreg.; C. L. Irving, manager, Pine Industrial Relations Committee, Klamath Falls, Oreg.; (two statements, including his oral statement before the Senate Committee on Labor and Public Welfare) ; and an analysis of the original Thomas-Lesinski bill by Walter A. Durham, manager, Lumbermen's Industrial Relations Committee, Portland, Oreg.

Mr. Bailey. If there are no objections, the Chair will direct that the statements be accepted as part of the record.

Mr. Tichy. Thank you, Mr. Chairman.

(The statements referred to are inserted at the close of Mr. Curren's testimony.)

Mr. Tichy. For the sake of brevity, I will touch upon just a few of the high lights of my own statement.

When the Wagner Act was adopted by Congress in 1935, I am sure Congress did not realize the tremendous latitude in making administrative determinations on very important phases of the act it was giving the National Labor Relations Board.

The great amount of unemployment in 1935 and the general economic condition of the country presented a very different atmosphere than that which existed during the recent war and postwar periods.

The Wagner Act was a green light for labor unions to start organizing and membership campaigns. In the 12 years after the adoption of the Wagner Act, labor unions grew and prospered and became a dominant force in our economy. In fact, their strength became so great that by 1947 the country was brought face to face with the fact that some labor groups had attained such power that they could control the very lives of our people and the economy of our country. The hearings 2 years ago clearly demonstrated the obsolescence of the Wagner Act and the need for more equity in the field of labor-management relations.

Congress, after extended hearings, was convinced that the Labor-Management Relations Act was a step in the right direction and overwhelmingly adopted it, even over a Presidential veto. Naturally, the leaders of the big labor unions felt it incumbent upon themselves to vigorously resist a curtailment of their power. It was to be expected that through their powerful political action groups, such as the Political Action Committee and Labor's League for Political Education, they would endeavor with all their resources to regain their former favorable position irrespective of the consequences to the public. In this, no one was surprised. The question now is whether the Congress is going to protect these union leaders or is going to continue the protection to the public provided by the Labor-Management Relations Act.

It is well that we examine the protections to the public provided by the Labor-Management Relations Act, 1947:

(1) By defining collective bragaining and requiring either party to a collective-bargaining agreement to give 60 days' notice to modify or terminate the agreement before taking economic action, the act gives assurance to the public that there will be a reasonable time for the parties to get the issues before each other and to more fully discuss them. This helps to eliminate untimely or hotheaded action on the part of either party.

(2) By providing that legal action may be taken against either party for violation of a collective bargaining agreement, the act has made both parties more responsible and has furthered the cause of industrial peace. I can say from personal experience that the foregoing is unequivocally true. Prior to the passage of the Labor-Management Relations Act, it was not uncommon to find situations in which a union would call a so-called "quickie" strike in contravention of its

contract. I remember several such strikes in my area within a few months prior to the passage of the act. I can recall none to have occurred since its enactment.

(3) By providing what has proven a reasonably effective solution to so-called national-emergency strikes, the act has provided a substantial protection to the public. This protection would be lost if H. R. 2032 were enacted.

(4) By removing the Federal Mediation and Conciliation Service from the partisan Labor Department and establishing it as an independent agency, the public has been assured of impartial conciliation. I view with both amusement and alarm the desires of the selfish to return that important function to the Labor Department. To them I say, management could as logically insist that it be placed under the Commerce Department. However, either proposal would impair the functioning of the Conciliation Service and impair its maximum usefulness in the interests of the public.

(5) The requirement for the signing of non-Communist affidavits assures the public that subversive elements are substantially eliminated from places of leadership and control in labor organizations. As a representative of management I would be proud to sign such an affidavit.

(6) By prohibiting unfair labor practices by unions as well as by management:

(*a*) The public is assured that neither group will restrain or coerce employees in their right to self-organization or their right to refrain from self-organization. Certainly if employees are to be assured an unfettered judgment in these matters, they should be free from domination by either employers or labor organizations, and they should have the right to either organize or refrain from organizing, as they see fit.

(*b*) The public is assured that there will be no work stoppages by reason of unwillingness of the chosen employer or employee representatives to deal with each other. As long as a labor organization is free to choose its own representatives, and the employer must deal with those representatives, then conversely the employer should be free to select his representatives and the union be required to deal with such representatives.

(*c*) The public is protected from unnecessary jurisdictional strikes. There is no circumstance within my knowledge that justifies a jurisdictional strike.

(*d*) The public is protected from losses due to secondary boycotts. If economic action is to be taken, it should be limited to the immediate employer and the employees involved in the plant affected. Other employees in other plants not involved in the issue giving rise to the economic action should not be put out of work by reason of a secondary boycott, nor should the public suffer the inconveniences and losses resulting from this octopus in labor relations.

(*e*) The public has been relieved in some degree from extra costs due to featherbedding. These provisions of the Labor-Management Relations Act should be retained. I am told that one union in the printing business frequently requires that already-made-up cuts or mats which could be used as received must be torn down or melted up and new plates made to satisfy the demands of that union. Within the past few weeks in our timber-products industry, a plant had done some plumbing work using the services of its own union employees. As a result, another union threatened the plant with a boycott and unfair listing if it did not pay a "work assessment" to a charitable organization. This was to be a payment, remember, for work not performed nor to be performed by the members of the other union. It should be observed that in the long run the public has to pay such bills.

(7) The ban on the closed shop found in the Labor-Management Relations Act has given assurance to the individual members of the public that they do not have to join a union in order to get a job. I find it difficult to reconcile our democratic ideals with a requirement that to get a job, to hold a job, or to be employed in a particular industry or at a particular trade one must join and pay tribute to a private organization with which he may be completely out of sympathy. It would be as reasonable to require that a veteran belong to the American Legion, the Veterans of Foreign Wars, or one of the other veterans, organizations to qualify for the benefits secured by such organizations. It would be as reasonable to require that every timber-products manufacturer belong to my organization to qualify for any benefits it may have secured for the industry, or to require that every manufacturer in the United States belong to the National Association of Manufacturers. There is no reason why unions should not have to sell their services or convince workers of the advantages of membership the same as must all other organizations.

(8) There are other protections given to the public by the Labor-Management Relations Act which would be wiped out by H. R. 2032. One example is the joint committee which would assist the Congress in keeping abreast of our ever-changing times. Taken as a whole, the present act has given the public real protection from unnecessary strikes and bad conduct on the part of either management or labor unions. This committee should consider well these protections to the public before it changes the Labor-Management Relations Act.

In spite of the clamor of some certain labor leaders, it is worthy of note that since the passage of the Labor-Management Relations Act, other union leaders have used to advantage some of their newfound rights and protections under this law—for example, by threatening suit, although sometimes in the form of a bluff, under title III of the act. Union leaders also have approved on several occasions the requirement for non-Communist affidavits. Although the Federal Mediation and Conciliation Service is no longer a branch of the Labor Department, we find that in our area the labor unions are the first to call for its services. I have had union leaders tell me the value of the representation election to determine the collective-bargaining representative and they have even advised me of their desire to have an election even when an employer was willing to recognize the union without one.

Most local union leaders with whom I have discussed the Labor-Management Relations Act speak in vague terms in criticizing it, which leads me to believe that most of this furor about the act has been created by the top men in their organizations and handed down to local unions as a policy to which they must give lip service.

The Federal Government has sometimes carried out public information programs on the provisions of new legislation. It might be worth while for it to carry out a like unbiased educational program to educate the public as well as union leaders and others of the fairness and equity of the Labor-Management Relations Act, rather than to carry on a program of vilification and biased information.

From a practical standpoint unions have not been hurt by the Labor-Management Relations Act. Labor Department statistics show that the growth in union membership during the life of the present act has not been retarded. Almost a million new members have been recruited by unions during the brief existence of this law. The present law did not deter a third round of wage increases. Further, unions can strike and have struck since the enactment of this law, even as they did before its enactment. Today the worker has regained his position as an individual with the right to work where he pleases and when he pleases. I hope that we will not be reactionary and return the individual workman to the position he had under the Wagner Act, when union rights superseded individual rights.

We should not forget the terrible strikes that tied up our economy prior to the passage of the Labor-Management Relations Act and the helpless position in which the general public was placed. Under the Labor-Management Relations Act, there has been a noticeable decrease in strikes—in fact, 33 percent less in 1948 than in 1946; 55 percent less workers were involved in strikes in 1948 than in 1946; 70 percent less man-days were lost in idleness in 1948 than in 1946. And in 1948 there were only 34,000,000 man-days of idleness resulting from strikes, as compared with 1946, when there were 116,000,000.

Where is the so-called slave labor that was to be the lot of working people under this law? Look about you, and you find none. The workingman has greater protection today than he has ever had. He is not only protected from the ruthless employer, but also from the truthless union leader.

The Labor-Management Relations Act has brought stability, responsibility, care, and caution to the collective bargaining table on the part of unions and employers alike—not "confusion," as stated by the Secretary of Labor, Mr. Tobin. This I testify to, not as a theoretical conclusion or from sitting a distance of 3,000 miles from the bargaining table, but from actual day-to-day experience at the bargaining table.

Gentlemen, we do want you to know that we appreciate the opportunity of having been granted time to appear before you. We realize that you are endeavoring to do a sincere job in analyzing labor legislation. We are sure that you are aware how extremely important a mutually satisfactory climate must be provided for both labor and industry in their deliberations to accomplish the maximum of industrial peace and economic stability. As this committee two years ago deliberated for many months and conceived the Labor-Management Relations Act of 1947, it is understandable that the job that you are attempting now is not an easy one. We are confident that your committee, with a profound sense of responsibility and in an effort to write legislation that will be equitable to management and labor, and even more important, will protect the public interest, will give serious and adequate consideration to the type of labor law it ultimately recommends. And we are equally sure that if this be done, the bill pending before the committee will not be reported out as it is now printed, but will be substantially amended, rejected, or possibly completely rewritten.

Thank you. And Mr. Curren would like to deliver his oral statement, sir.

Mr. BAILEY. At this time, I would like to ask the gentleman, for brevity's sake, to get through with your presentation as soon as possible.

Mr. JACOBS. Who is the next witness now?

Mr. BAILEY. Mr. Curren.

TESTIMONY OF JOHN G. CURREN, REPRESENTING NATIONAL LUMBER MANUFACTURERS ASSOCIATION, NEW ORLEANS, LA.

Mr. CURREN. Mr. Chairman, my name is John G. Curren, of New Orleans, La. I am appearing here at the request of the National Lumber Manufacturers Association to give you, to the best of my knowledge and ability, the benefit of my experiences in collective bargaining under the Labor-Management Relations Act, 1947, as it applied to the South.

For the past 4 years I have been a labor-relations consultant to management and now represent a substantial number of employers, principally in the southern pine and southern hardwood industries. Before that, I was for 3 years a field examiner in the regional office of the National Labor Relations Board for the 15th region, which covers the States of Mississippi, Louisiana, Arkansas, the western half of Tennessee, the southern half of Alabama, and the western part of Florida.

In this brief oral presentation, I am not going to try to discuss every feature of the proposed, present and past labor-management laws in detail; in lieu of that, I have a comprehensive statement which I would like with your permission, Mr. Chairman, to insert in the record.

Mr. BAILEY. If there is no objection, we will accept your statement for the record.

(Mr. Curren's statement follows that of Mr. Tichy at the close of their testimony.)

Mr. CURREN. Thank you, Mr. Chairman. However, there are three particular subjects to which I should like to call the attention of the committee.

First is the question of whether the free-speech provision of the Labor-Management Relations Act, specifically guaranteeing the freedom of speech provided in the first amendment to the Constitution, should be retained. Under the proposed measure, H. R. 2032, there is no plain guarantee of free speech. Once again the National Labor Relations Board would be free to establish limitations that employers would have to follow, instead of having the constitutional right clearly defined as it is in the existing law.

Under the Labor-Management Relations Act, 1947, employers can no longer be held guilty of unfair labor practices because of their expression of views, whether oral or written, provided such expression contains no threat of reprisal or promise of benefit. With the free-speech guarantee plainly written into the present act, management has gained confidence that it runs no risk of misinterpretation and of an unfair labor practice charge by presenting its views to employees, views which often help employees to make a more intelligent decision in their own self-interest. With free-speech protection unequivocally stated in the law, management is much less inclined to condemn and criticize the National Labor Relations Board, even when elections and Board actions are adverse, because it feels it has had its day in court and has not had its constitutional rights unprotected by a law such as the Wagner Act.

To keep this attitude of confidence in the equity of any labor law and its administration, it is essential that the free-speech provisions of the present act be retained. It would be unwise to omit this provision and rely upon the hope that the Board would not revert to some of the policies it followed between 1935 and 1938, when an employer could express no opinion on union activities because his economic weight represented coercion of employees, or between 1938 and 1943, when the Supreme Court, in a series of precedent-making decisions, tried to define the limits of privileged speech, but during which time employers had only hazy ideas of what was permissible, or from 1943 to 1946, when an employer was compelled to guess what the Board would think of his conduct in conjunction with his speech and how far apart allegedly unfair acts must be from the time of his messages.

With changes in the membership of the National Labor Relations Board, the question of what messages to employees constitute privileged speech is uncertain, vague, and confusing if the guarantee is written into the law, the opportunities for varying interpretations and reversals of opinion by the Board will be minimized.

Free speech under the present law gives employers and unions alike the same opportunity to correct misstatements and misrepresentations, to deny allegations and charges, and to answer questions and to make explanations, all to the end that the democratic principle of hearing all sides of a question will enable the employee to decide more intelligently on matters that affect his livelihood. This privilege is not only appreciated by labor and management, but also is greatly appreciated by the individual employee.

Another problem that I know your committee will want to treat seriously is the provision relating to the filing of non-Communist affidavits. While it is true that many paid officials of labor organizations have protested this alleged insult to their allegiance and patriotism, in view of the healthful effect, from the public standpoint and from the standpoint of the unions themselves, it is doubtful that the complaints have been justified. In many of these cases, the labor leaders have used this provision as ballyhoo in their campaign against a slave-labor law, while in other cases the howls were coming from individuals who had been wounded deeply, people who had been using the labor movement and labor organizations to promote their own brand of government.

In these days of tense international relations, it is imperative that the labor movement and the welfare of individual American workmen not be sacrificed, and although there may be other ways to handle the problem of Communist influence in unions, it seems that the requirements of the present law should be kept since they have demonstrated their value and the alternatives are subject to speculation.

However, "What's source for the goose is sauce for the gander," and maybe employers as well as union officials should be required to execute the affidavit. I do not know of any employers who would consider it an affront to their integrity or patriotism to be asked to sign such an affidavit. Hundreds of union, employer and public representatives on the War Labor Board and its agencies signed a similar affidavit without objections, and Congress has not condemned the loyalty check of Government employees, only a small percentage of whom are disloyal.

In view of the effectiveness of the provision of the present law, it is recommended that it be allowed to stand.

The third and most important fact that deserves the recognition of the committee is that the present law has brought to he bargaining table a mature type of conduct and a sense of responsibility which has not always characterized bargaining sessions. Your committee has already seen statistics on the lesser number of strikes and the fewer number of man-days lost from strikes as well as other evidence of stable employer-employee relations, all without hurting the unions, either in numerical or financing strength. This stability cannot be attributed to any one section of the Labor-Management Relations Act; it is the result of the act in toto. And yet, while the statistics prove that the Labor-Management Relations Act is not only beneficial to the public interest, but is also equitable, the law is being condemned as a slave-labor law.

One of the examples used to justify this label of slave-labor law is the act's provision relating to unfair labor practices by unions. After the passage of the act, and especially during the fall of 1948, it was widely proclaimed that these provisions would promote the persecution of labor organizations, through the use of injunctions by the National Labor Relations Board and through the filing of charges by employers and the issuance of complaints by the Board of union unfair labor practices. The facts tear aside the veil of propaganda of slave-labor law; the Congressional Joint Labor-Management Relations reports that in 15 months, there have been a total of only 660 charges of unfair labor practices by employers against unions, as compared to 4,136 charges against employers. Secondary boycott injunctions against unions have numbered 15. And there have been only two other injunctions against unions and one against an employer. What is not disclosed by these figures is the number of cases where individual employees would have been coerced or the public interest harmed by secondary boycotts or other abuses in the absence of provisions like those in the present act; the knowledge that irresponsible actions would lead to unfair labor practice charges or injunctions has been a stabilizing influence. In the same way, the mere knowledge that jurisdictional strikes, which hurt the public interest and usually do not help the individual employees involved, could be enjoined has served to stabilize industrial relations. That attitude of caution, restraint and responsibility has also been promoted by other provisions of the present law such as the one that makes both parties to a collective bargaining contract suable, even though the provision has not often been resorted to and even though most States permitted suits before the Labor-Management Relations Act went into effect. Another provision of the present act that has helped to develop a sense of maturity in bargaining is the one requiring "good faith" bargaining on both sides of the table. As a matter of equity, it is obvious that both sides must enter into negotiations in good faith, and yet it took the National Labor Relations Board 11 years—until 1946—to come to that view under the National Labor Relations Act. The scales should remain balanced.

It is very probable that the retention or loss of my one provision of the present law, of and by itself, would not cause an upheaval in employer-employee relations, with the possible exception of the "national emergency" section. But the act as a whole has been a stabilizing influence. This is so not only because it treats, one by one, with the individual irritants that collectively would add up to widespread industrial disturbances, but also because it describes the remedies for those sources of irritation in a much more specific manner than the National Labor Relations Act, which left too much writing of law, in effect, to the National Labor Relations Board.

Thank you, Mr. Chairman.

Mr. BAILEY. Mr. Tichy, you made some rather definite statements here in support of the retention of the present law. Is the committee to imply from your statements that you are throwing a blanket endorsement over the so-called Taft-Hartley law?

Mr. TICHY. I think that the committee could make that implication, because my experience under the law demonstrated to me that the public has gained a lot of rights here that they did not have under the Wagner Act, and for that reason, as well as the fact that the law has only been on the books, as far as the effective date of title I is concerned, since August of 1947. And I feel that it has not been given a completely fair test as yet. I am rather inclined to believe that if the present state of statistics continues to demonstrate the effectiveness of this law, after a full and complete test has been afforded, this committee, as well as the public as a whole, will clearly want the law retained.

Mr. BAILEY. This question is directed to Mr. Curren.

In your reference, Mr. Curren, to the matter of free speech, in view of the fact that we have a constitutional guarantee of free speech, do you think it is necessary that we write any additional guarantees of free speech into this legislation?

Mr. CURREN. Yes, Mr. Chairman, I do, and I do for this reason. Whereas the Wagner Act did not prohibit free speech, it did not protect and did not outline what free speech should be, and it took the National Relations Board 8 years—at least, the Supreme Court of the United States, after action by the National Labor Relations Board—to define free speech in the American Tube Bending case. Now, that was eight long years, from 1935 to 1943.

The reason why I think it should be clearly defined in the act is that if it is, employers will state their side of the case to their employees. After they have stated their side of the case, if they lose the election, frankly, and they go into the bargaining in a much better frame of mind from what they would have had if they had remained silent.

I think that free speech should be clearly defined in the act.

Mr. BAILEY. You have read the Constitution, have you, Mr. Curren?

Mr. CURREN. Yes, sir.

Mr. BAILEY. Do you have any difficulty in understanding the meaning of the Bill of Rights, and particularly the first amendment to the Constitution?

Mr. CURREN. I think the first amendment is excellent.

Mr. BAILEY. Do you think that reference to free speech needs any enlargement?

Mr. CURREN. It does, if we go back to the old act, because the National Labor Relations Board was just as aware of the first amendment as I am today. Yet it took them 8 years before we had a decision by the Supreme Court defining freedom of speech. In the first years of the National Labor Relations Act, any expression at all on the part of employers that seemed to be any type at all of free speech was declared an unfair labor practice, whereas now we know that if there are no threats or no promises of benefit, the employer can state his side of the case, and controls organizational drives which sometimes get out of hand. Not very often, but they do. And I think at the time it does happen, we should have that right given to employers. I think the majority of employers did not take advantage of free speech even though they were aware of the first amendment, because the Board had a number of decisions throwing out consent elections because of a speech that an employer had made.

Mr. BAILEY. Mr. Perkins, have you any questions?

Mr. PERKINS. Yes, Mr. Chairman.

Mr. Tichy, I believe that when you read No. 5, you made yourself very clear that you were very proud of the Communist oath provision in the Taft-Hartley law.

Mr. TICHY. That is true.

Mr. PERKINS. What experience have you had in labor-management relations How long has the duration of your experience been?

Mr. TICHY. Approximately 8 years, as labor relations consultant in one form or another, together with several years' experience, prior to that time, as a worker in one of the lumber mills on the coast where I became quite familiar with the problems of labor, and worked side by side with them.

Mr. PERKINS. You believe in our system of criminal justice, that we have had on our statute books in this country ever since we have been a country, do you not?

Mr. TICHY. Why, yes.

Mr. PERKINS. You believe as a principle that a man is presumed innocent until he is proven guilty?

Mr. TICHY. Why, certainly.

Mr. PERKINS. Do you not think there are other ways to handle this communistic problem instead of trying to insert an anticommunistic oath provision in a law for an employee to sign before he can be employed by a union?

Mr. TICHY. Congressman, I think your statement is very true. There may be other ways that this can be accomplished; however, so far as I am aware, no one has come up with one, or leastwise one has not been demonstrated in the law that would accomplish the purpose involved here. I would like to make it clear, Congressman——

Mr. PERKINS. Let us not take up too much time. We only have 10 minutes.

You state that if you were an employer you would be glad to sign a provision of that kind; is that correct?

Mr. TICHY. That is correct.

Mr. PERKINS. In this bill you have before you, the Taft-Hartley law, it only provided that the labor union leaders and their employees take the oath; am I correct?

Mr. TICHY. That is correct. May I add an explanation?

Mr. PERKINS. No. Just answer my questions.

It exempted the employer altogether there, did it not?

Mr. TICHY. No one has showed a need that the employer should sign it, had they?

Mr. PERKINS. Our Constitution says all people are free and equal in this country, does it not, and we are not to presume that anyone is communistic, are we, in this country?

Mr. TICHY. I think not, but——

Mr. PERKINS. Why was such a differentiation laid there? Why was such prejudice shown against the labor unions?

Mr. TICHY. I am of the opinion that the congressional committees which had taken, as I understand, some 5 months of hearings, came to the conclusion that a need existed insofar as labor unions were concerned, in view of the fact that it apparently was made clear and evident that the Communist people had infiltrated into the labor groups because that is a fertile ground.

Mr. PERKINS. Do you not know, as a matter of fact, that anything that strikes at one part of our labor-management relations, and is not applicable to the other, is totally unfair on its face? You will admit to that, will you not?

Mr. TICHY. No, I will not, for this reason, Congressman, that apparently a need had not been shown that the employer group has not been a fertile field.

Mr. PERKINS. The labor unions made no effort to show that the employers should sign such an oath, did they?

Mr. TICHY. If my recollection serves me correctly, they did not seem to show very much of anything in the last hearings.

Mr. PERKINS. They did not have the opportunity in the Eightieth Congress, did they?

Mr. TICHY. I would not subscribe to that statement.

Mr. CURREN. May I add something to that?

Mr. PERKINS. Yes.

Mr. CURREN. I think the need for the Communist affidavit was clearly shown by the labor leaders. I think the outstanding example of it was Mr. Musso, international president of the furniture workers, when he stated that the Communists had charge of his union when he resigned as international president. And I think statements of John L. Lewis are outstanding on Communists infiltrating into the labor movement. I think the Philip Murray statements brought all of that out several years ago. And I think that Mr. Green's statements have borne that out. I believe, frankly, that it should be taken by both sides.

Mr. PERKINS. I will ask you, as a matter of fact, if you do not think that it is unfair under our Constitution and laws to require a man or an employer or an employee or any labor union leader to take such an oath, inasmuch as that casts a reflection upon him concerning his loyalty to our form of government?

Mr. CURREN. Even when that need has been brought out by the labor leaders themselves? I think if they have brought out the need for it, that if labor today wants management to take that oath, I think it should be inserted that way.

Mr. PERKINS. If there is need for it, do you not think the Labor Department should have the authority to go into Federal courts and pull the Communists out of the unions by making a motion in the district court, or something of that nature, instead of requiring them to take an oath of that kind?

Mr. CURREN. I think the penalty that has been inflicted on them has been that they do not have the services of the National Labor Relations Board. I think that is proper, and I still say the need has been brought out by the labor leaders themselves.

Mr. PERKINS. I want to make one observation at this point, that under our democratic form of government I believe that you people who are proposing this communistic oath provision proposed it in the Eightieth Congress, and you who are proposing that it be retained are playing right into the hands of the Communist Party. The people in this country, especially all good Americans, do not like to be subjected to any reflection they may be considered Communists. They resent it, and if we have Communists who are trying to overthrow our form of government in any of these labor unions, there are other ways to get out of this problem, by letting the Labor Department deal with this question; or there is some other method, instead of trying to insert this oath provision, which is totally unfair to a democratic people.

Mr. TICHY. Mr. Congressman, may I speak on that for just a short time?

Mr. PERKINS. Yes.

Mr. TICHY. I appreciate the time is limited.

Mr. BAILEY. There are 2 minutes remaining.

Mr. TICHY. I want to point out first that one of the prominent unions on the Pacific coast came out with this quotation—incidentally, what they were talking about was the rumor that their union was being run by Communists—

> Furthermore, the Taft-Hartley Act has certainly cleared that issue up as far as our organization is concerned. All of the international officers, many of the district officers, and a great majority of our local union officers have signed noncommunistic affidavits. The law is quite strict, and any officer certainly would not take a chance on perjuring himself in an affidavit turned over to the Government.

Mr. PERKINS. Will the gentleman yield?

Mr. TICHY. Yes, sir.

Mr. PERKINS. Do you not think it would be much better to let the Labor Department handle that matter with the union leaders in order to eliminate those Communists in these particular unions you have reference to?

Mr. TICHY. It appears the unions have not been able to do it themselves, and I do not know what the Labor Department could do for them. Perhaps if we had a suggestion laid on the table as to that matter, it would be beneficial, and I would like to make one more point in order that the record will be clear so far as my personal position and that of my association is concerned.

Mr. PERKINS. I believe you admitted that any defendant was presumed to be innocent until he was proven guilty, under our system of justice in this country?

Mr. TICHY. That is correct.

Mr. PERKINS. Then, why do you want to cast a reflection as to a man's loyalty to a government, to his own government by requiring such an oath as this, when there are other ways to handle it?

Mr. TICHY. I find it difficult to accept that conclusion, for this reason: I know that a large number of the people who were working for the War Labor Board, and other public representatives—labor representatives and employer representatives—signed the affidavits and thought nothing of it. It was not the same identical affidavit, but in substance it was the same thing as the law now requires, but all of a sudden we go into a furore over the non-Communist affidavit, when it has been accepted.

Mr. PERKINS. That is just one of those things that was put in this bill to undertake to save face with the public by burdening labor with such an unfair act as the Taft-Hartley Act; am I correct in that statement?

Mr. TICHY. I do not believe so, sir. I could not subscribe to that.

Mr. PERKINS. That is all.

Mr. BAILEY. Mr. Irving, do you have any questions?

Mr. IRVING. No, I believe not. I just came in.

Mr. BAILEY. Mr. Burke?

Mr. BURKE. I would like to pursue a little further, and probably give you an opportunity to enlarge upon this so-called communistic affidavit.

Actually, the law, I believe—and I have been trying to find the section, but somehow or other I cannot find it here—I do not believe the law says anything specific about communism; it refers to subversive organizations, generally; is that not right?

Mr. TICHY. Congressman Burke, I think you will find it to be 9 (h).

Mr. BURKE. What page is that?

Mr. TICHY. I do not know what periodical or booklet you may have there.

Mr. BURKE. I have the official act.

Mr. TICHY. I, unfortunately, do not have a copy of the official act here. If you would like, I would be happy to quote the pertinent provision.

Mr. BURKE. It does say:

> He is not a member of the Communist Party, or is affiliated with such party, and he does not believe in, and is not a member or does not support, any organization that believes in, or teaches the overthrow of the United States Government by force, or any illegal or unconstitutional methods.

In other words, it sets out the Communist Party first, and any other subversive organizations that might exist?

Mr. TICHY. That is correct.

Mr. BURKE. I would like to give you my idea of the act, generally, and particularly as it applies to this. I have been of the opinion and, in fact, I campaigned on the premise that this act was just full of legalistic booby-traps for labor unions, generally, and that it accomplished its purposes in two ways: That is, the legalistic approach and the propagandistic; and, to my mind, this was more propagandistic than any intent that might serve a useful purpose. In other words, the idea was to convince the American people that only in labor unions could you find Communists, and probably all labor union people were Communists; is that not true?

Mr. TICHY. I question that that was the motive, sir. However, I have tried to make it clear here, and I regret I was not able to complete the quote from this labor organization out on the Pacific coast, and I would like to do so at this time. I believe the last sentence is the essence of it.

> However, there might be Communists from time to time slip into our organization because it is the aim of the Communist Party to work through labor organizations where they can get control.

That is a labor union saying that.

I would like to make two more points under the heading of non-Communist affidavits. One, so far as the signing of the affidavit is concerned, it contributes nothing to collective bargaining, as such. However, it does clear from the collective bargaining table, I believe, the subversive element which has been demonstrated by other witnesses on prior occasions, and by the admission of this particular union, that they have gained power within the unions.

I will go one step further. My second point here is that if there is any doubt, before I would strike this, as a member of the public, I would put it on the employers, if there are any questions that employers may also be fertile field for communism, which I doubt. I think the affidavit should be placed on them, as well as the unions and, personally, I would not feel my patriotism was being questioned when I signed such an affidavit. As a matter of fact, I have signed similar affidavits previously.

Mr. Burke. If Congress had passed an act requiring that management people be required to sign such an affidavit, would you not resent it?

Mr. Tichy. I would respond in this manner, Mr. Congressman: If a need for it had been shown to our committee or to the Congress that the Communist Party, or those who believed in the overthrow of the Government, had crept into management groups, I could see no reason for being offended because it was in the act.

Mr. Burke. I will grant you that, for instance, public officials and public employees should certify that they are loyal to our Government before they act as officials or employees of such Government, but we are talking now of privately employed people of both management and labor.

For instance, I signed a non-Communist affidavit and, frankly, I did not like to sign it. Not because I felt that I might be charged with perjury if I signed it, or anything of that sort, because I knew my background and general reputation would uphold my signing of the affidavit; but my feeling was that I was presumed to be a Communist until I proved otherwise.

In order to carry on a private business, I feel that the business of negotiating for labor people is just as much a part of free enterprise as is the selling of lumber, the selling of steel, manufacturing of automobiles, or what have you, and that in order to carry on my daily business I was required to prove my Americanism. Do you not think that that is a case of presumption of guilt and a requirement to prove myself innocent, rather than a presumption of innocence until proven guilty?

Mr. Tichy. I could not respond with a positive answer to that question, from this standpoint, that here we have a situation, as I understand, in which the Congress and all committees heard witnessses over a 5-month period, and found that the Communist Party had found the labor field to be a fertile field, and had gained entry to key positions; and secondly, unions have come out and admitted it themselves. Therefore, the entire group, in order to get to the ones who were Communists, have to sign these affidavits, so that I do not see, personally, why that should be objected to. In my position, I would say, if it was worth so much to my country to be able to put the finger on the people I would be glad to sign the affidavit.

Mr. BURKE. Here is another angle: Suppose I signed my affidavit, but suppose there was another officer of the same local union, or another national officer, that either could not or would not sign such an affidavit that precluded the possibility of me carrying on my daily business?

Mr. TICHY. Only insofar as going before the National Labor Relations Board was concerned, and that situation——

Mr. BURKE. Is that not one of the bits of machinery by which we do our business?

Mr. TICHY. It is, however—to continue in response to your earlier question—that same situation developed, I understand, in many unions, but in that manner they were able to tag the individuals, with the result they were cleared out and eliminated from the leadership in the organization, and the result was that the union was then cleared in its entirety so they could use the act and, I think, that is why this sanction is important, as Mr. Curren stated earlier, in that it lets the people, the membership, know who the individuals are, and the membership in turn can act to clear them out so that the organization can function in the maximum interests of all involved.

Mr. BURKE. Have there not been many cases where the individual labor official so resented it——

Mr. BAILEY. You have 1 minute.

Mr. BURKE. So resented the presumption that even though he could have signed without any possibility of danger of being charged with perjury, but would not, because he was conscientiously opposed to that presumption of guilt?

Mr. TICHY. That may be true, but there must be just a few examples because, I believe, last night's paper said something like sixty-five or seventy-five thousand union officials had signed the non-Communist affidavit. So there are a lot of them signing it.

Mr. BURKE. That is right, and you know the reason they signed it. The reason I signed it was because I felt the people I represented should not be without the benefits of whatever efforts and bits of machinery the Government had provided under the terms of the Labor-Management Relations Act, simply because I did not, as an individual, like the idea of a presumption of guilt.

That is all, Mr. Chairman. My time is up.

Mr. BAILEY. Mr. McConnell?

I believe Mr. Irving has no questions at this time, so Mr. McConnell will take over.

Mr. MCCONNELL. The real objective in the field of labor-management relationship should be industrial peace; is that not correct?

Mr. TICHY. That is correct.

Mr. MCCONNELL. Will H. R. 2032 in your judgment, as it is written, bring about or fulfill that purpose?

Mr. TICHY. No, sir; I do not believe that it would.

Mr. MCCONNELL. In other words, if H. R. 2032 were enacted as it is now written, you would have more strife between labor and management than you have had under the Taft-Hartley Act?

Mr. TICHY. I am inclined to believe that that is correct.

Mr. MCCONNELL. Let us consider the national emergency strike section. You are an attorney, I believe; is that right?

Mr. TICHY. That is correct, Mr. McConnell.

Mr. McConnell. Do you believe that the President has the inherent power to compel the parties to observe the 30-day status quo that they mention in the bill?

Mr. Tichy. I question very seriously that he would. If you will permit, I attempted to cover that in my major statement, in one paragraph on that subject, and this is what I have stated:

> Much has been said of the President's alleged inherent power under such circumstances as constitutes a national emergency. We do not agree that such an inherent power exists, and if it did, we have real cause for alarm and can only wonder through what other political gymnastics greater dictatorial power can be confined in one individual.

Mr. McConnell. In other words, as it is written now in the bill, and assuming that the President has inherent power, it would be a real danger to the freedom of America to allow such a procedure; is that correct?

Mr. Tichy. Yes; that is correct. I certainly do not believe the framers of the Constitution ever had any intention of creating in the President a king or dictator, which would appear to me to be the next step in this inherent power stuff.

Mr. McConnell. That is all.

Mr. Bailey. Mr. Nixon?

Mr. Nixon. Mr. Tichy, I was unavoidably absent during some of the questioning, and I was wondering if you had been examined on the point you made in your statement concerning the liability of unions for suit at the present time, as compared with the period before the Taft-Hartley Act?

Mr. Tichy. No; no questioning has taken place on that phase, as yet.

Mr. Nixon. On that point, I note in your statement you say from your own experience that you know that that section has been effective.

During the questioning of witnesses for the past few days there has been considerable disagreement on that point, and some of the members of the committee have suggested that the provision which makes unions liable for suit really is a misleading provision, because, as a matter of fact, unions were already liable for suit before the act was passed. I think I am aware of some of the ramifications of that problem and some of the difficulties that were involved in suing unions before the act was passed, but I wonder if you have any comment on that point from a legal standpoint, so we can find out whether or not this section can be stricken from the law at the present time.

As you of course recognize the new bill does not have a provision which specifically makes unions liable for their actions?

Mr. Tichy. That is correct, Congressman.

For the first point, it is important that we recognize that, I would say, at least 90 percent of the people who have to work with this law are not lawyers; they are laymen. The result is they are not expected to know what the law is. They have to have an act before them which they can understand and be able to live with. Although it is true that under the common law you could sue a labor organization as an unincorporated association, there were many practical difficulties, in that you would have to name every member of the union and have to serve them, and go through many complicated situations which were not conducive to such suits.

Secondly, I do not believe employers are desirous of suing unions. As a matter of fact, we have had no suits against unions, to my knowledge, in our territory. However, the very fact that this act came out and spelled this clearly so that the layman, the labor leaders, as well as the laymen, and management representatives, could see they were subjected to the potential of a lawsuit, and that brought about a certain care and caution and responsibility in the conduct in their relations. I had in mind at the time I was preparing this oral statement of at least two situations that occurred just shortly before the Taft-Hartley Act, the Labor-Management Relations Act, and in which both situations a strike had been called clearly in contravention of contract, and the union leaders, at later dates, after the thing was settled, indicated, "You might be able to sue us, but it might be so complicated it would not be practical."

In other words, they recognized that, with the net result that since the passage of the act we have had no such thing develop, because they can read it in the act, and it is sepelled out, and they, therefore, exercise more caution in what they do under the contract.

Mr. Nixon. It is true under the act, as it is presently written, that it limits the liability to union funds. It does not allow the person suing to reach the individual funds of the members of the union?

Mr. Tichy. That is correct.

Mr. Nixon. Speaking of the practical possibility, is it not a fact that a great majority of unions prior to the Taft-Hartley Act were unincorporated associations?

Mr. Tichy. I believe that is absolutely correct.

Mr. Nixon. And speaking again of the practical problems involved, the difficulty of suing an unincorporated association, and of serving every individual member of that unincorporated association, unless a specific State statute provided for service on an officer, it would place impossible barriers in the way of effective action against the union?

Mr. Tichy. That is correct.

Mr. Nixon. So your point is the present law, if it is as has been indicated simply an extension of the common law, the present law, at least has the effect of making both parties equally responsible for their contracts?

Mr. Tichy. That is correct.

Mr. Nixon. Referring to the discussion of the anti-Communist affidavit which occurred during the previous questioning, is it not a fact that probably the major effect of the affidavit on the credit side has been that through the affidavit those people in unions who were Communists have been spotlighted so that the union members themselves could take necessary action to remove them from power?

Mr. Tichy. Absolutely.

Mr. Nixon. As a matter of fact, the failure of the union officers to sign the affidavit has had no effect upon them from a criminal standpoint, as we know; but once those officers have been spotlighted—and I think you have given to us three examples in your statement here—the union members themselves have proceeded in their elections to remove them from power, which is an indication that throughout the labor movement the only difficulty in the past, and the only reason why Communists have been able to get power is that they have come in with their usual technique of subterfuge under false colors, and the Taft-Hartley Act has used an affidavit for the purpose of spotlighting these individuals, so that the members of the union could take the necessary action to remove them?

Mr. TICHY. I concur.

Mr. BAILEY. Will the gentleman yield to the Chair?

Mr. NIXON. Yes.

Mr. BAILEY. Do you not think that the requirement for taking the oath either from labor or from management is somewhat futile in that it opens an opportunity for someone who has designs on the Government to deliberately take the oath and hide behind it?

Mr. NIXON. Do you want me to answer the question?

Mr. BAILEY. Yes.

Mr. NIXON. I will say the non-Communist affidavit in the Taft-Hartley Act, any legislation which this Congress or State might pass, will never be foolproof or completely effective in meeting the Communist situation. I will also say simply because a law cannot be perfect is no reason to refuse to legislate in the field—and I realize the gentleman will disagree with me, and I am sure he will honestly disagree with me—I think by the same token you must recognize that the effect of the non-Communist affidavit requirement of the Taft-Hartley Act has been, at least in some unions and in some instances, to pin-point those officers of unions who were Communists, and that where that has occurred union members have for the first time had an argument which they could use, a legitimate argument, for removing those people from power. I think that in this field we must recognize the primary difficulty is in exposing the people who actually are members of the Communist party. The primary difficulty is not in finding these people guilty of crimes because, generally, they are not so foolish as to violate the law in a way that they would be caught; but once the people are exposed I have the greatest confidence in labor unions and the American public that they will take care of it at the ballot box, whether at a union election or national or State election.

It may be that there are arguments against the affidavit which can be made, but I say that before this Congress removes the non-Communist affidavit provisions from the act, this Congress should find a substitute for it which will be as effective as the non-Communist affidavit provision in removing officers who are Communists from positions of power in labor unions. I say that for two reasons: One, because the national security is involved. The technique of Communists throughout the world, and particularly in the United States at the present time, is to get control of key unions. They reached tremendous power a few years ago. Their power is now, I think, very fortunately on the way down. I think the non-Communist affidavit has contributed to that, and I think the national security requires that this Congress take some action at least to retain a provision of a law which will be of assistance in accomplishing that purpose.

And the second reason I think this Congress must take that action is in the interest of the unions themselves, because—and I think the gentleman will agree with me, coming as he does from the State of West Virginia, and from the coal section of that State—the real union leaders, themselves, throughout the country now recognize that once a Communist gets into a position of power in a union that the interests of the men are subordinated to the interests of the Communist Party.

Mr. BAILEY. As a member of the Un-American Activities Committee, does your committee have any recommendations to make to the Department of Justice as to the administration or enactment of legislation that would require this oath from the public generally?

Mr. NIXON. I think our committee would recommend, as we did recommend last year, retaining the non-Communist affidavit oath for union officers, and in order to get the proper balance, requiring it also for employers.

Your question is whether or not all the people in the country, the 140,000,000 people, should be required to take the non-Communist oath, and the answer to that, of course, is a simple one.

In the law we always have the problem of legislating to remove certain evils. Everybody in this country is a potential, shall we say, thief. In other words, a person's economic circumstances might conceivably force every one of us at some time into a position where we might potentially want to rob somebody else, but we do not by that token pass a law which would have the effect of placing everybody in the country in that category. We pass the law which will first punish those who are thieves, once they commit an act, and also we pass laws which have the effect of, as much as possible, preventing the commission of such actions, but we have to legislate for the specific danger, and in this case I think that is what we have attempted to do. We may have made a mistake, and I think if we have, I think you gentlemen on that side who are opposed, should offer an alternative, and I would be glad to consider it.

I say there is a danger from having Communists in power in labor unions, and it is a danger which has been proved from experience in other countries, and in this country. And if we are going to delete this provision I think we should bring out another provision.

Mr. JACOBS. Will you yield?

Mr. NIXON. Yes.

Mr. JACOBS. I might suggest that I have in mind something that would be effective as to Communist labor unions, and that is the provision of the election of officers. I do not think there is anything that would drive Communists out any quicker than good, old-fashioned democracy.

Mr. NIXON. I think we should discuss that in executive session, if we are allowed to do that. Maybe they will follow a different rule in the House than they did in the Senate.

Mr. JACOBS. I might comment further and say that I suggested such legislation in the Seventhy-ninth Congress, and I also communicated with the chairman of this committee that passed the Taft-Hartley law, and I never received an answer until 7 months after the Taft-Hartley Act was passed.

Mr. NIXON. I will be glad to work with the gentleman in trying to work out the administration bill which, I agree with the gentleman, is inadequate and must be revised extensively.

Mr. BAILEY. Mr. Werdel?

Mr. WERDEL. Mr. Tichy, I was very interested in Mr. Jacobs' remarks because I myself am trying to work out a bill to force the election of union officials, and I believe that it is one of the most fundamental things facing us in our labor disputes. After all is said and done, our country is criticized because of the voting power, and today we have not all unions but many of the powerful unions and the locals who have men in office that members cannot cast secret ballots to elect. I think that is fundamental to the thing we have been discussing. If a man of communistic teachings arrives at a labor leadership spot, then even the men themselves, who we must ask to protect our industry and our country and our activity, cannot remove them. That is admitted here by both sides of the committee, and having been admitted by both sides of the committee that that is the condition, and inasmuch as we know the communistic teaching is for the sabotage of industry and for the falsification of our oaths in court, do you not think that it is one of the most beneficial instruments that the individual workingman of the union has, if we require his leadership to sign a non-Communist oath?

Mr. TICHY. I concur.

Mr. WERDEL. In other words, if a union member has a man leading his union and creating difficulties, and he knows that that man is following the communistic pattern, to try to increase the membership of the Communist Party, and if he knows that that man has signed a false affidavit, then he has some advantage in securing his removal; more so than if we take it out of the act, is that not true?

Mr. TICHY. I agree absolutely.

Mr. WERDEL. If we affirm, or rather, admit—as we have to I think—that our country and our system of justice is based upon a man taking an oath that he will tell the truth, the whole truth and nothing but the truth, and we know that we have men infiltrated in our business and in our Government who are following and believing sincerely in a philosophy which teaches that the thing to do is to take that oath and then go ahead and say what you want to, under those circumstances, do you see any difference as a matter of Government, in asking the man when he goes into court, whether he is a citizen, a clergyman, a labor-union man, or whatever he is, to tell the truth, the whole truth and nothing but the truth, or to have him say under oath he is not a member of such an organization? Is there any difference?

Mr. TICHY. I am afraid I may have lost your question there, Mr. Congressman. Do you mind restating it?

Mr. WERDEL. I will rephrase it.

In the last 2 weeks we have had Thorez in France announce ahead of time that he was going to be a traitor.

Togliatti announced the same thing, about the same time, that he would lead his followers to treason in Italy.

And Pollit in England, head of the Communist Party, at almost the same hour, said the same words, and they probably came from the same source, and under instructions, he said he was going to lead the invaders to overthrow his country in England, and he also went so far as to give the instructions of sabotage.

Whether we are labor unions or are sitting at this bench, or whereever we are, is there any place in your mind where there can be a distinction upon an argument for good government in requiring a man to take an oath that he does not belong to such organizations, when he is in leadership and is taking the oath, or if he is given the oath in court?

Mr. TICHY. I see no difference at all.

Mr. WERDEL. I have been trying to find someone who could demonstrate the difference, and as yet I have not found one. I can understand why some labor leaders follow an opposition that has grown against the non-Communist affidavit. That opposition is stimulated by groups because of the seriousness with which it limits their subversive activities. I can understand why some men who could not follow their philosophy can still be following this approach against the non-Communist affidavit. I have yet to see a man who can state the difference. Our President says we are in the middle of a cold war, yet our original interpretation of the provisions as to treason in our Constitution have been that statements which are going to aid an enemy in the future are not treason. Those statements that were made last week by Mr. Foster are not treason under our law.

One other thing I want to ask you. Do you think ——

Mr. Tichy. Mr. Congressman, may I intercede for just a moment? I think Mr. Curren would like to speak as to your last statement, if it would be agreeable.

Mr. Werdel. Yes.

Mr. Curren. On the same line of thought you just expressed, Mr. Congressman, I think the best single example we have in the entire country took place right here in Washington just a short while ago when our present Chief Executive, President Truman, had to take the oath of office that he would defend the Constitution of the United States. I do not think the oath of office challenged the integrity of the Chief Executive when he was required to take it. I think that is the best example we have, that the Chief Executive must take the oath.

Mr. Werdel. Then you agree, do you not, that the men who control the unions of our country should be under an oath that they are not Communists, particularly when they are holding nonelective offices in captive unions, so that the membership will know and have one legal approach, until we assure their election by secret ballot?

Mr. Curren. Very definitely. A similar statement was made by Mr. Philip Murray in Portland, Oreg., at the international convention of the CIO in December of 1948.

Mr. Werdel. Along that same line, until we have control of the election of union officials in the hands of the men they represent—and I mean by that a guaranteed secret ballot—until we have that, do you not think it would be foolhardy for us to remove the provision of the Taft-Hartley Act giving the employees a right to vote as to whether or not they will accept the employers' last offer before strikes are called?

Mr. Curren. I agree with that.

Mr. Werdel. That is all.

Mr. Bailey. Mr. Velde?

M. Velde. I have no questions.

Mr. Bailey. Thank you, gentlemen.

Mr. Tichy. Mr. Chairman and members of the committee, we wish to express our sincere appreciation for the privilege of being heard by this committee.

Thank you very much.

(The several statements referred to by Mr. Tichy and Mr. Curren are as follows:)

STATEMENT OF GEORGE J. TICHY ON BEHALF OF THE NATIONAL LUMBER MANUFACTURERS ASSOCIATION AND OTHERS IN OPPOSITION TO H. R. 2032

My name is George J. Tichy. I am the manager and attorney of the Timber Products Manufacturers Association, whose offices are located at Spokane, Wash., and which is an industrial relations association representing timber products producers in eastern Washington, Idaho, and Montana.

I appear here in behalf of the National Lumber Manufacturers Association. I am also representing Timber Products Manufacturers' Association, Spokane, Wash.; Plywood and Door Industrial Relations Committee, Tacoma, Wash.; Industrial Conference Board, Tacoma, Wash.; and the Washington Employers, Inc., Seattle, Wash. I am informed that these various groups asked to testify before your committee but were not granted time. These organizations, exclusive of the National Lumber Manufacturers Association, represent more than a thousand employers employing at least 35,000 employees.

As an introduction to this subject, let us first make the following observations: (1) Every statute has its origin in the needs of that group which the law affects; (2) no statute, however well intentioned, will meet with the positive approval of everyone. All law, just from its very nature, will meet with the disapproval of some. Why? Law is our civilized method of governing the relations between peoples, groups, and the other components of society. Therefore, those who are controlled are going to be offended. In addition, it should be noted that any law is a composition of words and generally covers a variation of possibilities. The language in itself will frequently be crude or awkward and will not meet with the satisfaction of those who must live with the law.

In analyzing H. R. 2032 we must first look to our present labor legislation, the Labor-Management Relations Act of 1947, sometimes referred to as the Taft-Hartley Act. The foregoing observations are important in this connection.

In passing, as a spokesman for management in my everyday occupation, it would seem that I should be opposed to the Labor-Management Relations Act of 1947 just as much as many of the labor union leaders, because that law controls management equally with unions and union leaders. Let me make it clear that as any other law, this law is not perfect. However, in the field of labor relations as in any other field, the paramount interest must be that of the public and not that of any group. I firmly believe that a careful impartial analysis of that law will reveal that Congress basically intended to equalize the responsibilities of unions and employers, first in the interest of the public and secondly in the interest of the individual employee.

In the original passage of the National Labor Relations Act, more commonly referred to as the Wagner Act, Congress found (sec. 1, par. 3) that "Experience has proven that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

The result was that Congress placed certain sanctions on management. In essence these controls were:

(*a*) Employees had the right to organize and to bargain collectively through their selected representatives.

(*b*) It was made an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of that right;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

(3) To discriminate in any such manner as to encourage or discourage membership in a labor union;

(4) To discriminate against anyone filing charges against the employer; and

(5) To refuse to bargain collectively with the representatives of the employees.

(*c*) The union selected by a majority in an appropriate working unit were to be exclusive representatives of all of the employees in that unit.

(*d*) A board, known as the National Labor Relations Board, was established to investigate, try and decide complaints under this act. This Board was also empowered to prevent any person from engaging in an unfair labor practice.

(*e*) Procedures were established in order that the law could function.

Essentially that is the Wagner Act. Note that unions and union leaders were not controlled. All controls were on employers. In addition, observe that at the time of the passage of the Wagner Act, the following social, political, and economic factors prevailed:

(1) There were no huge labor monopolies as we know them today. Therefore, there was no foreseeable need for their control.

(2) The threat of communism to our political and economic structure was at a low ebb.

(3) We did not have such crippling strikes as thwarted the normal functions of large cities and even whole sections of the country.

(4) There were no labor barons capable of the direction of the Nation's economy as we have today.

(5) There was not the highly organized and integrated union structure that resulted in the Political Action Committee and the Labor's League for Political Education, with influence far beyond their numerical strength.

For the 12 years that followed the passage of that act we find that those things were to come about and suddenly, by 1946, we were brought face to face with the fact that a group had risen within our Nation even more powerful than the J. P. Morgans and John D. Rockfellers of the late 1800's and early 1900's.

Under the Wagner Act labor unions gained about 10,000,000 members.

Just as through the years we have come to accept corporations, associations and other business as a part of our society, we have also come to accept labor unions as a part of our society. There is nothing inherently bad in either; however, either may form the vehicle for the ruthless to prey upon members of its own group and, most important, the public.

In 1946 we saw a total of 4,600,000 employees out of work by reason of strikes crippling our Nation and its economy. There was a loss of 116,000,000 man-days of labor in a total of 4,985 work stoppages. We saw unnecessary jurisdictional strikes and secondary boycotts resulting in hoards of employees called out by labor barons to support strike issues that did not affect those employees. We saw the severe effect that John L. Lewis and the United Mineworkers had on the Nation's economy with his control of the coal industry. We have seen the control of any number of other labor leaders and unions over entire cities such as the recent complete tie-ups in New York City; the Oakland, Calif., area in 1946, and elsewhere. Human memory cannot be so frail as to ignore these unpleasant facts which have happened only yesterday.

In what manner did the Labor-Management Relations Act seek to correct these social, political, and economic inequities?

First. Congress retained in the Labor-Management Relations Act of 1947, as to the need for protection of employees, their finding contained in the Wagner Act, which I have already quoted, and further stated:

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members, have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed."

Second, the essentials of the Wagner Act, that is, the controls on employers, were retained in the Labor-Management Relations Act.

Third, the Labor-Management Relations Act sought to regulate unions and union leaders, as well as industry and industry leaders, by providing that they should not commit the following unfair labor practices:

(1) To restrain or coerce employees in their rights to organize or refrain from organization;

(2) To restrain or coerce an employer in the selection of his collective-bargaining representatives;

(3) To cause or attempt to cause an employer to discriminate against an employee who had been denied membership or has had membership terminated by the union for reasons other than failure to pay periodic dues and initiation fees required as a condition of acquiring or retaining membership.

(4) To refuse to bargain collectively with an employer;

(5) To engage in concerted action where the purpose is:

(*a*) To force or require an employer or a self-employed person to join a union or an employer organization;

(*b*) To force any person to cease dealing in the products of any other producer, processor, or manufacturer or to cease doing business with another;

(*c*) To force an employer other than the one being struck to recognize or bargain with a union previously certified as the collective-bargaining agent of the employees by the NLRB.

(*d*) To force or require an employer to recognize or bargain with another union where one has already been certified by the NLRB as the bargaining agent of the employees;

(*e*) To force or require any employer to assign particular work to employees in a particular union rather than to employees of another union;

(*f*) To require an excessive or discriminatory initiation fee of new members in the union after the union has a union shop type of agreement; and

(*g*) To cause an employer to pay for services which are not performed or not to be performed, that is featherbedding.

These unfair labor practices which unions and union leaders are directed not to commit under possible penalties do no more than to curtail abuses which have hurt the public and its own members.

The Labor-Management Relations Act permits either unions or employers to express any view, argument, or opinion so long as such expression contains no threat of reprisal or force or promise of benefit. This is the free-speech provision to which employers and unions alike are entitled. It seems ridiculous that such a provision should be necessary in view of our own Bill of Rights; however, National Labor Relations Board decisions under the Wagner Act necessitated a clear enunciation of these rights.

The Labor-Management Relations Act gives to employees the right to organize or to refrain from engaging in such activities. If the right to organize is to be protected the right to refrain should also be protected.

The Labor-Management Relations Act defines collective bargaining as the mutual obligation of employer and union to meet at reasonable times and confer in good faith with respect to wages, hours, and working conditions. It requires that either party to a collective-bargaining agreement must give a 60-day written notice to the other of any desire to terminate or modify an agreement. Thirty days after giving such a notice, the moving party must also advise the Federal and State mediation agencies of the status of the matter. The working agreement must remain in force for those 60 days, and economic action is forbidden. Thus a minimum period of 60 days is assured in which to resolve the issues that may arise from bargaining. Under the Wagner Act, only the employer was required to bargain in good faith and could and was subject to almost every unreasonable abuse by unions without any legal sanctions upon unions for this action. The requirements established are reasonable, in the public interest, and do not unduly inconvenience either the employer or the union. An unfair union should not be permitted to operate without limitations; a sincere union should not want to.

The Labor-Management Relations Act also provides that only one representation election shall be held within a 12-month period. Thus security and stability is assured to the collective-bargaining relationship in its initial stages.

Specific controls on unions and union leadership were established. For one thing, each officer is required to sign an affidavit that "he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods" (Labor-Management Relations Act, sec. 9 (h)).

This provision has received much criticism by union leaders. However, the vast majority of them have signed these affidavits. What harm has been done those who have signed those affidavits? The answer is: No harm has come to them and they have been a credit to their country, their union and to themselves. What harm has come to those who have not signed those affidavits? They and their union are deprived of their rights under the law. This sanction is necessary to bring clearly to the attention of the membership of that union the failure of their officers to file such an affidavit. Some have criticized this requirement as an insult to the citizenship and integrity of union leadership. In facing the current problem of totalitarianism against democracy, it would appear that each would be pleased for pride in his country to stand up and be counted.

We recognize communism acknowledges that its success is bred in strife and dissatisfaction and we know that they have found a fertile field in unionism. Unions form two facets for their dogma. First, unionism is an attempt by working peoples to improve their status. The dissatisfaction giving rise to the desire for unionization is a fertile field for Communist propaganda. Second, to control the working force is to control our economy, our Nation and our citizens. Let us assume without accusing for the purpose of illustrating our point, that the longshore unions are dominated by Communist leadership or their sympathizers. We know from past experience that those unions are capable of very effectively shutting our Pacific ports from all shipping. A transit union can stall our largest city to inaction within a few short hours! There are many other examples.

We know that Communists have infiltrated unions and we know that many unions, although giving lip service in bylaws forbidding membership by Communists, nevertheless have been unable to voluntarily rid themselves of them. Here the members have been given an assist in their problem by this law, yet their leadership clamors for repeal of this provision as un-American. Let us look to what one large union in the Pacific Northwest has said in response to the rumors that their union was run by Communists:

"Furthermore, the Taft-Hartley Act has certainly cleared that issue up as far as our organization is concerned. All of the international officers, many of the district officers, and a great majority of our local union officers have signed noncommunistic affidavits. The law is quite strict, and any officer certainly would not take a chance on perjuring himself in an affidavit turned over to the Government. However, there might be Communists from time to time slip into our organization because it is the aim of the Communist Party to work through labor organizations where they can get control."

Another large international union has been quoted as stating that they favor retention of this affidavit requirement and believe in its expansion to include representatives of employers. In this opinion I concur, and I shall feel no insult, but only pride, to be able to sign such an affidavit when the occasion arises. I am sure that all other representatives of employers in the lumber manufacturing industry will also be willing to sign such an affidavit. Those who give lip service to their patriotism and simultaneously desire repeal of this feature of the law are blundering into the net of the Communist and make a very effective front for the Communist cause. Frankly, I cannot see why there is so much furor over this issue. Hundreds of union, employer, and public representatives on the War Labor Board and its various committees and commissions signed an equivalent affidavit, and no objection was ever raised to my knowledge.

To answer those who say the Labor-Management Relations Act, 1947, requires unions to accept Communists as members, we note that the act does not forbid a union to make its own rules relative to the acquisition and retention of membership in the union.

Another provision of the Labor-Management Relations Act, 1947, that has received severe criticism is the power of the Board to obtain temporary injunctions. This should be studied carefully, as you will find:

First: The Board must first issue a complaint that someone is engaging in an unfair labor practice. This is only done after a change has been filed and a thorough investigation conducted by the Boarl. This is time-consuming and not conducive to hasty or ill-advised action.

Second: Such an injunction may be obtained against an employer as well as a union.

Third: The injunction cannot be granted until the party against whom it is sought receives notice of the proposal to seek the injunction; and

Finally, this provision is intended only for emergency use by the NLRB. It should be observed that in the first year of this law that, in unfair labor practice cases, under section 10 (j), injunctions were sought by the Board in only four instances—twice against employers, namely, General Motors Corp., in the case of a group-insurance plan, and Boeing Airplane Co., in compelling that company to bargain with a union; and twice against unions, namely, the Mine-workers Union and the Typographical Union. In every case the basis was in effect the refusal of either the union or the company to bargain collectively with the other in contravention of the law.

Under the Labor-Management Relations Act, labor leaders are no longer permitted to withhold from their membership at least an annual audit of the funds of the organization if that union is to have the protection of the law. The act requires that each union "furnish to its members annually financial reports" setting forth receipts and disbursements, including the purposes for which disbursements have been made. As employers, we have no concern with this, but it seems to me that employees who are members of a union have a right to this protection against racketeering, and I think the Government has an obligation to furnish such protection.

Employees are free under the Labor-Management Relations Act to seek an impartial, federally conducted, secret-ballot election to get rid of a union if they so desire. This is a right that they did not have under the Wagner Act. Statistics show that in over half of such elections the employees have eliminated the unions claiming to represent them. Without this statutory protection, those same employees would probably still be saddled with an unsatisfactory union, one which in reality did not represent their interests.

The right has been given to the employees to determine whether or not they wish to make membership in a union a condition of employment. You will read much, particularly in union publications, of the overwhelming number of elections in which the union has been successful, and by large margins. Even so, does it excuse such a requirement in those few plants where the employees have voted overwhelmingly in opposition to such a requirement? Furthermore, nothing is known of the wishes of those who are members of unions in which their leadership refuses to sign anti-Communist affidavits. If given the opportunity, how would they vote? Furthermore, it is left to the discretion of the union whether it will request an election, and I think you will agree that such elections are generally not requested when the outcome is in doubt. Finally, it should be noted that the largest percentage of the elections that have taken place thus far have been by unions which have had union-security clauses for years, and, therefore, it was anticipated that in such cases the unions would succeed. Would you give up your right to vote as a citizen of these United States simply because one political party has been successful in the last 7 out of 8 national elections?

Under the Wagner Act, the National Labor Relations Board in effect acted as investigator, prosecutor, and judge in any matter before it. History has long ago taught us that such a situation is not conducive to justice. The new law separated these functions so that those who shall judge the matter before the Board may not also be the prosecutors.

The Federal Mediation and Conciliation Service was separated from the Department of Labor and established as an independent agency. The Department of Labor as the spokesman for labor can hardly be expected to render fair and impartial efforts to unions and management alike. Title 5, section 611, of the United States Code provides specifically that: "The purpose of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." Only as an independent agency, not responsible to the Labor Department, can the Conciliation Service be impartial. It is just as logical to plan the Conciliation Service in the Commerce Department as to plan it under the Labor Department, and neither will satisfy unions and employers alike.

The rules of evidence to be used in proceedings before the Board were changed from those permitting uncontrolled hearsay evidence to those rules applicable to the district courts of the United States, adopted by the United States Supreme Court. These rules of evidence are based on years and centuries of experience by mankind in seeking to obtain an efficient judicial administration of the rights of peoples.

The Labor-Management Relations Act also provides a specific procedure to be pursued in the event of a national emergency created by a labor dispute. This procedure does not void the right to strike, but simply provides for certain steps to protect the public interest before that right may be exercised. The right to put this procedure in motion is reserved to the President. He has used it seven times and only once after the procedure was used in its fullest extent has a strike been called, and that was the recent longshore strike. As a matter of fact, the Labor-Management Relations Act specifically preserves the right to strike in the following language:

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

It further provides in Section 502:

"Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent. * * *"

Much has been said of the President's alleged inherent power under such circumstances as constitutes a national emergency. We do not agree that such an inherent power exists, and if it did we have real cause for alarm and can only wonder through what other political gymnastics greater dictatorial power can be confined in one individual.

The Labor-Management Relations Act makes both unions and employers equally responsible under their collective-bargaining agreements and permits either to obtain redress from the other for violations of those agreements in Federal courts. This has not brought any flood of litigation upon the courts, but has made the parties to those agreements more cautious and responsible. The American people have been the beneficiaries.

Concerning the restriction placed by the Labor-Management Relations Act on unions, forbidding their making contributions or expenditures in connection with certain elections, let us note that the same prohibition applies to corporations. However, you hear little of this. It is our firm belief that a union should not be permitted to divert the regular monthly union dues of a union member to support a political party or candidate to whom he may be personally opposed; further, a union member should not be compelled to make special contributions for such purposes. It should be remembered that some union members are not voluntary members.

The Labor-Management Relations Act forbids strikes by Government employees. Recent strikes in the nations of Europe pointedly demonstrate the necessity and wisdom of such a provision. Although responsible democratically organized and operated labor unions have their place in our society, that place does not include the very lifeblood of the country which provides and protects their existence.

Secretary of Labor Tobin, in appearing before the Senate Labor Committee, stated that the right of the individual worker has been abridged. It is well for us to consider a few of the advantages that the individual employee has secured through the Labor-Management Relations Act of 1947.

(1) When a majority of the individual members of a union feel that the union is not properly managing their affairs or representing them to their greatest benefit, they may, by following a prescribed procedure, dispense with the services of that union.

(2) If a union-shop-type agreement exists in an operation, the union is forbidden to charge unreasonable and discriminatory initiation fees.

(3) An individual is not required to join a union before accepting employment.

(4) Employees have an opportunity to vote by a federally conducted, secret-ballot election to determine whether or not they are to be required to belong to a union as a condition of employment.

(5) The employees may eliminate a "union shop" by secret ballot without fear of reprisal.

(6) An individual's union dues cannot be used for the purpose of supporting or defeating political candidates contrary to his personal preference.

(7) An individual employee who may be a member of a union by compulsion is free to take his grievances up directly with his employer subject to certain restrictions.

(8) Individual employees not only have the right to organize but the right to refrain from organization.

(9) Individual employees should no longer be deprived of the opportunity to work by reason of jurisdictional disputes or certain secondary boycotts.

Now let us see how much harm the Labor-Management Relations Act has done to unions. Labor Department statistics show that the normal growth in union membership nationally has not been retarded. Almost a million new members have been recruited by unions during the tenure of this act. Also, let us note that this law did not deter a third round of wage increases nationally. Furthermore, unions can strike and have struck as in the past.

What good has come to the public by reason of this law? After the terrible strike statistics which occurred in 1946 prior to the passage of the Labor-Management Relations Act, in 1948 under this act there were 3,300 strikes or 33 percent less than in 1946; 1,950,000 workers were involved or 55 percent less than in 1946; and the number of man-days of idleness resulting from strikes in 1948 was 70 percent less than in 1946. There were only 34,000,000 man-days of idleness in 1948 as compared to 116,000,000 man-days of idleness resulting from strikes in 1946. No small amount of this reduction in labor strife is attributable to the Labor-Management Relations Act. Above all, both labor unions and employers are made responsible for their conduct.

Where is this so-called "slave labor" that was to be the lot of working people under this law? Look about you and you find none. Frankly, it would appear the only people who have to fear this labor law are ruthless labor leaders, Communists and fellow travelers. The working man has greater protection today than he has ever had. He is not only protected from the ruthless employer, but also from the ruthless in the labor movement. Finally, the public has secured its greatest protection from unnecessary, untimely and ill-bred labor turmoil.

Rather than going backward in labor relations by repealing the Labor-Management Relations Act, it would appear that there are some abuses which the present law does not cure, which this committee should seriously consider if it is going to legislate on this subject. Since the act specifically provides for an orderly method of determining whether or not a union properly represents a majority of the employees in an appropriate collective-bargaining unit, organizational strikes should be forbidden. For instance, neither under the Wagner Act nor the Labor-Management Relations Act is a union, defeated in a representative election, prevented from striking in order to obtain recognition by the employer or to compel the employees of that employer to accept the union as its bargaining agent, although in a free and unfettered election those same employees might vote against that union.

In essence, the Labor-Management Relations Act has brought stability, responsibility, care, and caution to the collective-bargaining table by unions and employers alike, not "confusion", as stated by the Secretary of Labor, Mr. Tobin. This, I testify to, not as a theoretical conclusion or from sitting a distance of 3,000 miles from the bargaining table, but from actual day-to-day experience at the bargaining table.

Statement of John G. Curren on Behalf of National Lumber Manufacturers Association and Others in Opposition to H. R. 2032

Perhaps the most effective way in which to present my opinions on this subject is to give you below my analysis of the changes in the Federal labor law made by the Labor Management Relations Act of 1947.

DEFINITIONS

Supervisors.—Under the administration bill, employers must bargain with supervisors and cannot discriminate against them for union activity. Under the Labor-Management Relations Act of 1947, supervisors are expressly excluded from the definition of the term "employee". This change has succeeded in removing supervisory personnel from the "fish and fowl" category to which they were relegated prior to the passage of the Labor-Management Relations Act of 1947. It eliminates the age-old situation of consulting and discussing matters of confidential company policy with the supervisory staff and then in the future bargaining with the supervisory personnel on the same issues. Thus, when they were administering company policies and acting in behalf of the company, they could be considered "fish"; at the later date, when full knowledge of the principles they were administering came up for discussion, they were on the other side of the fence as the "fowl" in the case. No class of employee can maintain his emotional, and mental stability in a logical and unprejudiced manner, in our opinion, if he is thrown into the position of representing at one time one side and at another time the other side.

Professional employees.—Under the administration bill, there is no provision pertaining to professional employees. Under the Labor-Management Relations Act, 1947, professional employees are defined. This change is good in that it has eliminated some of the extremely aggravating and argumentative situations arising in trying to decide whether certain classes of employees were professional or not. It provides a basis of a written definition in making such determination.

Employer responsibility for actions of employees.—Under the administration bill, here is no provision pertaining to employer responsibility for the actions of supervisors or employees.

Under the Labor-Management Relations Act of 1947, the test of agency, in determining whether an employer is responsible for the actions and words of an employee or supervisor, is no longer controlled by whether the specific acts were authorized or ratified. This leaves the matter of employer responsibility for the actions and/or words of an employee or supervisor determined by the law of agency as established by the courts, a better criterion than making a determination based upon whether the employer was guilty of an act of omission in not specifically repudiating such actions, or inadvertently or apparently ratifying or authorizing such actions or words by either positive or negative action.

THE NATIONAL LABOR RELATIONS BOARD

NLRB.—Under the administration bill, a five-man Board continued but with power to prosecute as well as decide cases. General counsel abolished. Under the Labor-Management Relations Act of 1947, the Board was increased from three to five members. No particular advantage or disadvantage to the change, except that membership should be confined to a reasonable number to allow for greater unanimity of opinion and to stay away from a body too cumbersome to reach definite decisions without waste of time and argument. The judicial and prosecuting functions of the Board are separated, by placing authority for the administration of the former in the hands of the Board and the latter under the jurisdiction of the general counsel, to the extent that the general counsel is the final authority in respect to the investigation of charges and issuances of complaints. This is an excellent division of responsibility. It has worked to the advantage of both labor and management. Considering this move at the level of the regional offices, the regional director and regional attorney act independently of each other, insofar as their respective jurisdictions apply. It removed the possibility of any misplaced prejudices on the part of the regional director affecting the decisions of the regional attorney in unfair-labor-practice cases and allows for a better scheduling of cases. Despite the criticism of General Counsel Denham's actions in numerous instances and the "fire" he has had to withstand from both labor and management, he has done a splendid job in an extremely difficult position.

RIGHTS OF EMPLOYEES

Closed shop.—Under the administration bill, the closed shop is permitted. Under the Labor-Management Relations Act of 1947, the closed shop is outlawed. The United States Supreme Court has recently ruled that State anti-closed-shop laws are constitutional; therefore, this would seem to confirm the provisions of the Labor-Management Relations Act of 1947, regarding the outlawing of the closed shop. We believe that individual workers should be protected in their right to join or not to join a union—to remain or not to remain members—just as they individually wish and of their own free will.

Union shop.—Under the administration bill, the union shop is permitted without restriction; members can be fired for failing to keep membership in good standing. Under the Labor-Management Relations Act, 1947, the union shop is valid only if the labor organization represents the employees and if a majority of the eligible employees has voted in a Board-conducted election to authorize such a provision. This amendment's principal consequence has been to provide an additional red-tape hurdle for the unions to clear and has impeded more prompt handling of other work by the Board, since it placed upon it the holding of thousands of such union-shop elections. The deficiency appears to be that, even though the union wins such a union-shop election, their victory does not make it mandatory upon management to grant a union-shop contract. Victory does not impose upon management the obligation to accede to a union-shop contract. On the contrary, the question of a union shop should be an appropriate subject for bona fide collective bargaining between management and labor. This required holding of a union-shop election has shown to be no more than "shadow boxing" and procrastination prior to settlement of the issue at hand.

An employee cannot be discharged at the request of the union under a union-shop contract (1) if the employer has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to the other members, or (2) if the employer has reasonable grounds for believing that the request for discharge was due to reasons other than nonpayment of dues or initiation fees. Since the meat of this provision is that an employee can be discharged under a union-shop clause only because of nonpayment of dues or fees, we believe, and it has so proved, that it is a protection to the individual employee from the wrath, whims, or petty personal prejudices of union leadership. As such, it strengthens our Federal labor law, instills confidence in the fairness of its provisions, and should be retained.

UNION UNFAIR LABOR PRACTICES

Union unfair labor practices.—Under the administration bill, there are no provisions protecting the employee or the employer from union unfair labor practices, except in regard to secondary boycott, in which the bill prohibits only strikes and secondary boycotts that would force employer to (1) bargain with a union in violation of the act or (2) assign work in violation of the terms of a certification; and jurisdictional disputes, in which the administration bill is similar to the present Labor-Management Relations Act, 1947, except that the NLRB cannot get an injunction and it has the alternative of deciding the dispute itself or appointing an arbitrator to do so. Under the Labor-Management Relations Act, 1947, it is an unfair labor practice for a union to—

(1) Coerce employees or an employer in his choice of representatives.

(2) Cause or attempt to cause an employer to violate subsection 8 (3) concerning the union-shop provision.

(3) Charge excessive initiation fees. The Board determines the question of excessiveness.

Two or these changes were made with the welfare of the employee at heart. The third (No. 2 above) rebelled against the past history of unions taking unfair advantage of the employer.

(4) Refuse to bargain in good faith with an employer. This change, together with the other three mentioned above, constitute nothing more than a "balancing of the scales" by making unions responsible and subject to unfair labor practices that management was subject to under the old Wagner Act. It is an equalization of the restrictions by making "what is good for the goose" also "good for the gander."

(5) Jurisdictional strikes and secondary boycotts are defined to be unfair labor practices. The Board is given the power to seek injunctions in Federal district court against such practices upon the issuance of complaints. The Board is also directed to conduct hearings and determine such disputes. The outstanding decision on this question is of recent date and was decided by Judge Wayne Borah, Eastern District of Louisiana, in the case entitled *John F. LeBus, Regional Director, Fifteenth Region, NLRB, on behalf of NRLB, petitioner,* v. *Pacific Coast Marine Fireman Oilers, Watertenders & Wipers' Association and National Union of Marine Cooks & Stewards (CIO), respondents.*

(6) Featherbedding practices would be unfair. These two changes have served an excellent purpose in that they are measures that have been successful in prohibiting unions from victimizing parties who are innocent and causing them to suffer losses or impairment of business in situations in which they are not directly involved—and over which they exercise no control—and provide an additional protection against the bodly abused practices of forcing employers to pay for work not performed.

Free speech.—Under the administration bill, there is no provision pertaining to free speech. Under the Labor-Management Relations Act of 1947, the "free speech" precedents established by the Board were clarified to the extent that employers no longer can be accused of an unfair labor practice because of expression of any views, regardless of whether written or oral, provided such expressions contain no threat of reprisal or force or promise of benefit. This has provided considerable relief to management, inasmuch as the unions, during their organizational campaigns, have always spoken freely to employees they were attempting to represent. Within my personal experience, some union organizers have had no respect for the truth, and in a veiled manner usually threatened them with loss of jobs unless they supported the union. This loosening of the free speech provision removed discrimination suffered by management who made a speech or posted a statement, which in itself was not coercive, but when taken with unfair-labor-practice charges and the two considered conjunctively was ruled to constitute an unfair-labor practice. Under the old law, neither an employer's speech nor actions, taken individually, might have been coercive, but the Board had the right to rule that taken together they were. Now each action stands on its own. This gives the employer the chance to correct misstatements and misrepresentations, to deny charges and allegations, to make explanations, and follow the democratic principle of allowing the employee to hear both sides.

COLLECTIVE BARGAINING AND TERMINATION OF CONTRACTS

Collective bargaining—Termination or modification of contracts.—Under the administration bill employers and unions must notify N. S. Conciliation Service of contract termination or modification at least 30 days prior to (1) contract expiration date or (2) the time it is proposed to make the termination or modification, whichever is earlier.

Under the L. M. R. A. of 1947, "to bargain collectively" means the performance of the mutual obligation of both parties to meet at reasonable times and confer in good faith concerning wages, hours of work, etc., and to embody any agreement into a written contract. It was intended to mean not necessarily that the employer must make any concessions as long as he bargained in good faith and did not resort to subterfuge; this has resulted in a diminishing of charges by unions of company failure to bargain in good faith, on the premise that they did not agree to accede to one or more of the union's requests. Such a premise placed the employer always in the position of having to give in on some point, whether justified or not, solely for the purpose of protecting himself against a charge of failure to bargain collectively or in good faith.

Bargaining collectively also provides a procedure in which either of the parties—as contrasted to the past situation in which only the union could take the action—may terminate or modify the contract by: (*a*) Serving written notice of termination or modification 60 days prior to the termination or modification; (*b*) offering to meet and confer with the other party for the purpose of negotiating a new agreement; (*c*) notifying the Federal Mediation and Conciliation Service of the existence of a dispute within 30 days after the 60-day notice of termination or modification, and simultaneously therewith also giving notice to any State mediation agency; (*d*) continuing in full force and effect, without resorting to strike or lock-out, the existing contract for 60 days after notice is given of termination or modification. Until this procedure was written into law, the only manner in which the employer could test the majority status of the bargaining representative was by first submitting himself to a charge of unfair labor practice of refusal to bargain by refusing to meet with the union. The Board then investigated the charge and based upon that investigation could either direct the company to bargain collectively or direct the conduct of another election if the majority status of the union was in doubt—which occurred only in rare instances.

This change also provides that such modification or termination procedure is applicable only at the time contracts can be reopened under the terms of the agreement. It specifies that any employee who strikes during the 60-day notification period loses his status as an employee, which makes for considerably less strife, turmoil, and work stoppages and tends to stabilize working conditions and production of goods for the public welfare.

REPRESENTATION PROCEDURE AND ELECTIONS

Employer election petitions.—Under the administration bill there is no provision pertaining to employers asking for an election of representatives if the union claims recognition.

Under the L. M. R. A., 1947, an employer can file a petition with the Board for a representation election once the union makes a claim upon the employer that it represents a majority of his employees. Before, only unions or employees could file representation petitions after the employer had refused to recognize their claim. If the union or the employees chose not to file a petition the matter was left dangling, which created dissatisfaction among some of the workers, cause the organizational campaign to be strung out, and always affected the efficiency of the workers, decreased normal production and unnecessarily delayed the determination of the issue at hand. Now, if the union or the employees do not file a petition after being denied recognition by the employer, the employer has an opportunity to have an unsettled question decided by petitioning the Board for a representation election. This has eliminated a great deal of strife that occurred when recognition is denied and the union or the employees fail to file a petition. Only one valid election on a year can be held, except where there is necessity for a run-off election. Once a year is often enough to subject an employer to a representation election and eliminates a rival union from picking up where a defeated union left off.

A further protection and upholding of employees' rights is found in the change which allows 30 percent of the employees to file a petition with the Board to hold an election for the purpose of decertifying an incumbent union. It provides an opportunity for employees to either change union affiliation or dispense with it entirely if they feel they are not satisfied with the organization that represents them.

While the union is still the exclusive representative for all employees in a given unit, individuals may present their grievances personally, rather than through the union, provided the bargaining representatives are given an opportunity to be present. This gives more protection to an employee in a given unit who may not belong to the union and is thus given the chance to argue in his own behalf if he finds that his not belonging creates an attitude on the union's part of not giving to his grievance the consideration it deserves.

Plant guards.—Under the administration bill, plant guards, like professional employees, are not included in any of its provisions.

Under the L. M. R. A., 1947, plant guards and watchmen can be recognized as a group of guards, or watchmen provided they are not affiliated either directly or indirectly with a labor organization that admits rank-and-file employees. This is as it should be. In cases of strikes by rank-and-file employees, the plant guards could come in for protection and insurance purposes. In many instances in which a plant is struck the town may draw its power from the plant and some provision should be made for the continuance of such utilities for the benefit of the public welfare. To do this it is necessary that guards should be available for normal duty.

Filing requirements.—Under the administration bill, filing requirements with respect to financial and other information with the Department of Labor and non-Communist affidavits with NLRB, are omitted.

Under the L. M. R. A., 1947, no petition or charge filed by a labor union can be investigated unless the union shall have filed with the Secretary of Labor, a financial report and a report showing its name, address, names of three principal officers and compensation of all persons receiving more than $5,000, amount of initiation fees and dues, and a copy of its constitution and bylaws. This is another protection for the individual employees. It at least assures union members that if their bargaining representatives are determined to avail themselves of the facilities of the Board, they will be provided with an accounting of the financial status of the union, which is a matter over which many union members have complained loud and long in the past. This is as it should be. The filing of anti-Communist affidavits is something that there has been need for a long time. However, management should have been required to sign a similar anti-Communist affidavit. If we are going to ask for a 50–50 break on other clauses in a law, we should not only agree, but sponsor an equal break in all clauses. We fully realize that the need of ridding the Communist influence in unions was brought about by testimony of high ranking union officials including Philip Murray, William Green, and John L. Lewis, and not on the testimony of management. This provision has been successful in accomplishing the end for which it was written. But we believe there should be separate legislation dealing with the Communist problem in general, and not included in the Labor Management Relations Act, if it is to affect labor alone. If the anti-Communist pledge is to affect labor and management then it should be included in a labor act. There is a case pending before the United States Supreme Court and on the docket for February, testing the anti-Communist affidavit and in our opinion it will be declared unconstitutional for the reason that the act affects two parties—labor and management—and only one party—labor—is required to file the affidavit.

UNFAIR LABOR PRACTICE PROCEDURE

Statute of limitation.—Under the administration bill there is no time limitation on charges but Board cannot act on (1) charges under the L. M. R. A. 1947 unless alleged practice is also "unfair under administration bill" and (2) charges under Wagner Act if filed after January 1, 1949.

Under the L. M. R. A. 1947, the main changes on this subject are that while unfair labor practice charges are to be conducted as in the past, there is now a 6-month period of limitation on charges, giving some measure of protection in knowing that nothing that has occurred more than 6 months in the past can be considered as an unfair labor practice. A change was made in the test of the Board's findings of fact. Under the old act, they were conclusive if supported by evidence, which created a rather uncertain and ambiguous situation. Now the Board's findings of facts are conclusive only if supported by substantial evidence, and the rules of evidence applicable in Federal district courts govern Board's hearings, which gives both management and labor a definite basis from which to work.

GENERAL

The comments made on the above changes are my own opinions, based upon the experience of observing the application of those changes to the sets of circumstances that surround management-labor relationships. It is my opinion that such changes are sound, that they have improved relationships between labor and management, that they have resulted in less strife, fewer and shorter strikes and—most important—that some of the allegations of hardship made by unions cannot be upheld. This can be substantiated by the 100-page congressional report by the "watchdog committee." This committee was appointed to study the effects of the Labor-Management Relations Act which strongly upholds the position that unions have not suffered as a result of the act. Further, it is our belief, that with the free speech provision, allowing management to express its views prior to a representation election, management feels that it has had an opportunity to present its side of the picture without being hampered by the penalties under the old law. Consequently, when management loses an election under the Labor-Management Relations Act, their attitude in the bargaining is much better than if they were forced to enter into bargaining with the feeling that they didn't have half a chance to get their side of the story across. Within our experience it has caused better relationships, has decreased the tempo of the bargaining table bickering which accomplished little and accompanied many transactions under the Wagner Act.

[Telegram]

Bellingham, Wash., 3.

George J. Tichy,
Spokane, Wash.:

You may inform Senate and House Labor Committees that this group of 50 logging-industry employers in northwestern Washington are profoundly disturbed over proposed emasculation of Taft-Hartley Act. Most notable result to date in this area has been the stabilizing influence on both employers and employees, with a corresponding increase in operating efficiency and employee productivity. With approximately 3,000 employees involved, the year 1948 was completely free from work stoppages with exception of one small operation where 1 day was lost. In preceding years some type of wildcat strike or job action was occurring every few days. The restraining influence of the law has compelled the union leadership to abandon previous disruptive tactics and policies and return to fundamental collective-bargaining principles. Reports from the field clearly indicate that if the truth were known, the preponderant majority of rank-and-file union members in our section of the industry are privately pleased with the end result of 2 years under Taft-Hartley. We sincerely hope that the Senate and House committees will avoid hasty and ill-considered action in repealing this law.

R. I. Studebaker,
Secretary-Manager, Tri-County Loggers Association, Bellingham, Wash.

Statement of Charles S. Hoffman on Behalf of Oregon Coast Operators

I will briefly summarize some of our experiences which illustrate effects of the Labor-Management Relations Act of 1947 upon industrial relations within the lumber industry of southwestern Oregon.

In section 2 (3) the definition of "employee," specifically exempting "any individual having the status of an independent contractor," ended what had been a continuing dispute between the IWA-CIO and logging operators in this area. Prior to passage of the act the representative of IWA local 7–140 had repeatedly asserted that all contractors and their employees automatically come under the terms of the working agreement covering employees of the company which had granted a contract for logging operations. These claims were made by the union at various times for various contractors carrying on logging activities for E. K. Wood Lumber Co., Gardiner Lumber Co., and Cape Arago Lumber Co. We agreed with the union on any case where the contractor was not independent or where the contractor consisted of piece workers such as a cutting crew. In certain cases, independent contractors were forced to accede to the union's claims and recognize the union in order to avoid strikes which had been threatened. The L. M. R. A. has given support to the principle that an independent contractor is an employer in his own right and that any union agreement can only be negotiated between him and his own employees.

The exclusion in the same section, paragraph (3) of "any individual employed as a supervisor" has helped the employer keep its management representatives out from under union control. Before passage of the act both the AFL and the CIO, but particularly the CIO, tried to force working supervisors into the union. Likewise we have experienced cases at Gardiner Lumber Co. and at Cape Arago Lumber Co., where former union employees were promoted to supervisory positions in the logging departments and were refused withdrawal cards by IWA local 7–140. Although the provision of the act has not eliminated union pressure on this point it has reduced this pressure and strengthened the position of the operators and also the position of the supervisory employee himself who knows that he cannot represent both management and the union.

The specific definition of "supervisor" in paragraph (11) of section 2 has been a major help to management and to supervisory employees involved by reducing the endless argument and dispute as to what constitutes a supervisor. The number of grievances arising under this point has been considerably decreased since passage of the act.

The provision of section 8, paragraph (a) (3) providing for union shop elections has been helpful mainly in restricting undemocratic powers of union officials who have not qualified under the act. This particularly applies to the Reedsport area of IWA local 7–140 where the union is not qualified and where the check-off provision coupled with heavy fines or the threat of heavy fines maintained a pseudo-dictatorship over the employees. With the union shop outlawed by noncompliance with the act, the employees have less fear of being blackballed from the industry by action of the union. For example, the local has threatened a fine of $100 for any member who works on Saturday at straight time, even though the contract expressly provides overtime only if it is the employee's sixth day worked.

In this area outside of the jurisdiction of IWA 7–140, both AFL and IWA locals have complied with the act. The employers feel that UA election with such locals is probably wasted effort and only a halfway measure. They would either eliminate the provision for the election or restrict union shop and maintenance of membership along with the closed shop.

Section 8 (b) describing unfair labor practices for labor organizations has done more than any other factor to increase union responsibility as shown by closer observation of contractual provisions and a reluctance to yell "strike" every time they see something they want changed. The result has been more serious negotiation in place of numerous quickie strikes and threats of strikes.

We would like to see paragraph 8 (b) (6) expanded or clarified to include a restraint upon union demands claiming pay for unworked make-ready time which is quite prevalent under IWA local 7–116 and 1–140. The unfair principal involved in featherbedding applies equally to the situation just mentioned.

Section 9 providing for representation elections has reduced the number of strikes and threats of strikes over representation where only one union was involved. Prior to passage of the act many operators faced with a strike threat capitulated by recognizing the union making the claim. In a specific instance since passage of the act, IWA 7–140 made such claims upon a new operation established by the Reedsport Logging Co., and threatened to strike unless immediate recognition was granted. The employer offered to determine the issue by an NLRB election and so informed his employees. The union is not in compliance with the act and could not request an election. The employees showed no signs of dissatisfaction with working conditions and continued working without a strike and its resulting economic loss.

Contrast the case discussed in the preceding paragraph with our experience in July 1946 involving a dispute between IWA local 7–394 and the Powers Mill Co., at Powers, Oreg. The union presented the company with a proposed contract and was told to sign it or there would be a strike. The company questioned whether the union actually represented a majority of its employees. The company was given only 3 or 4 days' time in which to sign the agreement proposed by the union. The company refused to sign the agreement and the mill was struck. Either shortly before or shortly after the strike, the president of IWA district 7 offered a card check but could show only 6 member cards out of a crew of 20. Because of the exceedingly prounion nature of the proposed working agreement the company requested assistance from the association and a counter proposal was drawn and submitted to a committee representing the union. The company was not in a financial position to maintain a refusal to recognize the union, so negotiations were conducted while the mill was being struck. The union was recognized as the bargaining agent and a contract was agreed upon, after which work was resumed. The strike lasted approximately 2 to 3 weeks. This type of situation can be avoided under the L. M. R. A. but will most certainly exist again if we return to the prounion principles of the Wagner Act under which an employer could not request an election to determine if the union had majority representation.

In this area, the non-Communist affidavit requirement has largely accounted for dismissal by the IWA of one local business agent, one district secretary, and one district president. These men refused to sign the affidavit and they no longer hold office. The booklet titled "Meet the Woodworkers," recently published by the IWA-CIO has this to say on page 13 about Communists in CIO unions: "* * * the Taft-Hartley Act has certainly cleared that issue up as far as our organization is concerned. All of the international officers, many of the district officers, and a great majority of our local union officers have signed non-Communist affidavits." If it is felt that discrimination results from requiring only union representatives to sign a non-Communist affidavit I can speak for our members and for myself in saying there would be no objection to my signing such an affidavit.

The provision involving secondary boycott is being tested now in a case before the NLRB in Washington involving picketing first of the *Rolando*, then of the Irwin-Lyons Lumber Co. mill and their logging operations, and since early in December picketing only of the *Rolando* at the company dock in North Bend, Oreg. This picketing was and is conducted by the International Longshoremen's and Warehousemen's Union, by the Marine Cooks and Stewards, and by the Marine Firemen, Oilers, and Wipers. The mill employees, the majority of whom were members of the LSW–AFL did not or could not pass the picket line. The logging crews, represented by the IWA-CIO likewise did not work. The present case before the NLRB will depend upon provisions of the L. M. R. A. for protection to the Irwin-Lyons Lumber Co. and to the AFL crews of the *Rolando*. A reversal to the Wagner Act would leave no solution for such a dispute beyond wasteful economic force.

STATEMENT OF C. L. IRVING, SECRETARY-MANAGER, PINE INDUSTRIAL RELATIONS COMMITTEE, INC.

The language contained in section 1 (a) and (b) has done much to dispel the fallacious theory that "labor" and "labor organizations (unions)" are synonymous terms. We have noted that "labor" (employees) have been more insistent on their individual rights.

Recognizing the public stake in the problem by writing it into the law has awakened public interest and satisfaction in local communities.

The language in the short title and declaration of policy is useful. Like the preamble to a labor agreement, it might be called "hay." "Hay" is, however, a very necessary declaration of intention in both instances.

"Labor" and "union" are not synonymous terms any more than "employers" and "associations" are synonymous terms. They can become synonymous in practice only through the application of the theory that the rank and file, in both instances, determines policy and issues the instructions to the hired men with due regard for their informed opinion. A reverse theory should be discouraged in a democracy, and has been discouraged by this law.

The public, which has been paying and paying for industrial-relations warfare, is entitled to the consideration it receives.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT (WAGNER ACT)

Findings and policies.—The general knowledge that unions are recognized to have certain obligations in the sphere of collective bargaining has had a stabilizing influence.

In the Labor-Management Relations Act, for the first time, legislators have spelled out the responsibilities of unions and employers to the American public. The public, as represented by Americans not affiliated with either employers or unions, likes this recognition.

The further declaration of intention is good.

Definitions.—Except as specifically commented on below, our experience would indicate the definitions have met with general approval.

They are good definitions.

The exclusion of supervisors from the definition of the word "employee" did not bring serious problems to our section of the lumbering industry. We have never had a move to organize supervisors into unions, and neither union particularly wanted them in with their rank and file union. "Working foremen" have always been a problem, and will always be a problem, so long as unions contend that supervisors shall do no work, and so long as efficiency of operation, with a view to a lower-priced product for the public, demands productive work on the part of this type of man.

Supervisors should be left excluded from the employee definition. They are a part of management, and should be so recognized. Supervisors cannot be recognized as part of management if they are to be set up in unions in opposition to management. Any unrealistic and unhealthy realinement that divorces supervision from management will mean the buying public will pay higher prices because of higher costs.

Since our direct experience under the Labor-Management Relations Act has been entirely for employers in logging and lumbering, there has been no question but that they were engaged in the production of goods for interstate commerce.

"Commerce" that is interstate in character should be more narrowly defined. Interpretations placed upon the coverage of the Labor-Management Relations Act, 1947, have been too broad, with the Federal law assuming too much jurisdiction and leaving too little to State law. The States should be expected to assume responsibility for intrastate business.

Most of the definitions have been built up through a long history of cases before the NLRB under the Wagner Act. It is most helpful to have them in the law, and in one place, where they can readily be found.

National Labor Relations Board.—Expansion of the Board from three to five members, and the provision for three member panels, together with a separation of duties by creation of the office of general counsel, has been most successful from the standpoint of getting the work done. The National Labor Relations Board has been able to accomplish a prodigious amount of work, and good work, since the effective date of the Labor Management Relations Act, 1947.

A new note of equality before this governmental agency has been injected into proceedings before the Board. Employers and employer representatives have more confidence in the Board. There has been no union criticism of the Board set-up, although there has been criticism of the general counsel by union leaders and union attorneys.

A separation of "policing" and "prosecution" functions from "judicial" functions is necessary to impartial administration.

Rights of employees.—We have noted mare recognition by unions of individual and minority rights.

It is the history of civilization that individual dignity, freedom, and initiative in thinking and action builds up and sustains a high "average" in welfare and progress. A reverse process of building on an "average" has never been sustained because of the loss of individual rights and incentives. The rights of individuals and minorities should be afforded all possible protection.

Unfair labor practices.—Not one unfair labor practice charge has been filed against an employer member of this organization since the enactment of the Labor-Management Relations Act, 1947, and only one was filed during several years prior to its enactment. No illegal contracts have been signed under the union membership restrictions, nor have there been any strikes to compel the signing of such contracts. The number of union-shop contracts has increased. So have material benefits in wages. Prior to the enactment of the Labor-Management Relations Act, 1947, only 35 percent of our International Woodworkers of America, CIO, contracts contained union membership requirements so restrictive as a union shop. This union now has only one contract among our members that does not contain a union-shop provision.

The unions have lost a few union-shop elections. This has tended to keep them on their toes regarding individual service to individual employees. There is more respect for individual integrity.

The objection of employees to compulsory union membership has been partially removed by the clearing up of the situations under which an employee can lose his job. I refer to the fact that membership must be available to the employee on the same terms and conditions as generally applicable to other employees, and that his obligations are met by the willingness to pay initiation fees and dues uniformly required as a condition of acquiring or retaining membership.

In addition, employees have recognized that the right to petition for decertification provides them with a return road if return seems advisable. No longer is compulsory union membership a road of no return. (Union leaders have long argued that union membership is a lifetime obligation. Resignation is not recognized.)

In viewing the overwhelming results of UA elections by which unions are authorized to seek union shops, the casual observer fails to realize that the Labor-Management Relations Act, 1947, did its job by "cleaning up" the reasons for which a union could request discharge. Employees have no objection to paying their freight. Employees do not, in general, approve of closed shops or closed unions, and they realize that union-controlled hiring is most susceptible to discrimination. They appreciate their right, guaranteed by the Labor-Management Relations Act. to petition for the chance to unload an unsatisfactory union, or its compulsory membership requirements. Their objections were to the many internal control abuses inflicted upon them by unions that were ignoring or trampling rough shod over the rights of individuals and minorities.

It is significant to note that the only industries who have suffered real trouble as the result of the prohibition of the closed-shop contract have been the printing industries, the maritime industries, and the building-trades industries. It is even more significant to note that it is in these industries that the public has paid the highest price for one-sided bargaining because of overwhelming strength on the side of the unions. Employers in these industries almost had to cease doing battle for their customers, and have almost uniformly ceased to do so. The American maritime industry was nearly eliminated from peacetime shipping competition by the high costs of shipbuilding, loading, and operation. Prohibitive labor costs in the building-trades industries through wages, practices, and union employment controls, have been the greatest single factor in putting the price of homes beyond the reach of most Americans. A subsidization program now seems necessary to some people, when in fact subsidization will only cement the errors into permanency. In the printing industries, the public has been denied its rightful share of the benefits derived from the vast amount of technological improvement.

I favor the continued prohibition of the closed shop for the reasons outlined above. The provisions for compulsory UA elections might very well be eliminated where there is agreement on compulsory union membership after a 30-day period. The rights of the employees to petition to have the union-shop authority of the union denied or removed from the contract should be preserved because it is the best safeguard against uncontrolled union leadership and rampant majority domination.

Always giving consideration to this right of self-assertion by the employees—who are the ones most affected by a compulsory union membership provision—the contracting parties, that is, employer and union, should be given the right to make such a contract if they so desire.

The employee right to petition for decertification of the union, or withdrawal of the right to include a union shop provision, removes a cause of misunderstanding between employers and employees, and employers and unions. Under the Wagner Act, employees dissatisfied with union conditions would approach the employer with their problems. He had only two recourses in handling the problem: 1. advise them he had no interest in their problem, or (2) refuse to bargain with the union, and risk an unfair labor practice charge. Under the the Labor-Management Relations Act, he can refer them to the NLRB, and a cause for friction has been removed.

Union unfair labor practices.—No employer in our membership has filed an unfair labor practice charge against a union.

Twelve years of experience under the Wagner Act taught all of us that unions can and do commit unfair labor practices, and that such unfair practices should be defined and prohibited. Most of the unfair practices outlined in the act for unions are also unfair when committed by employers. This is equality in the eyes of the law and is as it should be. There can be no legitimate defense of secondary boycotts, hot cargo, jurisdictional strikes in the fact of certifications by the National Labor Relations Board, excessive initiation fees and dues, featherbedding, or any other form of coercion or intimidation. Whatever antimonopoly rules are applied against employers—no more, no less—should be applied against unions.

The public approves the conduct of industrial relations on a businesslike, rather than on emotional basis.

Forcing self-employers in one-man business, or "mom and pop" business, to join a union is simply tribute or "taxation without representation." There can be no services rendered to these people on wages, hours, and working conditions through representation by a labor organization.

Free speech.—Employers in this association have been exercising their free-speech rights since the Supreme Court clarified them several years ago despite the fact that the NLRB, under the Wagner Act, tried to deprive them of their constitutional rights. The Labor-Management Relations Act, 1947, provision merely writes the Supreme Court ruling into the law.

We have noted that employees expect and appreciate accurate information and the frank opinions of their employers.

Freedom of speech is guaranteed by our Constitution. There can be no quarrel with its written expression in a law laying down the rules for the prevention and handling of economic strife.

Obligations of employers and the representative of employees under collective bargaining.—There has been no difficulty in this area regarding the terms under which contracts may be terminated or modified.

Maybe these rules are not the best ones that can be found, and if better ones can be found we should get them. In the meantime, these rules have certainly been an improvement, and a protection to the public.

Representatives and elections.—For many years, we have insisted on NLRB certification of representation, after a secret-ballot election, before extending recognition to a union.

Requiring a secret-ballot election, conducted under governmental auspices, in a proven, democratic, and American process.

Our experiences, or my opinion, are not too pertinent as to the balance of this section. It outlines, more or less, instructions to the National Labor Relations Board. Consequently, comments below are to specific portions of the section.

Individual employees and their grievances.—We have noted that union representatives now pay more attention to the grievances of individuals and minorities. Most of these grievances are now settled at the immediate supervisor-workman level thus eliminating one of the most irritating aspects of day-to-day collective bargaining.

The provisions that collective-bargaining agreements shall be complied with in such grievance adjustments, and that the union shall have an opportunity to be represented in discussions, are sufficient guaranties to the unions.

Craft units.—Some craft unions affiliated with the American Federation of Labor, notably the operating engineers and the teamsters, have attempted to move into established industrial units. These efforts have been defeated, and have been opposed by the Lumber and Sawmill Workers, AFL, the International Woodworkers of America, CIO, and employers.

The National Labor Relations Board has usually done a good job on this question of unit determination. I can think of nothing that would be more disturbing to the economic atmosphere of this country than for every manufacturing employer to have to deal collectively with each of the craft units that could conceivably be set up in his organization. I once handled an NLRB case in California where the LSWU, AFL, and the IWA-CIO, sought industrial units among employees of a lumber manufacturing concern. The teamsters sought to represent logging truck drivers in woods operations and carrier operators in lumber plant operations, as well as all employees working in the loading or unloading of such equipment. In the same case, the operating engineers sought a unit composed of logging caterpillar operators, truck road construction crews, and hoisting engineers in the woods operation, together with the power plant employees and the operators of machines used in hoisting lumber in the plant operation. Neither of these two unions claimed any jurisdiction over the balance of the employees actually engaged in handling of logs and lumber. At the very best, the granting of their petitions would have meant three union contracts and three sets of collective bargaining negotiations for an employer with a labor force of 140 people.

To carry this craft business to its ridiculous extreme at this small operation, the machinists might have sought a unit composed of the machine shop and mechanical employees, the electricians for a small electrical crew, the carpenters and joiners for a few millwrights, the various brotherhoods in a small 10- or 15-man railroad operation and track crew, and the culinary alliance in the cookhouse. In addition there could have been a professional employees unit, a unit for guards, a supervisors unit, and a unit among clerical workers, and I am sure I've missed a few.

I wish to repeat the comment that, both under the Wagner Act and the Labor Management Relations Act, 1947, the National Labor Relations Board has by and large, done a good job on unit determination. The special protection to craft units, if interpreted narrowly, is dangerous, and a constant source of irritation between unions as well as employers and unions.

We have dealt and deal with craft unions, and successfully, in special circumstances usually of a temporary nature. Their former "take it or leave it" attitude has been succeeded by an attitude of reasonable argument and negotiation under the Labor-Management Relations Act, 1947.

Guards.—Guards and watchmen in the Pine Industrial Relations Committee, Inc., area have been excluded from contract coverage. A better job of plant and property protection has been secured thereby.

When watchmen used to be in a unit with production workers, they often looked to union strike leaders for instructions in strike situations because of their fear of retribution through the union, and with consequent loss in efficiency of protection.

Divided loyalty can only be harmful to this type of employee, and to the results of his work.

Twelve-month periods between elections.—Prior to the passage of the Labor-Management Relations Act, 1947, some of our member companies have experienced three or four elections within a 3 or 4-month period. Obviously, the union can lose two or three elections and then win another one through the sheer force of repetitive voting. The employees, even though they may not desire a union, get disgusted, and believe that government is aligned with unions against them.

Since the enactment of the new law, we have noted that unions apply for elections only after they have done a thorough selling job in organization. When the union does this job well, they are strong unions because of member understanding and participation. Our employers prefer to deal with that kind of strong union.

Unions should be required to sell their product or service just as any other product or service is sold. Employers, and their employees, have a right to expect freedom from organizing pressures for a reasonable period of time after the employees have expressed themselves on the subject in fairly conducted, secret ballot elections.

An exception might be made when unions fail to exercise the bargaining rights they have won.

Filing of union records and financial statements.—This provision has no effect on collective bargaining between employers and employee representatives.

This requirement of the law should be retained. Union members, especially, are appreciative of the information it gets them concerning the financial manipulations of their officers.

Non-Communist affidavit.—There are very few Communists among the members of either union in the Pine Industrial elations Committee, Inc., area.

One of the two unions with which we deal has had this problem to combat in other areas in the West. The requirement for non-Communist affidavits has enabled them to make progress in cleaning up their problem. I know it will be argued by those prejudiced against this requirement that they would have cleaned out the Communists anyhow. It is interesting to note that the job was not done until passage of the Labor-Management Relations Act, 1947. One of this union's booklets to their members, in commenting on the subject of rumors that its union is run by Communists, says, "Furthermore the Taft-Hartley Act has certainly cleared that issue up as far as our organization is concerned."

There are suggestions that employer representatives should be required to sign the affidavits on the same terms as union representatives. I have no quarrel with this proposal. The Communist and his ilk, including fellow travelers, must be brought out in the open where they can be smelled.

In my opinion, there is only one valid reason for refusing to sign a non-Communist affidavit in order to secure the benefits of democratic laws. A Communist should refuse to sign the affidavit.

Prevention of unfair labor practices.—This section of the law is largely technical, and can be better commented on by a legally trained administrator. Generally peaking, if enforcement injunctions are to be used against employers, they should be used against unions.

The decentralization theory, accomplished by conceding jurisdiction to recognized and consistent state agencies, should be retained. Democracy cannot be retained through centralization. Recognition of State jurisdiction can help solve the border line commerce problem.

The statute of limitations in the filing of unfair labor practices and the requirement that evidence substantiating the charge shall be submitted within 10 days of the charge are good rules to keep. In the past misleading charges were filed for the advertising value they contained in organizing employees, and with no idea of actual processing. The NLRB's records, under the Wagner Act, show unfair labor practice charges being brought years after the alleged acts were supposed to have taken place.

The Labor Management Relations Act, 1947, has eliminated the use of the NLRB, and the unfair labor practice charge, for organizational publicity purposes only. This furthers the equalization theory, and prevents a form of blackmail.

Technical commentators on this section should always bear in mind the inalienable right of an American citizen—whether he be an employee, an employee representative, or an employer—to seek and secure justice through the courts.

Investigatory powers.—These are technical provisions.

Limitations.—We've had no strikes since the new law became effective.

The right to strike should be protected so far as it is consistent with public welfare, but strikes should be approved by involved employees in secret ballot election.

Supervisors should be excluded from the definition of "employee." (See comment under "definitions" above).

The right of States to consider local conditions, and the desires of its citizens to enact more restrictive provisions regarding compulsory union membership should be recognized and vigorously defended. In a country as vast as is our country, with the varying conditions in various areas, there is every reason for decentralization of control.

Along this line, Supreme Court comment in the decision upholding North Carolina, Nebraska, and Arizona right-to-work laws is necessary reading not only as to the validation of State laws restricting compulsory union membership, but as to whether unions really need this form of security.

Effective date of certain changes.—I can't help remarking that a revised law will make it necessary to meet time requirements all over again even though these time requirements have been met. I am reminded that a great deal of constructive inquiry and work toward a better solution of difficulties between labor organizations and employers will have been wasted. Learning a new set of rules, all over again, will not be conducive to economic peace in our nation, and we need that peace if we are to achieve our aim of leadership in securing world peace.

More than anything else, our employers and employees need stability. They like to be able to figure ahead. Everytime the laws governing industrial relations procedure are changed, there is the need to consult lawyers, accountants, etc. These changes and consultations do not make for stability.

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

Employers have been gradually gaining confidence in the Federal Mediation and Conciliation Service because of its independent agency status. Conciliators in the old days, under the Department of Labor, were viewed by employers in this industry as simply Government-paid representatives of the unions. Commissioners of the service were generally tolerated, but seldom usefully used. Today, employers are accepting arguments that the Service is impartial.

Employers will not have confidence in any mediation or conciliation agency that is under the direction of the Secretary of Labor, or in the Labor Department. They take the enabling act creating the Department of Labor literally, as they well should, and expect it to follow that dictate as labor's representative in the administrative branch of the Federal Government.

National labor-management panel.—We have had no direct experience with this body.

This panel has been of considerable value to the Mediation and Conciliation Service in setting up their activities. It can continue to be useful. The public likes the idea of a bureau seeking the advice of citizens.

National emergencies.—Since we have had no strikes, there has been no opportunity of declaring us a national emergency. This is a small-business industry. In our association, the average member company employs approximately 150 employees.

President Truman has made pretty good use of this provision in the Labor-Management Relations Act, 1947. Perhaps it can be improved upon, since it has little effect on law defiant unions. If there are ways to secure these improvements, they should be used. Fact-finding recommendations might be helpful before the jury of public opinion.

It is certain that neither unions nor employers have a complete right to go their own way in their desire to accomplish some of their aims, if that be at the expense of the great American public. The Federal Government of the United States will always have a hard time justifying a proemployer position, or a prounion position. They should never have any trouble in justifying a pro-American public position.

TITLE III—SUITS BY AND AGAINST LABOR ORGANIZATIONS

None of the members of this association have been sued by a labor organization. Neither has one of the members filed suit against a labor organization.

The right to redress through the courts has been a powerful and stabilizing influence on every matter connected with the history and development of America. There should be the right of redress to the courts, either by a labor organization, employees, or an employer, when damage results from breach of contract or any illegal action. This right to redress through the courts should especially be open to third parties.

This particular provision of the Labor-Management Relations Act, 1947, has had more to do with the acceptance of contractual obligations and responsibility by unions and their agents, as well as their members, than has any other single thing. Employers, too, have been brought alive to the fact of their responsibilities and their obligations. The American public can only benefit from such acceptance of responsibility.

Voluntary, revocable check-off.—Our dues check-off provisions have always been voluntary and revocable. We have had no automatic check-offs.

We have no health and welfare programs in the John L. Lewis sense. There are many group insurance and hospital programs that have come into the picture through voluntary, cooperative action on the part of employers and emplolyees.

Fines should be prohibited as withholding items. I see no objection to collecting initiation fees, as well as regular recurring monthly dues through the medium of a voluntary revocable, individual check-off, if the contracting parties agree to that procedure.

As to health and welfare funds through the medium of collective bargaining, I want to issue a warning. The trend of interpreting the phrase "wages, hours, and working conditions" as including everything under the sun is dangerous. It will eventually break down the collective-bargaining process, and make it necessary to go to complete governmental regulation. The back of the collective bargaining process will be broken by simply carrying too much weight. Unless we want collective bargaining failure, we had better not permit the expansion of the commonly recognized definition of the terms. Actual wage rates, hours of work actualy performed, and the job conditions under which work is performed during these hours of work for that rate of pay is about as far as collective bargaining can function and remain as one of our successful democratic processes for the settlement of labor disputes.

Boycotts and other unlawful combinations.—We have experienced no boycotts or other unlawful combinations within our membership since the passage of the Labor Management Relations Act, 1947.

That kind of experience is good for all of us. If the language of the prohibitions needs clarifications, it should be made more definite. There is no place in the American scheme of things for coercion or intimidation by any means or by any persons or organizations. Secondary boycotts, jurisdictional disputes, hot cargo, etc., offends the public.

Restrictions on political contributions.—However this thing cuts, it should cut both ways when applied to either corporations or unions.

It is to be hoped no labor-bossed political machine can develop. Because such a political machine would be national in scope, it would be more dangerous to the common welfare than have been localized political machines.

Strikes by government employees.—A study of the events in some of the western European countries with whom we have been trying to live—and work for—during the past 2 or 3 years should be sufficient evidence that strikes against the Government should be outlawed.

TITLE IV—CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

This joint committee can be a powerful force in avoiding the mistakes of the Wagner Act. The biggest mistake under the Wagner Act was letting it go so long without amendment. The joint committee, properly functioning, can help avoid repetition of that mistake by recommending preventive minor operations. The Labor-Management Relations Act, 1947, ran into trouble because it had to be a major operation in order to cure a deep-seated ailment.

The public likes this businesslike approach to legislation.

TITLE V—DEFINITIONS

See our comment on title I, above, regarding "industry affecting commerce" and the dangers in broad interpretation of this term.

Saving provision.—Although turnover rates have decreased, when compared to the preceding four or five war years under the old Wagner Act, they have decreased because of economic and social conditions, not the new law.

The right of any employee to quit his employment should be protected. It has not been damaged by the Labor-Management Relations Act, 1947.

Separability.—This seems to be good legislative draftsmanship.

Statement of C. L. Irving Before the Senate Committee on Labor and Public Welfare, February 17, 1949

My name is C. L. Irving. I am secretary-manager of the Pine Industrial Relations Committee, an employers' industrial relations association. We serve lumbering employers in the western pine lumbering area of central and southern Oregon, and northern California, from a headquarters office in Klamath Falls, Oreg. I am appearing here on behalf of the National Lumber Manufacturers Association, an organization composed of 15 regional lumber manufacturing associations throughout the United States.

Industrial relations has been my business life since 1935, the year the Wagner Act was enacted. Until 1942, I was in charge of personnel work, labor relations, and public relations for one of the lumber companies. In 1942, I helped the Pine Industrial Relations Committee get started, and I've been its operating head for the past 5 years.

A Federal labor law, to be effective in promoting the national welfare, must contain several essential features. It is no longer sufficient to lay down vague rules and generalizations for the guidance of parties to collective bargaining, or of Government administrative agencies regulating collective bargaining.

Years of operation under a labor law now generally conceded to be insufficient, the Wagner Act, have taught industrial relations men that neither employers nor unions should be the prime beneficiaries of the law. Rather, the law should be aimed toward protection of the consuming public, and employee citizens.

1. The rights of the consuming public should be recognized in any law governing employer-employee relations. The Government is the logical representative of that public. It should intervene in work stoppages affecting the national health and welfare, and our national labor law should outline a procedure for so doing.

2. The rights of individual citizens must be recognized, and vigorously defended. In our western lumbering industries, employers are individualistic, employees are individualistic, and the representatives each of them selects are individualistic. This characteristic of people is developed by the nature of the problems and the work. No effort to cast them in the same mold, by compulsion, even though countenanced by the law, has contributed to their happiness or well-being.

3. There should be equality for employer and employee representatives in the eyes of the law, and before the governmental agencies charged with enforcing the law or assisting the parties.

4. The rights of States to be interested in the problem should be recognized, and that interest should be encouraged. The desires of their citizens to regulate according to the more localized needs should supersede Federal law, and not be wiped out by Federal law, in the absence of proof of need in the national interest.

5. Rules for guidance must be enunciated within the framework of the law, and provision made for enforcement of those rules. The rules, or the enforcement, cannot be successful unless there is fairness and impartiality toward both parties. In this respect, the right of redress through the courts, both in enforcement and for loss-recovery purposes, should be outlined as to procedure, and afforded to the parties in industrial relations, as it is to all citizens. This is especially true as to contractual obligations. Industrial relations, as to employer, employee, or employee representative, should be expected to operate on sound business principles. The time for emotionalism is past, and the emotional approach has been too costly to our country in terms of strikes, and loss of productivity and financial return in wages and profits.

6. A labor law should be definite and clear. The Congress should enact a complete law, not one to be developed by administrative action or court interpretation. Codification of rules and findings developed under the Wagner Act, and from the deficiencies of that act, makes this now possible.

7. Finally, allowance should be made for legislative error in the light of experience, and arrangements made to promptly correct them as well as to provide a check on administrative actions to insure conformance with the intent of Congress.

It is my belief that the Labor Management Relations Act of 1947, is such a law as I have described. It should not be repealed. If amendments are found necessary or desirable they should be made in the public interest, not in the interest of any particular segment of our economy.

Comments by Walter A. Durham, Jr., of the Lumbermen's Industrial Relations Committee on the Major Provisions of the Thomas-Lesinski Bill (S. 249 and H. R. 1395) as Originally Proposed

Title I.—Amendment of National Labor Relations Act:

Section 1 would remove references to union abuses of the public interest and not only glosses over the truth but implies that employers are the only group of citizens who have obstructed commerce.

Section 2 would remove the exemption granted to supervisors and professional persons under the L. M. R. A. and would open the road again to encroachment of management prerogatives. To subject supervisors once more to divided loyalties will not only impede productive efficiency but will destroy good relationships—particularly with foremen of logging camps—built up during the past year.

Section 3 removes the independent office of the general counsel and again would place the Board in the role of prosecutor and judge—a procedure foreign to American ideals of fair play and justice.

Section 7 would remove the protection accorded to citizens to join or not to join a labor organization as they individually see fit.

Section 8 would remove all references to unfair labor practices by unions, and will surely reverse the trend toward union responsibility that we have seen in the lumber-industry negotiations during 1948.

Section 9 (a) would remove the clarification of the right of an individual employee to present grievances individually to his employer without intervention of the union.

Section 9 (b) would determine the appropriate bargaining unit only in the light of the full benefit to employee organization and with no regard to employer views or even to practical operating requirements in the industry. Further extension of craft unionism and jurisdictional strife can only result from such a one-sided and unrealistic determination of bargaining units by the Board.

Section 9 (c) would remove the right of employees to challenge the continued existence of a labor organization by appropriate petitions to the Board, and will put the public at the mercy of labor-dynasties which have perpetuated themselves without regard to views of their membership. The employer likewise would be prevented by the proposed bills from seeking a determination of a representation question. This is an especially important question in the lumber industries, where at least one of the two equally powerful AFL and CIO woods unions has declared war on the other until jurisdictional victory is complete. Some employers have a CIO woods union and an AFL mill union, all getting along fairly well under the present law.

Section 9 (e) would eliminate the requirement for a union shop election, which has been considered of dubious value as a mandatory feature of the

L. M. R. A. It would be better to retain the election machinery if a certain percentage of the employees desired to avail themselves of an election to assist them either in gaining or in removing a union-shop clause. In the lumber industries, the unions have used elections in the "easy" cases where some form of compulsory membership previously existed prior to the passage of the L. M. R. A.

Section 9 (e) also would drop the provision that in a representation election, employees on strike but not entitled to reinstatement could not vote. During the relative harmony in lumber labor-management relations of the past year, there has been little occasion to test this provision. It would avoid the packing of ballots by professional strikers and should, as the shipping industry of the west coast has learned, prevent some of the wanton violence to life and property which has occasionally accompanied recognition strikes in the past.

Section 9 (f) would eliminate the requirement that financial statements be filed by any union prior to availing itself of Board services. This requirement has done much to assist lumber unions in an honest attempt to show their accomplishments to the unions. It is a sign of maturity and responsibility which many of the union leaders of my acquaintance would like to see retained.

Section 9 (h) would remove the requirement that non-Communist affidavits be filed before a union can use the services of the Board. The international scene as well as the domestic drift toward a collectivist "welfare" government makes imperative the retention of this safeguard, which I believe should be extended to employers. The CIO International Woodworkers, after fighting a successful battle to rid themselves of certain left-wing officers in the Pacific Northwest, prints the statement that "Furthermore, the Taft-Hartley Act has certainly cleared that issue up as far as our organization is concerned."

Section 10 (a) would clip the powers of the Board in preventing unfair labor practices by removing its right to action in the Federal courts, and will permit the Board to take action only in those cases it may be pleased to consider. Court procedure has been successful in eliminating a particularly obnoxious secondary boycott involving a western Washington sawmill which had continued for months prior to the passage of the L. M. R. A.

Section 13 would appear to restore an unlimited right to strike, particularly when coupled with the fact that the new section 8 defines not a single unfair labor practice of unions.

Title II is omitted in the proposed bill, which will make possible the return of the Conciliation Service to the United States Department of Labor. During the past year the Federal Mediation and Conciliation Service has done much to establish itself as a true independent public agency, and the employees I have met in the agency have appreciated the new air of impartiality which was impossible in a department charged specifically with the duty of furthering the interests of labor.

Title III is also omitted, which would lift suits by and against labor organizations. It is my observation that the new law has made for more dignity and responsibility in the conduct of both employers and unions in their bargaining relationships, and it would be a distinct loss to the public to tempt one side back to the era of irresponsibility. It is extremely unfortunate that the new bill proposes to remove the restrictions upon contributions by groups, banks, or labor organizations in connection with Federal elections. Our whole system of government is based on the expression of individuals, not of citizens in the mass without regard to the rights of minorities in the group.

Title IV of the present law provides for a joint committee to study "basic problems affecting friendly labor relations and productivity." Loss of this feature in the proposed bill will remove an orderly and proper method for the Congress to continue the study of its own labor law. My friends in legal and college circles have great admiration for the quality of the two reports issued by the present joint committee.

In closing, I most strongly urge that any form of compulsory union membership be limited to the payment or offer of payment of regular monthly dues. The harsh requirement that a citizen must keep membership in any organization "in good standing" is not in keeping with American traditions of individual dignity and freedom. I do not approve of compulsory membership in any association for any purpose, but if we are to have it under the new labor law, let's have it in a form which does not seal the lips of an employee who would stand in fear of labor dictatorship if compulsory membership is not prescribed to mean payment or offer of payment of regular monthly membership dues.

Finally, in my conversations and radio debates with labor union officials and attorneys, they have failed to offer a single constructive suggestion for amending the Labor-Management Relations Act, except that the non-Communist affidavit requirement be extended to employers.

Mr. BAILEY. At this time the committee would be glad to hear from Congressman Lucas of Texas introducing one of his fellow Texans, who was scheduled to appear here this morning, a gentleman by the name of Charles Brooks.

Mr. LUCAS. I appreciate the opportunity of introducing Mr. Brooks. I had the pleasure of going to school with him down in Texas, and I observed his attention and knowledge in the labor field.

Mr. Brooks, in 1933 or 1934, as a member of the National Labor Relations Board, was one of the administrators of the Wagner Act, and then after his service in the Army during the war, he came back, and because of his knowledge in the field he was selected as first assistant to Mr. Denham, and today, I understand, he is going to talk about the administration of both the Wagner Act and of the Taft-Hartley Act, so that you members of the committee may understand the difficulties which arose under both acts.

Since October of 1948 Mr. Brooks has been with the Texas Co., but I understand he does not wish to appear here as a witness representing the Texas Co., but he is to testify only as to his administration under both of the labor acts which have been upon the books.

I think I should say, and you all understand, I do not necessarily subscribe to what Mr. Brooks will state, but he is my friend, and I take pleasure in presenting him to you.

Mr. BAILEY. Thank you, Mr. Congressman.

You may proceed, Mr. Brooks.

TESTIMONY OF CHARLES M. BROOKS, ATTORNEY, FORMER MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Mr. BROOKS. Mr. Chairman and members of the committee, by way of introduction, from 1937 to August 1947, except for 3½ years' service in the Army, I served in various capacities as an attorney with the National Labor Relations Board under the Wagner Act. From August 1947 until October 15, 1948, I served as associate general counsel of the National Labor Relations Board under the Taft-Hartley Act. In the latter position I supervised the investigation and trial of cases before the Board and the administration and personnel of the Board's 28 field offices. Since October 18, 1948, I have been on the legal staff of the Texas Co., 135 East Forty-second Street, New York, specializing in labor law.

My purpose in appearing before this committee is to give my personal opinions based upon my experiences during the past 11 years, working under both the Wagner Act and the Taft-Hartley Act, in the hope that they may be of some help to you in writing a labor law. I shall try to be objective in my statements and in giving answers to any questions the members of the committee may ask, limiting myself to my experiences; and I can sincerely state that I have no ax to grind. What I say today will be my personal conclusions and does not necessarily reflect the view of the company with which I am associated.

Good labor relations: My experience in this field has taught me that good labor relations are not produced by law. They result, in my opinion, from fair treatment, recognition by each party of the rights of others, and mutual respect of the employer and employee representatives one for the other. By the nature of things today, however, a Federal labor-relations law seems to be necessary. It is the rule now instead of the exception that employers have contractual relations with their employees' chosen representatives. It is, therefore, important that an orderly procedure be available for the selection of the collective bargaining representative by the employees. Where two segments of our society, such as labor and management, are bargaining with each other on the conditions and circumstances under which they will associate with one another, rules of conduct should be established. That is the function of a modern-day labor-relations law.

1935 versus 1949: Those advocating a return to the Wagner Act must have lost sight of the fact that the relative strength of labor organizations and management associations is more nearly equal now than it was in 1935 when the Wagner Act was enacted. As Congress noted in section 1 of the Wagner Act, there was in 1935—

> inequality of bargaining power between employees. * * * and employers * * *—

because the former did not possess full freedom of organization while the latter did. That was true at the time it was written into the Wagner Act, and there were only approximately 4,000,000 members of labor unions then. Today there are more than 15,000,000.

Labor unions today are as strong economically and politically as the employers with whom they do business, and in some cases stronger. The evils which the Wagner Act was designed to correct do not exist today, with certain very rare exceptions. Congress found in 1947 that the new evils had arisen; namely, abuses by labor unions of the power and authority which they had gained during the preceding 12 years.

Equality under law: The 1949 version of a labor-relations law should, therefore, take into consideration the fact that equality rather than inequality of bargaining is approximated, and that rules of conduct must be designed to apply to both parties in the field of labor-management relations. The rights of both should be guaranteed; but each must assume his responsibilities.

Moreover, the strength of organizations and the prevalence of collective bargaining relations in our industrial society today means that if labor and management resort to their economic strengths to settle their disputes, a very large portion of the public itself feels the impact with adverse effects. So, it should be the concern of our Government that a labor-management relations law take into account the public, which is the innocent bystander, and incorporate protections for the public into the law.

Freedom from coercion: The individual employee should be guaranteed by law the right to organize for the purpose of collective bargaining. The employer should not be permitted to restrain or coerce the employee in the selection of his bargaining agent or to hinder him from engaging in concerted activity for his welfare. In like manner, labor unions should be prohibited from restraining and coercing employees in the exercise of their rights to refuse to participate in union activities. It is well known that labor unions do from time to time use coercive and intimidatory tactics to persuade employees against their wills to support a union.

It may be true, as some have said; that unions learned their coercive and intimidatory tactics from employers. I do know that in the early days of the administration of the Wagner Act there were numerous cases where employers used spies, thugs, strong-arm squads, and other such means to prevent union organization. I also know that after the passage of the Labor-Management Relations Act in 1947, the Board's offices had brought to their attention a number of cases where unions were using the same kind of tactics. I remember, for example, a case involving a small coal company in the State of Kentucky. The case was settled after a charge was filed, but the investigation prior to its settlement revealed that the United Mine Workers Union confiscated the employer's property, severely injured several persons who attempted to come on the property, and otherwise threatened the lives of any who interfered with the union's activities to obtain a closed-shop contract from the employer, although the employees were not members or adherents of that union.

I remember also the threats, intimidation, and coercion by the Furniture Workers Union against the employees of Smith Cabinet Manufacturing Co. (Smith Cabinet Mfg. Co., 23 L. R. R. M. 1424). Other such cases which I remember include the Sunset Twine & Line Company case (23 L. R. R. M. 1001), and the cases involving several West Virginia coal companies (23 L. R. R. M. 135).

These kinds of tactics are not typical of unions, of course, just an antiunion activities are not typical of employers. The point I am making, however, is that the law should protect the employees from these coercive tactics if they are used either by unions or by employers.

Requirement to bargain: Any labor law should retain the present requirement that employers bargain with the duly chosen representatives of his employees in the bargaining unit. By the same token, no one has told me nor have I read anywhere why the same requirement should not be exacted of unions. If a labor organization demands that an employer sign a contract with it on behalf of his employees, that employer should have a legal right to charge that union with an unfair labor practice of refusal to bargain if the union refuses to discuss the provisions of the contract. Prior to the enactment of the Taft-Hartley Act, the Labor Board had taken cognizance that there was such a thing as a union refusing to bargain, but there was no provision in the Wagner Act to require it to do so nor a remedy that the Board could invoke. The present requirement that unions must bargain in good faith should, in my opinion, be retained. We should not revert to the situation where a union can offer a contract on a "take this or take a strike" basis without the employer having a legal recourse.

While I was with the Labor Board under the Wagner Act, the rules with respect to the requirement of a company to bargain with its supervisory employees was changed three times. The problem presented by the anomalous status of supervisors was a constant source of difficulty in the administration of the Wagner Act. As the Board pointed out in the Maryland Drydock case:

> The very nature of a foreman's duties makes him an instrumentality of management in dealing with labor.

The Board also observed in that case:

> To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests.

We with the Board found ourselves telling management, "You violated the law because your foremen aided one union against another." Then the next week we had to tell the company to bargain with that same union on behalf of those foremen. It is my personal opinion that supervisory employees should be excluded from the operation of a Labor-Management Relations Act. An incongruous situation inevitably results if they must "fish" with the employer today and may commit a "foul" for him tomorrow.

Employers' petition: Under the Wagner Act the Labor Board rules provided that an employer could file a petition asking for an election only if two or more labor organizations were demanding representation for the same group of employees at the same time. I knew of several instances in my experience where a labor union demanded an employer to recognize it and sign a contract, but the union refused to file a petition seeking an election to prove its majority representation. It seems only fair to me that since there is available a means of proving, by the accepted American method of the election, that the union represents the employees, the employer should be permitted to ask for an election if the union refuses to do so. This provision in the Taft-Hartley Act to my knowledge has not operated unfavorably to unions and, as a matter of fact, under the Board's rules, the petition of the employer will be dismissed if at any time prior to the election the union withdraws its demand. It is clear, therefore, that there is no merit to the claim that his offers an employer a device to force an election upon a union at a time when it does not want it or is not ready for it. The only thing it does is to provide a means by which the employer can determine, in the orderly manner established by Congress, whether or not his employees want the union which is claiming recognition.

During my 14 months with the Board under the Taft-Hartley Act, it was my observation that this provision and the 1-year rule regarding repeat elections had a wholesome and stabilizing effect upon labor relations. The demands for recognition were made usually only after the union believed it was in a fair position to win an election.

Jurisdictional disputes: I have had some experience with jurisdictional dispute cases, but in nearly all of them the filing of the charge caused a settlement and the strike was ended. I cannot understand why a disruption of the flow of interstate commerce should ever be tolerated simply because each of the two unions is trying to force an employer to recognize it as the bargaining agent for his employees, or to assign work to it rather than another union. Labor unions have hailed the Wagner Act as their magna carta because it guarantees the right of an employee to join a union of his own choice. Why, then, should a union be permitted to force the employee to join a particular union? What choice has the employer when two unions close his plant because they are fighting over the jurisdiction of his employees? Isn't it only fair that he be permitted to ask his Government to stop the fighting until the dispute has been settled by orderly Government processes?

Moreover, to enjoin the strike only after an award has been made, as the present proposal would do, is like calling the doctor after the patient is dead. It is very little better than nothing because one of the unions will have won out or the employer will have taken bankruptcy long before the Labor Board will have rendered a decision. At the present rate that the Labor Board turns out decisions, it would be a minimum of 1 year, from the time that the charge was filed, the hearing held, the report sent to the Board, it is studied and analyzed by a member of the legal staff, or a Board member, and a decision issued.

It seems to me that once it has been determined that there is a jurisdictional dispute and that a complaint should issue, the enforcing agent should be authorized, not required, to seek an injunction pending disposition by the Board, if the gravity of the situation is such that an injunction is called for. And that is why I would advocate the discretionary injunction rather than the mandatory injunction.

Separation of functions in the Board: The general principle of the separation of the prosecuting and administrative functions from the judicial functions in the National Labor Relations Board should, I think, re retained. The Taft-Hartley Act, however, leaves much to be desired in that respect. The respective duties and authorities of the two branches should be clearly and unmistakably defined by law. If they are both in the same agency it should be only for housekeeping purposes, I think.

I served in four regional offices and in two different capacities in Washington under the Wagner Act when the three Board members constituted the administrative and prosecuting head of the agency. As I indicated, I served 14 months supervising field operations under the Taft-Hartley Act when the independent general counsel served as the prosecuting and administrative head of the agency.

On the basis of all these experiences, it is my considered judgment that the functions of the National Labor Relations Board should be separated.

Trying to be brief, I shall list some of the reasons for this opinion:

(1) The agency deals with the most controversial and emotional of all subjects handled by administrative agencies.

(2) The Board members can handle more cases when they are not plagued with administrative and personnel problems outside their respective staffs.

I have known of instances where many hours of the time of all the members of the Board have been consumed in discussing who will be the chief attorney in one of the regional offices; and under the old set-up, a Board minute was required to be entered after the meeting of the Board itself before a person above the first two professional classifications could be promoted.

(3) There can be no charge that the Board considers cases other than on the record and in a judicial manner if it is not charged with the administration, investigation, and prosecution responsibilities.

(4) More expeditious treatment can be given to cases submitted by field offices to Washington for advice whether to prosecute, if final clearance from the Board members is never required.

(5) The staff members of the field offices enjoy a greater confidence from the parties if their orders regarding investigation and prosecution emanate from a source different from that which is also the final judgment in the case after trial. And believe me, gentlemen, in my position I heard and had illustrated to me many, many instances of that kind of situation, being in daily contact with the regional offices. The public felt that when they went to the office, whether they did or did not. That is not the point I am making. But they felt that they

got a better deal if the boss of that person in the field office was not the individual who later would sit as the judge.

(6) The nature of the cases handled, the number involved and the dispersed nature of the Board's administration makes it impossible to avoid the discussion of cases from time to time with one of the parties at the Washington level while the cases are still in the investigation stage. Prior to the Taft-Hartley Act the party was never content in such circumstances unless he could talk with a Board member. Such was not only time consuming to the Board member but also did not encourage the parties to the belief that objective and judicial treatment was given when the case came before the Board on the record.

To illustrate, you gentlemen here are called upon from time to time by constituents to intercede with an administrative agent. If one party at your behest is allowed to talk to a Board member about a case that is being investigated and then later that case is tried, prosecuted, and comes before the Board as the final judge, the parties certainly feel that they are not getting the same judicial and objective treatment on the basis of the record made when both parties are present, if such is allowed. I think, in short, it is just against a fellow's nature to enjoy having the cop who arrested him pass sentence on him.

The closed shop: As long as I am able to remember the sad stories told me while I was with the Labor Board by employees who were "fired" from their jobs because they had displeased a union leader in exercising their right to freedom of speech and opinion, I cannot favor a closed shop; as to the union shop, I would approve it only to the extent that the payment of dues is required. There is also still fresh in my mind such cases as the one where a woman was denied employment in Martin Bros. Box Co. in Oakland, Oreg., because the union refused her membership card due to a personal dislike. It may be that the bargaining agent merits some form of security—I can understand that argument—but the denial to a man of his right to work in order to satisfy the whim of or to perpetuate in power one or more leaders of any organization, labor, fraternal or otherwise, is contrary to my understanding of Americanism.

Secondary boycotts: From my observation in dealing with secondary boycott cases which came before the Board while I was there, I can see no basis upon which they are justified as a general rule. Where a union applies its economic pressure to an innocent party to win a dispute with someone else it is, in my opinion, wrong. There is not now and there never should be a law which compels an employee to work if he does not want to do so. There is, and I think there should continue to be, a law by which a union can be ordered to cease applying pressure to a party with whom it has no dispute and against whom it has no complaint, except that it wants to force someone else to grant its demands.

I think Congress should note that in the vast majority of these types of cases the union ceased its boycott when a charge was filed. When I left the Board four and a half months ago these cases had considerably diminished in numbers and in severity.

I do think that the law should not require application for an injunction in these cases but should leave the question of seeking an injunction to the discretion of the prosecutor. The reason for that is that we found that many of those cases had merit, but they were not of such grave import that injunctive proceedings were warranted.

Decertification: To my mind the provision of the present law authorizing elections to determine if the employees want to continue their bargaining agent was a much-needed reform. Time and again, employees came to me while I was in the field with the Labor Board and asked, "How can we have an election to unseat the union as our bargaining agent?" The only answer I could give under the Wagner Act was "You must select another union to replace the present one." "But we don't want another union," they would say. I had to reply, "I'm sorry, then; you can't have an election."

Why should this democratic process be opposed? It is nothing more than the procedure of "recall" long practiced in democracies. It cannot hurt a union which the employees want and it does give the individuals a chance to determine democratically the tenure of their bargaining agent.

I would like at this point also to digress from the statement for a moment to include something I have omitted with respect to the rights of replacements of economic strikers to vote and the fact that the present law prohibits the strikers themselves from voting. The Supreme Court, back in 1938, in the Mackay Radio case, decided under the Wagner Act that economic strikers were not entitled to reinstatement if they had been replaced; in other words, that he had lost his employee status by taking the chance on engaging in a strike, if he had been replaced and if the strike was not caused by a law violation.

After that decision, however, the Board issued a decision in the Columbia Pictures case which nullified that Supreme Court decision to the extent that it provided that if these strikers had been replaced, both the strikers and the replacements would vote. In that Columbia Pictures case, the result was that 54 strikers voted and 50 employees who had replaced them also voted. 104 people voted with respect to 50 jobs. The strikers outnumbered the employees. The result was that the strikers voted for the union that was on strike; the people who had been replaced voted for the new union that they had chosen.

The Board certified the striking union, and still to this day the employees working in that particular unit in a Columbia Pictures—and the case occurred years ago—do not have bargaining agent because of that rule. Now, that is the background of the reason for the insertion of the provision regarding replacements voting and strikers not voting.

I think very honestly and sincerely that Congress should try to work out some kind of definition of "current labor dispute," different from the one that has been applied by the Board. The Board calls a labor dispute current as long as there is a picket marching up and down. In the St. Petersburg (Fla.) Times case, where the Board refused to find that the company had violated the law, still there was a picket line, and the employees on the job there were not, under the Wagner Act, prior to this present situation, entitled to choose a bargaining agent of their own.

If Congress could work out a definition, in my opinion, of what is a current labor dispute, something to the effect that once the operations have resumed normalcy, or returned to normalcy, the strike would no longer be current insofar as who would be eligible to vote, then I believe with all of the guarantees contained in the law, that an employer cannot interfere with, restrain, or coerce, that he cannot dominate and support a union, it would enable the employees who have replaced the strikers as permanent employees to vote and choose a union of their own choice.

I think certain changes should be made in this law, very definitely. I believe, probably, that we will not have a good feeling of labor relations among management and labor unions as long as it bears the present name. I suppose that is typically American. We get sold on something, and we just will not give up until we accomplish our objective.

Apparently, labor unions, rightly or wrongly, do not like the name "Taft-Hartley," and the members of labor unions have been taught that if that name is mentioned, they must frown. So I suppose that the name should be changed.

I think also that section 10 (l) of the present act, which is the provision requiring, or making mandatory, the application for an injunction in certain cases, should be repealed. I think the application for injunction should be discretionary rather than mandatory.

I think that the union shop election requirement should be amended, if not repealed entirely. The most that I think that it should provide is that there might be an election whereby the employees could contest the right of the union to make union shop contracts; in other words, that the first union contract could be made without an election, but that if the employees later petition for an election to determine whether or not that right should continue to exist, then the election could be held, and then only.

I say that I think it should be repealed altogether, but at the most it should provide for that kind of election.

I think the non-Communist affidavit requirement should apply to both parties and that Congress should more clearly specify what officers and persons must file.

I think that the "last offer" election provision should be repealed. That is the provision whereby the Labor Board conducts an election to determine whether the employees wish to accept the last offer of the employer as stated by him. That is the only section, incidentally, of the emergency strike title of this law that I had any experience with I did have some experience with it.

I think that section 8 (d) of the Taft-Hartley Act, which is the provision defining collective bargaining, should be amended to specify clearly the rights of the parties to a contract respecting its modification or termination.

Gentlemen, I have tried to illustrate some of the important aspects in which I think our labor-management law should be equalized. I have given much thought to this question of a fair labor law since I returned from the service. I think it is much needed. For the most part, I think that the present law has approached that equality which is necessary.

Congress will, in my opinion, do well for the country, and I include labor unions, if it does not change the existing law as radically as it is proposed to do in the bill before you.

I think the law should be given a longer test in somewhat and substantially the same form that it is now, with Congress giving constant study to the deficiencies in a deliberate and orderly fashion, not under such strains of terrific political pressure as exist today.

This field of labor-management relations, in my opinion, above all others is one where reason departs when emotion enters.

Thank you, sir.

Mr. BAILEY. At this point, the Chair would like to say that this committee cannot function legally while the House is in the Committee of the Whole considering general legislation. I am sure the members of this committee want to question the gentleman, because he has a first-hand knowledge of the questions that this committee desires information on.

In view of this fact, the committee will stand recessed until 6 o'clock tonight, at which time we will resume the questioning of the gentleman who is before this committee at the present time.

(Whereupon, at 12 noon, the subcommittee recessed until 6 p. m. of the same day.)

NIGHT SESSION

(Pursuant to recess, the subcommittee reconvened at 6 p. m.)

Mr. KELLEY. The subcommittee will please be in order.

Mr. Brooks, this morning you finished your prepared statement, and I believe you appear tonight in order to answer some questions the members might like to ask you; is that right?

TESTIMONY OF CHARLES M. BROOKS—Continued

Mr. BROOKS. That is right, sir.

Mr. KELLEY. We will proceed with that.

Mr. Jacobs, will you proceed?

Mr. JACOBS. Mr. Brooks, in the next 10 minutes that I have, to ask you a few questions, I want to clear one point at leact:

I believe I remember that you made the statement that unions were as strong economically as employers; am I correct about that?

Mr. BROOKS. Yes, sir.

Mr. JACOBS. Would you state for the record the value of the company you are now engaged by?

Mr. BROOKS. I do not know, sir.

Mr. JACOBS. For the record, as I get it from the Library of Congress, the figure is $1,116,165,,665.

Do you know the value, the total value, of the treasuries of the first 32 international unions?

Mr. BROOKS. No, sir.

Mr. JACOBS. For the record, and with reference to Life Magazine as of May 31, 1948, we will let the record show that the total value of the first 32 international union treasuries' assets is $214,164,810.

Assuming those facts to be correct, Mr. Brooks, it seems to be quite a disparity; in other words, your company standing alone is worth about four times as much as the first 44 international unions' treasuries combined, if those facts are correct, and I take it you will assume for the purpose of your examination that they are?

Mr. BROOKS. I will assume that they are correct, sir. If you think that they are, I will.

Mr. JACOBS. They are not my figures. I procured the figure in reference to your company from the Library of Congress, and I have a bad habit of saving what some of our publications have to say from time to time, and file them away under an index so I can make reference to them later.

Do you have any idea—to get another comparison—as to how much the first 32 corporations in the United States are worth?

Mr. BROOKS. No, sir, I do not.

Mr. JACOBS. Again, for the record—and this is a very rough figure, because my computation was hurried—it is about $88,000,000,000.

Are you aware of the fact that there are quite a number of corporations who have more assets and employees than there is wealth and population in certain States?

Mr. BROOKS. I have never seen those figures and have never compared them, so I cannot say; no, sir.

Mr. JACOBS. Do you not think that is something that would bear upon the statement that you made this morning, that the unions have acquired as much economic strength as the employer?

Mr. BROOKS. No, sir; because it is not germane to the thought I was putting over.

Mr. JACOBS. I am referring particularly to the statement that the unions have acquired as much economic strength.

When we speak of economic strength—

Mr. BROOKS. Would you like me to explain what I mean?

Mr. JACOBS. Let me approach it in this way: When we speak of economic strength, of course we mean the power of a man or an organization to sustain himself in an economic contest; that would be what I think. Would you accept that as a fair definition?

Mr. BROOKS. Not all-inclusive; I would accept that as one definition, one facet.

Mr. JACOBS. In what other factor did you think that the unions acquired additional economic strength?

Mr. BROOKS. Their power to claim an industry, the Nation economically, is what I had in mind.

Mr. JACOBS. Are you speaking of the so-called emergency or crisis strike, or are you speaking of the strike against some individual company that does not necessarily create a crisis?

Mr. BROOKS. No, sir; I had in mind, when I made that statement that the power of a union to close an industry exerted an economic strength.

Mr. JACOBS. You mean a whole industry throughout the country?

Mr. BROOKS. A whole industry, or a segment of industry, or a large corporation—take the American Telephone & Telegraph system, as one.

Mr. JACOBS. You would have, of course, a different factor there. You have a utility that has a complete monopoly?

Mr. BROOKS. That is right.

Mr. JACOBS. Let us get back to the industries we speak of as being in a free economy like your industry. The time may come when we will have to deal with the utility in an entirely different way. In your industry, do you think the right to strike in regard to any one corporation, regardless of how big it is, should be curtailed?

Mr. BROOKS. Congressman, that is an entirely different subject than what I was talking about here. It all depends on what you mean by "curtailed," and to what extent. I was not trying to give this committee the impression that I thought unions should be prohibited from striking. As a matter of fact, I stated there should be a law to compel a man to work, and the statement about the economic power was intended, as I just described—maybe it is a poor choice of words, and if it is I would like to explain it to you.

Mr. JACOBS. Of course, in the last analysis, the man that goes on strike usually has very little money, and he certainly is not in a position to sustain himself as well as the owner of a business. You would agree to that?

Mr. BROOKS. That I could not answer categorically, Congressman.

Mr. JACOBS. Let me ask you this question: Do you think it is fair to ask people to answer questions categorically in regard to this problem?

Mr. BROOKS. It depends on the question.

Mr. JACOBS. I had in mind particularly the General Electric questionnaire. Let us pass that for a moment and go to the other phase you testified about, in regard to decertification.

At any rate, in your mind, the provisions of section 10 (l) should be repealed? That is the mandatory injunction?

Mr. BROOKS. Yes, sir.

Mr. JACOBS. Have you read Business Week for December 18, 1948, the editorial, in which they talked about that subject? Do you agree with its conclusion?

Mr. BROOKS. No, sir.

Mr. JACOBS. Then you disagree with Fortune, for November of 1948, I suppose?

Mr. BROOKS. I do not recall that issue of Fortune.

Mr. JACOBS. How about Life for November 29?

Mr. BROOKS. Nor do I recall that.

Mr. JACOBS. I presume if you disagree with Business Week you disagree with them, because they were about the same.

Do you agree with Senator Taft in the statement he is reported as having made in regard to the same subject?

Mr. BROOKS. The statement of Senator Taft has been reported variously, and I do not know whether I agree with it or not, because I have not seen it verbatim.

Mr. JACOBS. I think that is a fair statement, because I have only seen reports in the newspapers, but I do want to ask this question: Even though you repeal section 10 (l) you would have in effect section 10 (k), which is the discretionary——

Mr. BROOKS. 10 (j).

Mr. JACOBS. That is in reference to (D) of 8 (b) (4)?

Mr. BROOKS. 10 (k) relates to 8 (b) (4) (D).

Mr. JACOBS. Ultimately, if a decertification occurred, it would be an unfair labor practice to go to a man and try to get him to refuse to work in order to coerce the employer into recognizing the old union, or bargaining with them in any way; is that correct?

Mr. BROOKS. That is not correct.

Mr. JACOBS. You say that is not correct?

Mr. BROOKS. Yes, sir.

Mr. JACOBS. You have a different construction, then, of the decertifications? Would you explain that to me?

Mr. BROOKS. The Board interpreted in the Perry-Norvell case—there is also another case, but I cannot think of the name of it right now, but it was highly publicized at the time. There was a strike out in Dayton, Ohio, and I think you probably recall it——

Mr. JACOBS. No, I do not.

Mr. Brooks (continuing). Where a decertification election was held and the petition which was favoring the proposition to remove the union carried; in other words, the union was decertified, but in that case the strike continued, and it was interpreted—and at that time I was still with the Board—it was interpreted that 8 (b) (4) (C) does not apply to such a situation because 8 (b) (4) (C) is very explicit. It provides that any union or its agent—not any employee, but any union or its agent, which is engaging in a strike or induces the employees of any employer to engage in a strike for the purpose of forcing an employer to recognize a union when another union has been certified, is a violation. It does not prohibit—if I might continue or I will stop on this if you want.

Mr. Jacobs. I only have 1 minute.

Mr. Kelley. The gentleman's time has expired.

Mr. Irving. I will yield all of my time to Mr. Jacobs.

Mr. Jacobs. I just had one additional question.

I just wanted to ask you, as a lawyer, if you do not think that that decision did a little violence to provision (C) under 8 (b) (4)?

Mr. Brooks. No, sir; I was in on the decision, and I thought I was making a correct decision.

Mr. Jacobs. I did not know you made the decision or I would not have asked you the question.

Mr. Brooks. I did not make it alone, but I was in on making the study. It was based on a lot of research and a lot of study.

Mr. Jacobs. That is all.

Mr. Kelley. Mr. Irving? You have 9 minutes.

Mr. Irving. Thank you.

In regard to the building trades, do you consider that the unions are always responsible for the jurisdictional strikes? Can you feature any other situation where they are not?

Mr. Brooks. If I understand—First, may I say, Congressman Irving, I am not indicting building trades craft unions, and if I said anything today that implied that I am indicting those unions because of the fact that they do engage in jurisdictional disputes, or because there are jurisdictional disputes in their industry, I would like to clarify it and say I had no such intention of indicting them, generally; but to answer your question, if I understand what a jurisdictional strike is, I would have to say it would be caused by a union.

Mr. Irving. It would be caused by a union?

Mr. Brooks. Yes, sir, if you and I have the same definition in mind of jurisdictional disputes.

Mr. Irving. I did not mean to infer the same thing you are talking about. I do know that you had indicted them. I have necessarily been away, and am not fresh on all of your testimony. I was merely asking a question. I have this idea in mind, that if a contractor or an employer wanted to put a certain craft on the work, and he knew that the work belonged historically to another craft, that that sometimes will cause a jurisdictional dispute. Getting at it from an economic standpoint, he might put the laborer on the carpenters' work or the boilermakers' or the cement finishers' work, because it was cheaper for him to do that. I think that the carpenter, or any other trade, would be justified in engaging in a very serious dispute there in the protection of their rights. That has been known to happen in many instances when the contractors chose to put a craft, whose scale was considerably less, on the work which historically and normally belonged to a more skilled craft in order to save money. That causes jurisdictional disputes sometimes, and sometimes strikes.

Mr. BROOKS. That is where the dispute arises, because one union says historically, normally, or for one reason or another, that "that work belongs to us;" and the other union says for some other reason "that work belongs to us." There you have the dispute. I think that there should be machinery established to settle that dispute in an orderly fashion so that innocent persons would not be hurt as a result of the squabble that goes on, and that is my only feeling about the matter.

Mr. IRVING. Then that is the situation that is created by management itself?

Mr. BROOKS. Congressman, I think that there have been numerous situations in the labor field that are bad that have been created by management, and I think that all evil practices of management should be curbed by law.

Mr. IRVING. There are other situations reverse from that where they may put a higher rate craft on the job because they do not like the reputation, or something else about the lower-rated craft organization, and that causes disputes. Quite often the supervisory force is from one craft or another—particularly, from the craft I mentioned, the carpenters. Because of their general knowledge of construction, many are put in as superintendents. Many of them become contractors and employers in management. They do have a feeling for their own trade, I presume, and if they show any preference, that could cause the foreman and the supervisor to be thrown out of the union picture. The unions have no control over such situations, generally speaking, unless it is something quite serious. They understand their own work, and they can get along that way; that is, by the representatives telling the foreman or superintendent: "Now, you go along in a certain fashion that we have been going along in in this district, this area, and we will have no disputes or trouble." But when they do not have that power over this supervisor, or, at least, a chance to talk to them, they often have no other recourse.

That arises particularly when a man comes from, say, the east coast or the South or Central States, or from some other territory where the rules and the jurisdiction of work is different. Then they try to put in effect the practices in their territory, and it does not work out in the new territory, wherever they are, and it causes a great many of those disputes. The thing I am trying to develop here is that there has been a great deal made out of jurisdictional disputes, many of them which are caused by managements themselves, rather than the unions.

They have a privilege under those building-trade contracts of selecting the craft the work belongs to, but many times they refuse to take that initiative, or that privilege, and thereby cause a dispute. If the contractor would say, "I have this privilege under our contract of giving the work to the craft that I think it belongs to, subject to a decision," then there would be no impasse. But when he refuses to take the responsibility that he has agreed to, it causes a dispute right there, sometimes before the work even starts, or when it is starting.

Mr. KELLEY. You have 1 minute left.

Mr. IRVING. That is all.

Mr. Brooks. Yes, I think all that you have just said, Congressman, might be evidence that should be presented to a tribunal set up to resolve the dispute, and there are a lot of reasons that these disputes occur.

Mr. Kelley. The gentleman's time has expired.

Mr. Wier?

Mr. Wier. This is the same gentleman who was testifying when I went out of the House this morning?

Mr. Kelley. Yes, it is Mr. Brooks.

Mr. Wier. I was looking for his presentation, but I do not find it here.

As I remember, you have been, in the past, a representative of the National Labor Relations Board; is that correct?

Mr. Brooks. Was your question, Have I been?

Mr. Wier. As I see here now, you have been associated with the National Labor Relations Board as an attorney?

Mr. Brooks. Yes, sir.

Mr. Wier. When did you cease that?

Mr. Brooks. October 15, 1948.

Mr. Wier. Last October?

Mr. Brooks. That is right.

Mr. Wier. And previous to that you were associated with the National Labor Relations Board when it was operating under the Wagner Act?

Mr. Brooks. Yes, sir.

Mr. Wier. When did you go to work for the Board?

Mr. Brooks. In 1937, on November 6.

Mr. Wier. Are you what they call a field man, or an attorney?

Mr. Brooks. I have been a field trial attorney, I have been a litigation attorney, an appellate court attorney, special litigation attornel, regional attorney, acting regional director, associate field chief of the section in Washington, a member of the Clearance Section in Washington and finally, under the Taft-Hartley Act, during the last 14 months, I was associated general counsel in charge of all the field offices, the 28 regional and subregional offices.

Mr. Wier. That is quite a field you have covered.

What have you been doing since October?

Mr. Brooks. As I stated in there, on October 18 I joined the legal staff of the Texas Co., specializing in labor law.

Mr. Wier. Are you here now representing management in that capacity as counsel for the Texas Co.?

Mr. Brooks. No, sir.

Mr. Wier. During the era of the Wagner Act did you feel at that time, previous to the passage of the Taft-Hartley Act, that the Wagner Act was not functioning properly?

Mr. Brooks. Yes, sir.

Mr. Wier. Did you ever testify to that effect?

Mr. Brooks. I was never called upon to do so, and at the time there were hearings I was in a rather insignificant position, and as a result would not have been called upon, and was not called upon to testify publicly. I have stated privately that opinion.

Mr. Wier. You offered no testimony during the hearing held by this committee in the Eightieth Congress?

Mr. Brooks. No, sir.

Mr. WIER. Your work has been confined almost exclusively to Washington and New York, then?

Mr. BROOKS. I have served as regional attorney in the Seattle district, covering the States of Washington, Indiana, Oregon, and the Territory of Alaska.

I have served in the San Francisco district, covering northern California and Utah. I have served in Los Angeles, in the Los Angeles office, covering southern California and Arizona. I have served in the Fort Worth office, covering Texas, New Mexico, and Oklahoma.

Mr. WIER. You have been around the world, apparently.

That was my only interest, Mr. Chairman. I am not going to take up the time of the committee on this testimony, because it is vague in my memory right now, and I just wanted to know what brought him here to testify in this capacity as a former representative of the Board.

Mr. BROOKS. I would like to answer that question, Congressman, as to what brought me here.

Mr. WIER. That is what I am trying to get.

Mr. BROOKS. I am not here as a representative for management. I stated that I do not know whether or not my company agrees with this, or not. I did not show my statement to the company. The only thing that I have done is to call upon my experiences and put down here what I think, to try to help the Congress of my country, with my right to testify and petition, and hoping that it would be of some value to this committee, which I believe wants to write a good labor law. As I indicated, I have thought about this problem for a long time, and Mr. Lucas, who is a personal friend of mine, asked me in the very beginning, since I was no longer with the Government, if I would be willing to testify. I said that I would like to and arrangements were made whereby I could testify, and here I am, sir.

Mr. WIER. In your present capacity, are you located in Texas?

Mr. BROOKS. In New York City, in the home office.

Mr. WIER. How did Mr. Lucas locate you?

Mr. BROOKS. Because I was born and raised in Texas and went to school with Mr. Lucas in Texas, and have voted all my life in Texas, and am still a Texan.

Mr. WIER. I guess that answers my question.

That is all.

Mr. KELLEY. Mr. Smith?

Mr. SMITH. And in America, it is one of your rights to quit your job when you can get a better one?

Mr. BROOKS. I was very happy to have the pleasure of doing this, sir.

Mr. SMITH. You are just here expressing your rights as an American citizen?

Mr. BROOKS. Well, expressing my opinion, as I said, and believing that I have a right, plus the fact that I think that my Congress wants it for whatever it might be worth.

Mr. SMITH. I am sorry that I did not get here to hear all of your testimony.

I yield the balance of my time to Mr. Nixon.

Mr. KELLEY. Mr. Nixon, you have about 19 minutes.

Mr. NIXON. I have only one question, Mr. Chairman.

I may say that I heard Mr. Brooks' statement this morning, and I thought he made a real contribution to the thinking of the committee, regardless of where we may stand on the issues which he discussed. Also, in view of his long experience in labor relations, I wonder if he would have a comment on an event which just occurred. It has just been announced that Mr. John L. Lewis has called a 2-week coal strike.

Now, as you know, there is a difference between the administration version of the bill which the committee is considering, and the Taft-Hartley Act on the methods that are available to stop strikes which impair or threaten the national security and the national health and safety. And in behalf of the administration version of the bill, which does not provide for the use of an injunction to stop such a strike, the Secretary of Labor has testified that if we have a mandatory cooling-off period, public opinion will be sufficient to stop such strikes.

Do you feel that looking at this strike, public opinion will be sufficient to stop Mr. Lewis' present coal strike?

Mr. Brooks. Congressman Nixon, I wish I could answer that. I do not profess to be qualified to answer it. I have tried to limit what I say to something for which I can call upon experiences that I have had, and I have had very little dealing with the mine workers' union, and none in that regard.

Mr. Perkins. Mr. Chairman——

Mr. Kelley. Just a minute, please.

Mr. Brooks. I might say this, that that illustrates what I had in mind when I said that unions possess economic power equal to the employees with whom they deal, and that is the economic effect that will be felt as a result of that action.

As to whether public opinion will stop the strike, I do not think I could contribute very much to the committee as to what I think about it. I have a thought, but I cannot prove it, and cannot disprove it.

Mr. Perkins. Mr. Chairman, will the gentleman from California yield?

Mr. Nixon. Yes.

Mr. Perkins. I want to ask the gentleman if he understands that there is more than 70,000,000 tons of coal at this time on top of the ground, and that this is no strike that Mr. Lewis has called. Do you understand that or not?

Mr. Nixon. Are you asking the witness a question?

Mr. Perkins. I am asking you, Mr. Nixon.

Mr. Nixon. I think the gentleman's comments are directed to the point as to whether or not, first, when Mr. Lewis calls out the men, it is a strike. I will not argue the technical matter. I think that probably the fact that the men leave the job and stay out for a length of time could be called a strike. If Mr. Lewis chooses to call it something else, that is all right with me. I will not argue the point.

The second point that you are interested in, apparently, is whether or not the fact that there are 70,000 tons of coal——

Mr. Perkins. Seventy million.

Mr. Nixon. Seventy million tons of coal on hand would in any way change the question which I raised.

In my question, I did not indicate that this was at the present time or would be held to be in the future a strike which imperiled the national health and safety.

My question was whether or not in a strike of this sort, public opinion would be sufficient to stop it.

Mr. PERKINS. Do you know whether or not Mr. Lewis is allowed to call out his men under his contract when he has ample tonnage of coal on the ground for use and when there is no emergency existing? Do you know whether or not under his contract he is permitted to do that?

Mr. NIXON. If the gentleman is questioning me as to what Mr. Lewis' contract is with the coal operators, I would say that the best evidence of that would be to have the contract before the committee. I do know this, that in the past on several occasions Mr. Lewis has called what I might call strikes——

Mr. PERKINS. Just answer the question.

Mr. NIXON. Let me continue. I will answer your question. I yielded the time, and you have no right to interrupt, as the chairman well knows.

Mr. KELLEY. Proceed.

Mr. NIXON. When Mr. Lewis calls what I might call a strike but which you might call something else, but on which the men do not work, there have been occasions in the past when strikes have been called in which the national health and safety have been considered by most people to have been imperiled.

My only question is as to whether or not in this case, if it does appear at some time in the future during the course of the walk-out that the national health and safety are imperiled, whether or not the law that the administration recommends would be adequate to protect the national health and safety.

Now, on that point I think we probably have the basis for disagreement. The gentleman apparently believes that the new law is adequate. I am of the opinion that it is not. As to the nature of the strike, as to the impact it will have on the economy, those matters will be determined as the strike proceeds.

That is all, Mr. Chairman.

Mr. PERKINS. That is all.

Mr. KELLEY. Mr. Werdel?

Mr. WERDEL. Mr. Brooks, I was here for some of your remarks this morning. I am sorry that I had to leave. I am also sorry that I had to bring you back here this evening; but, as you have probably found out already, there are some members of our committee who work better at night than they do in the daytime.

I do not know whether in your remarks—I have not had the opportunity to read them—you made any statement about the right of free speech on the part of both parties.

Mr. BROOKS. Yes, sir; I did, and I omitted it in the interest of time this morning.

Mr. WERDEL. You did omit it?

Mr. BROOKS. I did not read it. There is a reference on page 11 to the free-speech section of the act, and I suppose that I should elaborate on the last sentence, in view of the fact that one or two people who have read this have indicated they did not understand what I meant.

Mr. WERDEL. I wish you would.

Mr. BROOKS. I used terminology there that was frequently used by members of the staff of the Labor Board, because it so frequently occurred in Labor Board decisions.

My statement there says that some kind of clarification as is contained in section 8 (c) of the Taft-Hartley Act prohibiting the Board from finding an unfair labor practice based upon a statement which was not coercive or did not contain a promise of benefit should be included in the law. The use by the Board of statements as background to support unfair labor practices should be used guardedly, if at all.

What I had in mind by the "background" is this: When I went with the Labor Board in 1937 under the Wagner Act, to my surprise, I was advised rather early in the day that when we prosecuted an employer we should go back and put into the record everything that the company had done and that any representative in managerial capacity had said, at least to 1933, which was 2 years prior to the enactment of the Wagner Act. And the reason given to me for doing that was, it was "background."

That practice continued all through my experience with the Wagner Act until it was repealed in 1947, being used gradually to a lesser degree. It worked like this: An employer would make a statement to his employees, or at a chamber of commerce meeting, or in a church yard or some place, to the effect that in his opinion unions were more detrimental than beneficial, or something to that effect. If we could prove that, though it had no relation directly to the charge which was being prosecuted, we put it into the record, and very frequently the attorneys on the review stand would make much of that in writing the Board's decision, to illustrate that this employer was antiunion and, therefore, since he was antiunion, the Board could infer and would and did infer that a discharge or some other allegation was in violation of the law, and that the allegation was true, because of this antiunion feeling.

Of course, the Board had gotten much better in that respect through its own efforts and through the efforts of the courts by 1947, as a result of the Tube Bending decision in the second circuit, and the *Thomas* v. *Collins* decision in the Supreme Court, the Board placed less reliance upon these background statements.

But I felt in writing that statement that the Board should use, very guardedly, as I say, very rarely if at all, this background information unless it is directly connected.

Now, if you could establish in the case of a discharge that the employer representative had said, "I expect to discharge that man who is a union leader if I get a chance," of course that statement in and of itself contains the coercion and the threat, and certainly applies. So my feeling was that some kind of protection or some kind of clarification as to the manner that the Board would use such statements should be contained in the law. It has nothing to do with whether or not it is admitted into the record. As a matter of fact, very early under the Taft-Hartley Act, I issued a statement to all of the field offices to the effect that—I might mention this, because it is in the labor-management relations report of the joint committee, and it illustrates something that has been discussed here in my presence yesterday by other witnesses with respect to the difference in disability of the evidence, and the application that the Board can give to it. Section 8 (b) restricts the use that the Board can make of it, and not whether it would be admitted into the record. And in the general counsel's name, I issued this statement very shortly after the Taft-Hartley Act became law:

> In future hearings, Board attorneys should request the trial examiners to admit in evidence all utterances which might conceivably be found coercive, since the competency of such utterances cannot well be determined until the conclusion of the hearing, and the Board should have an opportunity to pass upon such evidence. No prejudice can, of course, result to any party from the admission of doubtful utterances which are later found by the Board to be privileged under the new law, there being neither a jury to be influenced thereby nor findings based thereon.

Mr. **Kelley.** Mr. Werdel, you have 1 minute left.

Mr. **Werdel.** Very well.

Mr. **Brooks.** I am sorry I took so much of your time, Mr. Congressman.

Mr. **Werdel.** That is all right.

Mr. **Velde.** Mr. Chairman, I yield my time to Mr. Werdel.

Mr. **Kelley.** All right.

Mr. **Werdel.** Then it is your opinion, as I gather it, that there should be some reasonable ground on which the employer can state his position to his employees provided there is no coercion or threat?

Mr. **Brooks.** Yes.

Mr. **Werdel.** Do you think that we ought also to maintain the provision in the act with regard to strikes by Government employees?

Mr. **Brooks.** Yes, sir.

Mr. **Werdel.** And there is one other question I wanted to ask you about the provision in the Taft-Hartley Act prohibiting a labor organization from exacting payments from employers for services which are not performed or not to be performed.

Mr. **Brooks.** That is section 8 (b) (6), which is commonly called the featherbedding section.

Mr. **Werdel.** There are three cases in New York City where labor leaders are under indictment now, I believe, for calling strikes without any desire on the part of the employees to strike. They have called the strikes, and then they have charged so much to take the picket line off. I believe they are being handled under that section, too.

Mr. **Brooks.** I am not familiar with those cases you mentioned. We did have, while I was with the Board, a few section 8 (b) (6) cases, featherbedding cases. It so happened that in all but two of those cases the moment that an attorney was brought into the case by the union, the practice was stopped and the charge was settled, with the exception of two cases, and one of those was a case up in Connecticut where the musicians wanted what they would have received had they played, and all they would do was play what they called an overture and a chaser at the beginning and end, respectively, of the program. The other one was the Conway Express case in up-State New York where the Teamsters' Union required the employer to pay the wages that the truck drivers would receive between Albany and New York in order for the companies to be privileged to ship the trailers down by boat from Albany to New York. So the drivers spent the night at the hotel drawing their pay in the same manner that they would. And those are the two cases I know of wthat we prosecuted to a successful conclusion. The others were all settled, to my knowledge.

Mr. Werdel. Based upon your experience, is it your opinion that we need that provision or something similar to it maintained in the new act?

Mr. Brooks. It had a most wholesome effect. And the fact that there have been so few cases should not determine whether it is valuable. I certainly think it should be in the law; yes, sir.

Mr. Werdel. Mr Brooks, I personally want to thank you for your appearance here. I know that this committee will probably try to come out with something that is workable. I think you have helped us a great deal.

I waive the balance of my time to Mr. Velde.

Mr. Kelley. Mr. Velde, you have 6 minutes.

Mr. Velde. Mr. Brooks, I, too, appreciate your coming here. I think you have demonstrated by your testimony that you have a very excellent background.

I would like to come back to this question of national-emergency strikes. I know that you did not prefer to answer Mr. Nixon's question. Maybe I can ask you a slightly different question about it.

Mr. Brooks. I will be glad to give you my opinion. I cannot back it up with any facts or experiences. That is all I meant.

Mr. Velde. I would like to have your opinion on it.

Mr. Brooks. My opinion is that there should be a legal method similar, if not identical, to that contained in the present act dealing with such strikes. I think that the procedures that must be gone through before the injunction is sought can be clarified. I think that the exact termination date of the injunction and what must be done to terminate it can be clarified. But I feel—and this is my personal opinion—that the present proposed bill is woefully inadequate in a modern-day society where unions can cripple the economy of the Nation in a short time. I think it is woefully inadequate to deal with it and the threatened consolidated interest in the strike in New York City recently was something that illustrated that, to my mind, when the papers started telling what would happen if they did strike.

Mr. Velde. Mr. Brooks, some have referred to inherent power in the President to stop such strikes. Do you know of any such power that is provided by our Constitution or laws which would allow the President to stop a strike in a national emergency?

Mr. Brooks. Mr. Chairman, I do not profess to be a constitutional lawyer, but I have looked at it just a little bit. I have not found anything that anyone has said or anything that I have read to persuade me that the power exists. And I would say that as far as I personally am concerned, if it does exist, I think Congress should repeal it right away, or there should be a constitutional amendment.

Mr. Velde. Have you testified before the Senate committee?

Mr. Brooks. No, sir. I filed a statement with the Senate committee, a very brief statement, dealing principally with the effect that the change in the law had had upon the personnel of the Board, illustrating that they felt that a two-way street was better than a one-way street and that the two-edged Taft-Hartley Act was better than the one-sided, to use a much overworked term, Wagner Act. I did not go into arguments regarding the different provisions. I filed that with the Senate committee.

Mr. Velde. Thank you very much. That is all I have, Mr. Chairman.

Mr. KELLEY. Mr. Perkins, do you have any questions?

Mr. PERKINS. Yes, Mr. Chairman.

There has been injected into the record here this evening the action that the President of the United Mine Workers has taken calling out the coal miners protesting the appointment of Mr. Boyd as head of the Bureau of Mines. When you were testifying a few minutes ago in that connection, did you mean to imply that there was an emergency in existence in the coal fields at this time?

Mr. BROOKS. No, sir; because I have not even read the news account of that yet. This is the first I had heard of it; so I have no opinion whether it is an emergency, and I do not have facts at my disposal as to whether it would be an emergency if it occurs. So if I did imply that, Congressman, I did not intend to, because I do not know.

Mr. PERKINS. From your experience, if you were heading an organization and understood the management of your organization better than anyone else, and you felt that someone was being put in charge of the department that affected your employees, who was inexperienced in that field, would you have any reluctance about calling your men out from work for a couple of weeks, especially if your contract justified it?

Mr. WERDEL. Mr. Chairman, on a point of order: We are getting along late in the evening here, and our time is limited. I believe the gentleman is just making an effort here to use the committee as a sounding board to whitewash Mr. Lewis.

This man has no opinions relevant to any subject before this committee and the question stated. I make the point of order that we proceed with the next witness.

Mr. PERKINS. Mr. Chairman——

Mr. KELLEY. The Chair will say this, that the gentleman has had vast experience in the National Labor Relations Board, under the old act and under the new act. And I think the question that was directed is perfectly in order and germane to the subject which we are discussing.

Mr. WERDEL. Speaking to my motion, Mr. Chairman, if a member of the committee wants to state anything on behalf of Mr. Lewis, let us put it in quickly and get on with our business.

Mr. KELLEY. His question is in order. If the gentleman does not want to answer it, he does not need to.

Proceed.

Mr. PERKINS. Go ahead.

Mr. BROOKS. I will do my best to give you my personal opinion on that, and once again, I do not know how much it is worth.

I personally feel that the leader of the labor organization has no such right to exercise the power that this particular leader has, to call the men out on strike, tell them to cease working, cease drawing their pay, for any length of time, to protest the appointment of a Federal official, any more than I would feel that group of employers would be privileged, or would have the right, to close up their businesses to protest your election to Congress.

Mr. PERKINS. You have never known of any time that the welfare of this country has suffered by reason of any action of John L. Lewis, have you?

Mr. Brooks. Congressman, I know that a lot of people have said that it has suffered. I know that they have painted dire pictures——

Mr. Perkins. I am just asking you if you know?

Mr. Brooks. Let me think. I am not sure. I think I will have to answer that that I cannot think of any right now that I can point to.

Mr. Perkins. I will ask you if there was ever a time when Mr. Lewis called out his men that he did not have more than 30,000,000 tons of coal on hand?

Mr. Brooks. I do not know the answer to that.

Mr. Perkins. To get back to the point——

Mr. Nixon. Will the gentleman yield to me?

Mr. Perkins. No.

Mr. Nixon. I yielded to you three times.

Mr. Perkins. Let me get on to this point; then I will yield to you.

Mr. Nixon. All right.

Mr. Perkins. Now, is it your contention that an emergency creates power—national emergencies? Or what is your opinion about that?

Mr. Brooks. Your question is, is it my opinion that an emergency creates power?

Mr. Perkins. Yes.

Mr. Brooks. That is a tough one to answer. I do not know the import of your question.

Mr. Perkins. Within the province of the President in the execution of the laws.

Mr. Brooks. Well, I certainly know this, Mr. Congressman, that by law certain kinds of emergencies, if declared to be such by either Congress or the President, do create certain kinds of powers; yes. I know there is such a thing as emergency powers.

Mr. Perkins. At this point, I want to make an observation that his opinion is contrary to the law as stated in the case of *Home Owners Building & Loan Association* v. *Blaisdell* (290 U. S. 398). That case held that an emergency does not create any power, but that an emergency may afford a reason for the exertion of a living power not already employed.

Mr. Brooks. The only good thing I can say about myself is that I was right. That was a tough question. And you have now proved what I said a moment ago, that I am not a constitutional lawyer.

Mr. Perkins. Now, you have stated that you were of the opinion that something should be in the law to handle national emergencies. I will ask you if you know what article II, section 3 of the Constitution provides?

Mr. Brooks. I cannot quote it, sir.

Mr. Perkins. Do you know that all the legal authorities hold that the National Government has an inherent power to deal with national emergencies within constitutional limits?

Mr. Brooks. If all the legal authorities agree on that, that is the only thing I ever heard of that all legal authorities agree on.

Mr. Perkins. All right. I will side-shoot the cases *Wilson* v. *New*, and *Block* v. *Hirsh* (256 U. S. 135) and any other cases cited therein. Now, going back to the question of emergencies——

Mr. Kelley. You have 1 minute left, Mr. Perkins.

Mr. Perkins. Article II, section 3, of the United States Constitution provides that "he shall take care that the laws be faithfully executed."

What do you construe that to mean in time of national emergency?

Mr. **Brooks**. That means a lot. It means that he is to see that the laws are executed. That is about the most that I can say.

Mr. **Nixon**. Will the gentleman yield to me? Otherwise his time will be up.

Mr. **Perkins**. Article II, section 1, of the United States Constitution, also provides for the grant of a general power to carry out his duties as the administrative head of the Government.

Mr. **Kelley**. Your time has expired.

Mr. **Perkins**. That is all.

Mr. **Kelley**. All the time has expired.

Thank you very much, Mr. Brooks. We appreciate your coming here.

Mr. **Brooks**. Thank you, Mr. Chairman.

Mr. **Kelley**. The next witness is Mr. Robert R. Grunsky, chairman of the California Metal Trades Association.

You may proceed when you are ready.

STATEMENT OF ROBERT R. GRUNSKY, CHAIRMAN, CALIFORNIA METAL TRADES ASSOCIATION

Mr. **Grunsky**. Mr. Chairman and members of the House Committee on Education and Labor, my name is Robert R. Grunsky. I am managing director of the California Metal Trades Association, and the following statement is presented on behalf of 300 employers, members of the California Metal Trades Association, who comprise the principal metal trades operations in the San Francisco Bay area.

The California Metal Trades Association is not a trade association but was organized in 1890 to represent its members in labor-relations matters. The association has been dealing with organized labor for the past 58 years, and at the present time negotiates with 12 unions for its 300 members. Many of our contracts are group or master contracts covering as high as a hundred and sixty-six employers under one contract.

I wish to emphasize that it is not an antiunion association, or a grouping of employers for the purpose of breaking labor. I would like to say originally in 1890 the association was set up for the purpose of preventing the organization of unions in the San Francisco Bay area. However, in the early twenties its policy abruptly changed, and it is not now and will not, as long as I have anything to do with it, have any policy along those lines. Its policy is to deal fairly with organized labor to the end that the employers may continue to operate their organizations at a profit while retaining those functions of management which rightfully belong to management.

Our association is made up of small employers. I would like to introduce for the record here the names and the number of employees involved in the association which I represent. I have copies here, Mr. Chairman, if you wish me to give them to you now.

Mr. **Kelley**. Without objection, they will be received and filed for reference.

Mr. **Grunsky**. Over 86 percent of the members of the association employ less than 100 employees. The largest single member of the association employs less than 1,000 employees.

So it is on behalf of the small employer, the small jobbing shop, and the small manufacturer in the metal trades field that I submit this testimony.

It is my understanding that your committee is interested in specific cases, not generalities, concerning changes and improvements in labor-management relations due directly to the Taft-Hartley Act. I intend to be specific.

First, may I refer you to section 8 (a) (4) (D) of the Taft-Hartley Act, the provision pertaining to jurisdictional disputes and work stoppages.

Prior to the passage of the Taft-Hartley Act employers of the California Metal Trades Association were involved in an average of four to five jurisdictional disputes and work stoppages each year. These disputes mainly involved the 30-year-old dispute between the millwrights and the machinists for the jurisdiction of installing and erecting machinery. Since the passage of the Taft-Hartley Act there has not been a single work stoppage involving any employer of the association over the question of work jurisdiction.

This is certainly a record of improved labor-management relations. Although the proposed administration bill does not make a jurisdictional strike an unfair labor practice, this bill does not have the teeth of responsibility and the penalty of possible suit for damages that are contained in the Taft-Hartley provisions, and it is our fear that it will not, for this reason, be effective in preventing jurisdictional strikes.

Take a case of jurisdictional strike. By the time an unfair-labor-practice charge is processed through the National Labor Relations Board and a cease-and-desist order is issued by the Board, such order would be in effect an obituary to the employer whose business was long since dead from the effects of the jurisdictional strike.

With reference to the non-Communist affidavit, section 9 (b) (H) of the Taft-Hartley Act, I wish to state that as a direct result of this requirement to file non-Communist affidavits, the membership of local 1304, CIO Machinists, an affiliate of the United Steelworkers of America, in an election held in June 1948 completely cleaned out all left-wing officers and business agents of the local and in this election over 30 officers and representatives who were known to be left-wing or Communists were swept out of office. This was merely part of a campaign on the Pacific coast by the United Steelworkers to clean up their locals.

Further, the Grand Lodge of the International Association of Machinists was encouraged and backed by the provisions of this law to remove from office all business agents and officers who were either left-wing or would not, or could not, take the non-Communist oath in lodge 68, the largest machinist local in the San Francisco Bay area, and in lodge 1176, Tool and Die Makers.

There certainly should be no doubt in the minds of your committee that this action resulted in improved labor-management relations and I know that there is no doubt in the minds of the employers whom I represent.

The administration bill contains no provisions requiring the filing of non-Communist affidavits and I wish to go on record as definitely recommending that this provision be retained in the interest of improved labor-management relations and also in the interest of our national security.

For example, although Harry Bridges has been given a clean bill of health as far as being a Communist is concerned, there is no question in San Francisco or on the Pacific coast as to the leanings of his union and many of the union officers. He has stated that if his union could get control of the water front on both sides of this country, he could effectively shut down the commerce and trade of the United States.

I ask your committee to consider what effect a Communist-controlled machinist union might have on our war effort in the event of a national emergency.

With further reference to the non-Communist affidavits, I wish to go on record as stating that the employers and staff members of the California Metal Trades Association are willing, and do recommend, that non-Communist affidavits be filed by employers and their agents as well as by union officers and agents handling labor-relations matters.

I now refer you to section 8(b) (4)(B) unfair labor practices on the part of the unions, and section 9(c) (1)(B) the right of an employer to petition the National Labor Relations Board for a representation election where employees or a union have presented him with a claim to be recognized for purposes of collective bargaining.

Prior to the passage of the Taft-Hartley Act some of the unions with which we deal refused to use the processes of the National Labor Relations Board for the purpose of determining questions of representation with small employers.

I emphasize again the "small" employers. We are little fellows.

The Machinists Union, lodge 68, under Hook and Dillon refused to recognize the Board or use any of its processes. An employer in San Francisco, when pressed with a demand for recognition, had a choice to make between accepting a strike and picketing of his plant, or recognizing the union as the collective-bargaining agent without the employees having the right to vote, or to determine for themselves their bargaining rights.

Since the passage of the Taft-Hartley Act containing the provisions referred to we have had no cases in which any union with whom we deal has refused to use the processes of the National Labor Relations Board for the purpose of determining the collective-bargaining rights of the employees.

Can there be any question in the minds of your committee that this change of attitude on the part of the unions, from the use of economic force for the purpose of recognition to the use of the National Labor Relations Board, is not an improvement in labor relations for the small employers or for the employees of these employers?

Here again the proposed administration bill falls down from the standpoint of labor-management relations in that there are no provisions giving the employers the right to petition for an election or making a recognition strike by a union, without using the processes of the National Labor Relations Board, an unfair labor practice.

Section 8 (b) in its entirety and section 2 (5) deal with the union officers' responsibility for their acts and for unfair labor practices of the unions.

As a direct result of these provisions of the Taft-Hartley Act, and the fact that the unions and their officers were given responsibility commensurate ith their position in the American industrial life, the employers of our association were able to negotiate fair and firm no-strike-no-lock-out clauses in all agreements.

What was the result of this union responsibility? Prior to the passage of the Taft-Hartley Act and throughout the war period, in the 60 foundries which are members of the association in northern California there was an average of one authorized or unauthorized work stoppage per month, notwithstanding a no-strike clause in the contract.

The record of Lodge 68 of the machinists' union under Business Agents Hook and Dillon has been well publicized for the number of work stoppages that occurred during the war period, and has even been read into the Congressional Record. Since the passage of the Taft-Hartley Act there has not been a single work stoppage during the life of a contract in any plant with any union with whom the association deals.

Although section 204 of the administration bill recites that it shall be the responsibility of employers and employees to make every effort to negotiate no-strike clauses, this section is apparently meaningless and unenforcible by reason of the fact that there are no teeth in the measure in that unions and their officers have been relieved of their responsibility for violation of contract, as well as our employers. We are now in receipt of demands from several metal trades unions for complete elimination of all no-strike clauses.

Based on the record there is no doubt that it is in the interest of the public, employers and employees that any legislation continue the responsibility of unions and employers to live up to their contracts.

The administration bill proposes the return of the Conciliation Service to the Department of Labor, whereas the Taft-Hartley Act set this service up as an independent agency.

Prior to the passage of the Taft-Hartley Act and the setting up of the Conciliation Service as an independent agency, our employers either refused to deal with the Conciliation Service or looked upon them as business agents of the union, and their effectiveness in aiding or settling disputes was about what you would expect with such an attitude on the part of the employers.

Since the Taft-Hartley Act has been in effect there has been a complete change of attitude on the part of the employers I represent. They feel that this is an independent agency and in 1948 the Conciliation Service did effective work in bringing to settlement the three major strikes which occurred between the Association and the unions.

The employers look on the Department of Labor as a department set up to aid and assist labor to the same extent that the Department of Commerce is set up to aid and assist business. If the Conciliation Service is returned to the Department of Labor, whether their feelings are based on fact or fiction, there is no doubt in my mind that the Conciliation Service would again return to the ineffective role it played prior to becoming an independent agency as far as the California Metal Trades Association is concerned.

The unions' claim of damage under the Taft-Hartley Act cannot be substantiated on the basis of the facts with the employer members of the California Metal Trades Association. Here are the facts: During the past year 22 contracts were negotiated.

Fourteen union authorization elections were held covering these contracts by the National Labor Relations Board. The Board procedure was conducted smoothly in adequate time for negotiations even though there were many serious problems involving multiple employer bargaining units covering from 60 to 88 firms in one authorization election.

Three major strikes occurred over purely economic differences of opinion. In not one instance was the Taft-Hartley Act or any of its provisions the cause of an issue or dispute which resulted in strike. All unions resorted to grievance procedure and arbitration rather than economic means in settling questions arising over the interpretation or the application of the agreements.

All this occurred in one of the strongest union and most highly organized areas in the United States. I don't believe this indicates damage to unions, in our experience, at any rate. Does it not again indicate improved labor-management relations?

In summary, and in behalf of these small employers, I wish to state:

(1) The antijurisdictional dispute legislation resulted in definite improvement in labor-management relations. These provisions should be retained, including the right to sue unions for violation.

(2) Non-Communist affidavits resulted in clean-up of troublesome and left-wing unions. These provisions should be retained and expanded to include employers and their agents.

(3) The right of employers to petition for representation elections and the requirement that the unions use the National Labor Relations Board processes rather than economic action extended the protection of the National Labor Relations Board's democratic processes to the small employer and his employees. Such provisions should be retained.

(4) The provisions of the act requiring union officers and agents to be responsible for living up to contracts resulted in the complete elimination of authorized or unauthorized work stoppages during the life of our agreements. Such responsibility on the part of the unions is in the interest of all and should be retained.

(5) The Conciliation Service was an effective aid in settling disputes for members of our association during the period of time which it has been an independent agency. It was not effective prior to this time. This service should be retained as an independent agency and should not be returned to the Department of Labor.

(6) Our record shows that the union authorization elections have not damaged or weakened the position of the unions, nor have they been prevented from using their economic strength for the purpose of attaining legitimate gains. These provisions should be retained.

In conclusion I wish to point out that labor today is the dominant force, both politically and economically, in the industrial life of the United States. The students of labor relations today realize that we are changing over, if we have not done so already, from a capital economy to a labor economy. From the record and the pressures being applied toward legislation it is apparent that labor is not willing to voluntarily assume the responsibility commensurate with its position in our country today. The Taft-Hartley Act gave them this responsibility by legislation and it appears necessary to continue this responsibility in any revision of labor legislation.

I wish to thank you for the opportunity of presenting this evidence to your committee for consideration.

Mr. KELLEY. I don't think there are any questions from any of the members. You are going to get off easy tonight.

Mr. GRUNSKY. I will enjoy that.

Mr. KELLEY. Thank you very much, Mr. Grunsky.

Next we will hear from Mr. Donald A. Morgan.

TESTIMONY OF DONALD A. MORGAN, ON BEHALF OF ILLINOIS STATE CHAMBER OF COMMERCE

Mr. MORGAN. I am Donald A. Morgan, a lawyer, of Peoria, Ill. I appear, with your kind permission, on behalf of the Illinois State Chamber of Commerce. That chamber is composed of 8,600 Illinois businessmen from all types of enterprise, in 241 communities in Illinois. A few of the enterprises are, of course large, but the vast majority of the business furnishing its membership are small.

Since 1946, the chamber, through its Personnel and Labor Relations Committee, has given intensive study to the problems of labor-management relationship, and since the spring of 1948 has conducted an extensive survey among its membership in the course of its study.

The Illinois State Chamber of Commerce agrees wholeheartedly with a statement made by the President of the United States, in June of 1946, when he said:

> We accomplish nothing by striking at labor here, at management there. There should be no emphasis placed upon considerations of whether a bill is antilabor or prolabor. * * * Equality for both and vigilance for the public welfare—these should be the watchwords of future legislation.

It is fundamental that successful handling of the relationship between labor and management is of the gravest importance to all of us. The employee, the consumer and the employer, whether he be an individual owner, an investor, or a hired manager, constitute the public; each of us falls in one or more of these groups.

Among those classes, as they have come to be called, to be sure there is a sharp conflict of interest, but the paramount interest of all is that the relationship succeed. Our standard of living, our economic system, our democratic society and its government, even our ability to survive as a free and independent people in the world today and tomorrow, depends upon the maintenance and encouragement of our free economic system and its productive might, supported by the cooperative efforts of employers and employees developed through free and fair bargaining between them.

If these facts are true, and we have the entire history of the greatest nation in the world to prove them, and the lives and liberty of our sons to risk if we fail to heed them, then the only question we dare be guided by in connection with the enactment of labor laws is whether the proposed changes will benefit the public interest. The public is interested in collective bargaining not only to the extent that it function, and strikes and interruptions be avoided, but also, and to a much greater extent, in what the bargaining produces in the way of a sound and workable relationship consistent with the realities and necessities of a productive economy under a free and democratic society.

This is not, or should not be, a private fight between labor unions and management. Yet it would appear to be so. The only attempt to justify H. R. 2032 is that the legislation it would repeal is "antilabor" and the repeal, therefore, is "prolabor." The public interest in the matter is not discussed or considered. We believe that that approach is no less absurd than it would be for business to demand, merely because it thought it could, that the Congress repeal the antitrust laws, the Securities Act, or the Corrupt Practices Act because they are "antibusiness" and without regard for the public interest in the matter.

Legislation enacted at the request and for the benefit of a special group will be repealed and reenacted with the vagaries of the political fortunes of pressure groups, and it will contribute only confusion. The only legislation that can become woven into the fabric of our system is that which is required by and designed for the benefit of all.

The Congress of the United States, by tremendous majorities and with little regard for party lines, has enacted labor-management legislation in the public interest. We believe, as President Truman has stated, that anyone seeking to change the existing laws should be required to prove to the Congress how the suggested changes will benefit the public interest, as against special or private interests.

We believe that the public interest requires a fair labor-management relations code, and that it should recognize the following fundamental principles:

(1) The public interest requires that the parties have equality of rights and obligations and be treated fairly by government.

The business manager is literally in the middle. He is required to divide the economic advantages of the business among the employee, who wants higher wages, the consumer, who wants lower prices, and the investor, who wants a return on his investment, and he is subject to intense pressure from each. If he fails to make the proper division, the business will inevitably fail, and jobs and wealth will be lost to the public. If the law gives the manager duties and obligations only and the labor organization all of the rights and remedies, the manager will be wholly unable to work out the division required of him, he will lose his customers and investors, or both, and his enterprise will fail. Obviously both parties, if either, must be required to bargain in good faith. If no such requirement is set, the union will have a perfect right not to bargain, or to bargain in bad faith, and a poor deal will inevitably result.

If collective bargaining agreements are to mean anything, there must be mutuality of obligation and adequate remedy available to each party for a breach of the agreement by the others. It is not the remedy itself that is important; it is the compulsion to responsibility by the presence of the remedy. In the summer and fall of 1947, many responsible union leaders advised their members that because of the remedy provided, they must abide by their agreements, and no one can deny that such advice is in the public interest. And if that responsibility is to be achieved as a practical matter, both unions and employers must be answerable for the acts of their representatives under the established law of agency.

Simple fairness requires that the tribunal established to administer the law should be impartial, that investigative, prosecutive and judicial functions should be completely separated, and that the hearings should be conducted under rules of evidence and procedure that would prevent decisions dictated by bias, whim or caprice, and give opportunity for adequate judicial review. It seems basic to us too that both employers and employees should have access to the tribunal for the remedy of wrongs and determination of representatives.

(2) The public interest requires that fundamental freedoms be preserved and protected.

The American system is based upon the inviolability of the individual and his rights. Those rights should not be infringed, except in absolute necessity in the public interest, and we should not overlook some, in the zeal to protect others.

Individual employees should have the free choice of their representative, subject only to the free will of the majority of their fellow employees, and they should be protected from interference, restraint or coercion in their choice, not only by employers but by the representatives involved. The right of an employee not to join a union and not to be represented by one is no less sacred and should not be overlooked.

Certainly the right of an individual to quit, and his right to strike, unless he has agreed not to, should be preserved. But the law should also protect his right to work and to keep his job, even though someone else thinks he should not. Mass picketing, coercion, intimidation and violence in derogation of his right to work should be prevented. The closed shop, at least in the case of closed unions, is an indefensible monopoly of the labor market and cannot be justified as a union security device.

The union shop, on the other hand, based upon the free will of a majority of the employees, is perhaps a legitimate union security demand, if it requires only that the individual employee pay his fair share of the cost of his representation. Both the closed shop and the unrestricted union shop permit the union representative to determine whether an individual may or may not be a member, and thus amount to a denial of the right to work.

The freedom of speech of employers, employees an dunion representatives should be preserved by all means, but that right should not be permitted, in this field any more than any other, to be exercised as an excuse for violence, force or intimidation under its guise.

(3) The public interest requires that the Government prevent artificial restraints on productivity and efficiency of operations.

Make-work, stand-by, work limitation, and other feather-bedding practices and opposition to the introduction of more efficient methods, equipment and materials, must be prevented by law. The inevitable result of any of these practices is to reduce the standard of living, by making goods more expensive or less available. Such practices are wholly inconsistent with the indisputable fact that our standard of living depends upon the greatest production of goods, material and service, with the least cost, time and effort.

Secondary, sympathetic and jurisdictional strikes and boycotts, those directed against an employer not involved in the dispute to force action by another person, are indefensible union activities. The employer is innocent and unable to do anything about it; the employees seldom know much about the issue they are striking for. Such strikes are an utter waste of manpower and facilities, to the detriment of the public, and should be unlawful and subject to prevention by proper remedy.

The administration bill does not outlaw any secondary boycott as such. It merely makes unlawful the attempt to attain either of two improper objectives by either a secondary boycott or a strike.

Another danger to productivity and efficiency of operations lies in the attempt to aline supervisory employees with the people they supervise, in organizations to deal with employers. The difficulty of this problem is clearly shown by the indecision of the National Labor Relations Board as to whether supervisors were covered by the Wagner Act. It presents a sharp conflict between the right of supervisors to bargain collectively and the public interest in maintaining efficiency in industry. We believe that the public interest should prevail, and that the individual employer should be free to decide whether he can or cannot bargain collectively with his supervisors.

(4) The public interest requires that Government prevent strikes which endanger the national health, security, or welfare.

In 1946, President Truman stated:

> It is inconceivable that in our democracy any two men should be placed in a position where they can completely stifle our economy and ultimately destroy our country. The Government is challenged as seldom before in our history.

And on January 6, 1947, the President said to the Congress:

> The paralyzing effects of a Nation-wide strike in such industries as transportation, coal, oil, steel, or communications, can result in national disaster. We have been able to avoid such disaster in recent years only by the use of extraordinary war powers. All those powers will soon be gone. In their place there must be created an adequate system and effective machinery in these vital fields. This problem will require careful study and a bold approach, but an approach consistent with the preservation of the rights of our people. The need is pressing.

We agree that machinery must be provided and suggest that the pressing need will be aparent whenever that kind of strike occurs. We believe that the use of injunctions in such national emergencies has proved to be effective and necessary and that it should be spelled out in the statute. We believe, moreover, that the danger is presented by the monopolization of entire industries by single unions, and if no other method can be devised to prevent it, then such combinations must be controlled or eliminated, just as combinations of business contrary to public interest are broken.

(5). The public interest requires that individuals pledged to destroy our free economy should be removed from union leadership.

It is a known fact that Communists have attempted systematically to gain control of unions, so that they could control our industrial might for their evil purposes, and that they have met with some success. This is not a labor-management problem; it is one of national security. Nor is it antiunion or a question of union regulation, because no Communist ever gained control of a union for the benefit of the union or its members.

The anti-Communist affidavit device, enacted in 1947, was soundly based on the power of communism in some unions, and it has proved peculiarly effective in restoring control of many unions to their members. Probably further security legislation is necessary, but the anti-Communist affidavit can continue to have a wholesome effect.

It has been suggested that employers be required to sign the same affidavit. There would appear to be no objection to that proposal, even though Communist infiltration of employers has not been demonstrated and it would be the substitution of shallow appearance for sound reason.

(6) The public interest requires that political activities of special-interest groups be controlled.

Many years ago, the Congress determined that political activities of banks and corporations should be restricted. That was because their wealth made their unrestricted political activity a matter of public concern. Large unions today are in the same position and no sound distinction can be made. Louis Waldman, one-time lawyer for Sidney Hillman, and a well-known union attorney, has said:

> As long as trade-union leaders confine themselves to the task of raising wages, shortening hours and improving the conditions of employment of their members, their political philosophy is of little concern to the public. But when these unions enter politics, they are seeking public power which may directly affect the life and well being of every American. In politics, therefore, the union leaders' philosophy of government must be weighed in the light, not of trade-unionism, but of the public welfare.

We do not suggest that unions should be prevented from editorializing in their papers on political matters. That is freedom of speech. We do believe, however, that unions should be prevented from making contributions to political parties or canditates, for the same reasons and to the same extent that business corporations are so prevented.

The Illinois State Chamber of Commerce has tried, for the past 3 years, to be completely objective in its study of this subject, and I have tried to be objective tonight. We believe that labor-management legislation, to be workable, helpful or, permanent, must be founded solely on the public interest and welfare, regardless of its name, or the public clamor of any special-interest group. We do not believe that H. R. 2032, or its counterpart in the United States Senate, is in the public interest because it fails to recognize the principles that I have discussed here.

We believe that a fair code for labor-management relations should contain the provisions which I have indicated today and which are set out and discussed more fully and more clearly in the printed report of our study which I have filed with this committee today.

Thank you very much.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. I have no questions.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. No questions.

Mr. KELLEY. Mr. Smith?

Mr. SMITH. No questions.

Mr. KELLEY. Mr. Werdel?

Mr. WERDEL. I just want to know about his qualifications and background.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I just want to mention one fact. The act makes it mandatory upon the general counsel to apply for an injunction against a labor union where a charge of unfair labor practices has been filed and where the regional director states in his petition for an injunction that he has reasonable cause to believe the charge to be true.

By that provision the Government takes over the burden and expense of injunction suits against labor unions, and the employers do nothing but watch from the sidelines. The act does not provide that the general counsel shall seek an injunction against an employer against whom a charge of unfair labor practices is filed.

While it is a fact that such temporary injunction shall be in force only from the time it is issued by a United States court until the National Labor Relations Board shall rule upon the complaint of unfair labor practice against the union, there is no provision requiring the National Labor Relations Board to expedite its said ruling.

Such an injunction was issued against a certain union's district council on January 8, 1948, and the Board did not rule upon the complaint until February 1949. The consequence was that the labor union was enjoined during all that time from picketing the contractor who was engaged in the manufacture of certain products by strikebreakers.

It seems that, as has been mentioned here, it would be quite a long time before certain rulings were made, and it seems to me this exceptionally long time for the Board to take to act is totally unjust, if not premeditated.

Do you care to say anything on that?

Mr. MORGAN. I don't know exactly what the question is, Mr. Irving. I would make this observation: I don't think the present law makes it mandatory upon the general counsel to obtain an injunction in all unfair labor practice cases, only certain ones; and those are the ones involving strikes, and apparently the Congress thought it desirable in those instances to maintain the status quo.

I would be inclined to agree with you that a year is a long time.

Mr. IRVING. You don't think it is fair, then, that he should be required to issue an injunction against the employer in case of a charge of unfair labor practice by the union?

Mr. MORGAN. I don't think the necessity exists, Mr. Irving, because the employer doesn't strike. The employer does a certain act which the Board seeks to prevent or remedy. If it is a discharge or failure to promote or something like that, then damages run from that date, and the employee is compensated in back pay.

Mr. IRVING. I would think it would be just as fair that he be enjoined from employing strike-breakers and continuing the work as it would in the other case.

The act prohibits all boycotts by unions, including boycotts of goods manufactured by strikebreakers in the struck plant. That prohibition has been recently determined by the National Labor Relations Board to prohibit picketing, and also the we-do-not-patronize list in a case that I mentioned above.

The act provides that any person damaged by such boycotts may sue the union carrying on said boycott for damages. The words "any person" include not only the person being boycotted, but the person whose goods might not be delivered because a truck driver or any other person refused to cross a picket line or was damaged in any other way by reason of said picketing.

Mr. MORGAN. That is correct. I understand that. That is entirely consistent with our position, the position of the chamber, which I have expressed here tonight. We think all secondary boycotts should be prohibited by a fair labor-management relations code for two reasons principally:

The first is that the employer who is being damaged by that action has very little or nothing that he can do to prevent it. It is not some act on his part that they are objecting to.

The second reason is that very often in those cases the employees who are actually taking the action, the secondary boycott, probably know very little about the actual dispute. They know what someone has told them. Someone told them it is sufficient to take this action, and they follow their leader. Perhaps that is proper if the action itself is proper. But they don't know what they are striking about.

For example, this is not a secondary situation, but a sympathetic situation, which is much the same. I heard this question discussed a moment ago about this present coal situation. I hadn't read about it at all.

However, in that case I doubt if there is anything that the coal producers can do about the appointment of this individual by the Federal Government, and I also doubt that the employees themselves actually are as well informed about it as they would be if it were a strike for wages. When they strike for wages, they know about that.

Mr. IRVING. You are speaking mostly for small business. Do you think if 1, 8, 10, 15 men are working on a job, they don't know what a dispute is about if they are called to picket or strike the job?

Mr. MORGAN. No, I think if they are called to strike the job for some direct economic reason of their own, they know pretty well what they are trying to accomplish, but if they are told not to work on that job because there are some nails from a nonunion shop, they know nothing about that first-hand, usually. They know nothing but the hearsay from the man who told them, that this is made in a nonunion shop. Maybe he knows nothing about the facts. Maybe the employees want it to be a nonunion shop.

Mr. IRVING. He is relatively in the same position of a stockholder of a company when the company wants to lock out a union for any reason, in order to take unfair labor practices against their employees. The stockholder doesn't know a great deal about that either.

Mr. MORGAN. I assume that is right, yes.

Mr. IRVING. I think there are a great many unions which elect representatives whom they have confidence in and who conduct the business in much the same manner as executives of business do. I take it from your testimony that there are no oppressive features in this act at all.

Mr. MORGAN. What act?

Mr. IRVING. The Taft-Hartley Act.

Mr. MORGAN. Oh, yes, I want to make myself clear on that. We don't undertake in this study to endorse specifically the Taft-Hartley Act, and I don't think my testimony can be characterized like that.

This study began in the spring of 1946 before there was any Taft-Hartley Act, and the things I have mentioned in my testimony and which are contained in this printed study consist of many things in the Wagner Act, many things in the Taft-Hartley Act, and perhaps one or two things in the administration bill.

We are talking generally about a fair labor-management code and what we consider the obligation of Congress to be to enact such a law in the public interest.

Mr. KELLEY. You have 1 minute left.

Mr. IRVING. You make some statements relative to the pressure of unions, and so forth, to repeal this act. If I remember correctly, there was a whole lot of pressure by management to repeal the Wagner Act. There wasn't too much disposition on the part of business to cooperate with the act for a great many years.

Thank you.

Mr. KELLEY. Mr. Wier?

Mr. WIER. I have no questions.

Mr. KELLEY. Mr. Smith?

Mr. SMITH. No questions.

Mr. KELLEY. Mr. Werdel?

Mr. WERDEL. How long have you been in Peoria?

Mr. MORGAN. I am a lawyer in Peoria. I practiced law there for about 11 years except for a period during the war.

Mr. WERDEL. It is my recollection that you were in the Federal Bureau of Investigation; is that right?

Mr. MORGAN. That is correct. I was in the FBI for 3 years.

Mr. WERDEL. That is all.

Mr. KELLEY. Mr. Velde?

Mr. VELDE. Since we are fellow-townsmen, Mr. Morgan, I would like to ask you a few questions about the labor conditions around Peoria generally and specifically refer to a strike that happened in the Caterpillar Tractor Co. about a year and a half ago. I didn't know too much about it, and I don't know whether you do or not, but I would appreciate your telling the committee what the strike was called for and how it was settled, and so forth.

Mr. MORGAN. I would be very glad to, Judge Velde.

I didn't represent either party in that matter, so any testimony I can give you is just as a private observer, what I read in the newspapers, et cetera.

However, my recollection of the matter is something like this: The Caterpillar plant employees were represented by the United Farm Equipment and Metal Workers of America, CIO. In the spring of 1948 they were engaged in negotiation of a new contract and the old contract had expired. During the course of those negotiations a couple of other unions filed petitions with the National Labor Relations Board claiming the right to represent these same employees, who were represented by the Farm Equipment Workers, or at least some of them.

At that point, as I recall, the company announced that it had to recess the negotiations because it would not be permitted to negotiate with the union, and for the additional fact that it would appear quite unlikely under the existing conditions that the incumbent union could remain, and it would be folly to negotiate and sign an agreement with the union which probably would not stay.

Their ground for saying that was that the Farm Equipment Workers Union had not filed their affidavits and, as the company understood the law, they would not be on the ballot and could not represent the employees.

Shortly after that recess, the plant was struck, I think it was down for 13 weeks—it may have been a little longer.

Near the end of the strike an election was held. The Farm Equipment Workers were not permitted on the ballot because they had not filed their anti-Communist affidavits at that date, and a new union was selected by the employees as a result of the original and a run-off election.

I think perhaps one of the most interesting features about that whole strike, and to me it casts some light on this labor problem, in this: That during the period of the strike, perhaps after it had run two-thirds of its course, one of the local newspapers set out to poll the employees in a kind of "last offer" set-up. They mailed to each employee at his home address, some 18,000 employees or so, an identifiable ballot with an identifiable return envelope and requested that they be sent back immediately.

Approximately 3 or 4 days later the dead line was reached, the ballots were counted, the question on the ballot was: Do you want to accept the company's last offer and terminate the strike with the understanding that when a contract is negotiated, any wage increase will be made retroactive? That was the offer made by the company. The vote was about 13 to 1 of the employees who returned the ballot to end the strike and return under those conditions.

I am sure the poll was fairly conducted, and I think somewhere over 60 percent of the employees actually returned their ballots. Yet the strike continued. I think it was an interesting commentary.

Mr. VELDE. What I was referring to in asking about that particular case was that it is a good example of communistic infiltration.

Do you recall whether or not a business agent admitted later that he was a Communist?

Mr. MORGAN. Yes; the charges were made locally there by disinterested organizations that there were some Communists in town, and they gained a lot of newspaper publicity from that fact, and three Communists were identified, two of whom were in the Farm Equipment Union. One of the men was the publicity and educational director for the local union, and the other man was international vice president of the Farm Equipment Workers Union. I understand one of the men admitted, or, at least, refused to deny they were Communists, and that was the reason they had not signed the non-Communist affidavit and, subsequent thereto, I am sure you will recall the Farm Equipment Union, by a resolution at its international convention instructed the officers to sign an affidavit, at which time a number of them resigned and were replaced, and I understand they now have signed the affidavits, but, apparently, a number of the officers had to remove themselves.

Mr. VELDE. I notice here in your statement you say:

> It has been suggested that employers be required to sign the same affidavit—

Referring to the Communist affidavit—

> There would appear to be no objection to that proposal, even though Communist infiltration of employers has not been demonstrated, and it would be the substitution of shallow appearance for sound reason.

You are a former member of the FBI, and so am I, and I happen to know that there are at least a hundred people in my personal acquaintance that I have come across during my experiences who are worth considerable money, and who are in the position of employers, and I think maybe you know something about that, too. Would you care to comment as to whether you do know whether there are some Communists in this country who are in the position of employers?

Mr. MORGAN. I would not deny that for a minute, Mr. Velde. On the other hand, I do not think there has been any effort on the part of the Communists to infiltrate the employer group, as such, while we know there has been such an effort in labor unions, and I think we all known why. Certainly there are some Communists in all walks of life today.

Mr. VELDE. Do you not agree, too, that if you require a union official to sign a non-Communist affidavit, the employer, or the person who represents the employer, should also sign the non-Communist affidavit?

Mr. MORGAN. I would agree with that, Mr. Velde, as the United States Chamber of Commerce has, and I make that suggestion.

Personally, I put some of my own views in the statement. Also, I think that is rather shallow appearance; however, on the face of it, it is certainly fair enough, but I would like to suggest on the face of it we should have our laws apply equally to men and women. Yet, all of us would agree that prostitution is a crime which can only be committed by a woman. But I suggest that it is fair that employers perhaps should be required to sign the affidavit for the purpose of appearance only, but I would not agree there is the same substantial reason they should do so that there is in the case of the union.

Mr. VELDE. I think that is all I have.

Mr. KELLEY. A question was raised by Mr. Velde about communism in management—do I understand it correctly?

Mr. VELDE. Mr. Chairman, of persons who are in a position of employers. I know of an example of a very wealthy woman from the west coast who happens to come from San Francisco. While she does not directly employ very many people, she does do so indirectly, because she is a stockholder in a large corporation, and I definitely know she is a Communist.

Mr. KELLEY. That brings up the question in my mind that before we got into the war in Europe, there were quite a few people in this country in important positions in management and business who were tainted conservatively with communism and fascism.

Mr. MORGAN. That may perhaps be true. I really do not know, Mr. Chairman.

Mr. KELLEY. I have no more questions. Thank you very much. We are glad you came, Mr. Morgan.

Mr. MORGAN. Thank you very much for letting me come. I have enjoyed it.

Mr. KELLEY. Mr. French and Mr. Hazard.

As I understand it, you each have requested 15 minutes.

Mr. French, you may proceed.

TESTIMONY OF SEWARD H. FRENCH, JR., ASSISTANT TO THE PRESIDENT AND MANAGER OF INDUSTRIAL RELATIONS, CRUCIBLE STEEL CO. OF AMERICA

Mr. FRENCH. My name is Seward H. French, Jr. I reside in Pittsburgh, Pa., where I am employed as assistant to the president, in charge of industrial relations of the Crucible Steel Co. of America.

Crucible Steel is a basic steel manufacturing company, having manufacturing plants in Pittsburgh, Pa., Midland, Pa., Syracuse, N. Y., Harrison, N. J., and warehouses and offices in many other cities and States. We employ a total of about 15,000 persons. Almost all of our production and maintenance employees are represented by a union and have been for some 10 years. A substantial number of our office employees are represented by unions. We have bargained collectively, and largely to the mutual satisfaction of all concerned, for many years.

I am not opposed to labor unions. They are here to stay—as much a part of the American scene as the corner drugstore. Nevertheless, the time has come when they must recognize their responsibilities and submit to government by law the same as any other citizen or organization. The Labor-Management Relations Act of 1947, or Taft-Hartley Act, took a step in that direction, and as a result has been bitterly opposed by some persons and groups.

I am here today to testify that, if the act is not all good, it is just as certainly not all bad.

(1) Some regulation of labor unions is required:

From the beginning, the opponents of the Labor-Management Relations Act have attacked it with much heat but with little logic. Complaints have been general accusations that it is a union-busting, vicious, antilabor measure, designed to destroy and enslave the workingman.

These accusations are without foundation in fact.

I have seen something of industrial relations in a great industrial area. Under the act not one workingman has been enslaved or destroyed. Not one union has been broken.

The truth of the matter is that, although our labor unions have grown to be big business, under the act they have for the first time felt in some minor respect the restraints which have been imposed upon other big businesses. They have made themselves responsible for the welfare of some 15,000,000 workingmen and their families, yet they would be unrestrained by law in the exercise of the vast powers which have been granted them.

We in this country have, by statute, carefully safeguarded the handling of money in the hands of trustees. We have hedged our corporations about with a multitude of laws designed to protect persons investing money. We have many and strict laws and rules of conduct to govern the professional behavior of attorneys, insurance agents, stock brokers, and the like. It seems not unreasonable that some provision should be made by law to protect the 15,000,000 persons whose welfare is in the hands of the labor unions from the possible abuse of the powers given to unions by Federal legislation. A country which has been so zealous in guarding money in the hands of persons occupying positions of trust and confidence must be at least equally zealous in safeguarding the right to work and the welfare of working men and women which has been entrusted to the leaders of labor unions.

It is not surprising that the union leaders object to any restraint or regulation, for until the Labor-Management Relations Act they were free to do very much as they pleased. Nevertheless, even those persons most favorably disposed toward labor unions must admit that the possibility of abuse of their numerous powers exists, and as long as there is such a possibility some union leaders, who are, after all, only human, will abuse these powers. It should be obvious that the public interest requires reasonable regulation.

(2) The restrictions imposed by the Labor-Management Relations Act are reasonable regulations.

Putting aside the general criticism which is based upon the untenable theory that there should be no regulation whatsoever of unions, an examination of the individual provisions of the Labor-Management Relations Act will show to any fair-minded person that those specific restrictions are but reasonable limitations upon possible abuses of the powers vested in labor unions and their leaders.

The requirement that unions as well as employers bargain in good faith is certainly a reasonable regulation. Collective bargaining can hardly be carried on entirely by one party, and if the processes are to be encouraged, as seems to be now an almost universally accepted objective, the statutory requirement that both parties bargain in good faith is essential.

Most of the abuses guarded against in the Labor-Management Relations Act have to do with the rights of the individual working man or the public and are not primarily beneficial to the interests of employers. They were not intended to benefit the employer, except in a most indirect way, and that is not the ground on which they have been attacked.

As Lee Pressman—at that time general counsel for the C. I. O.—complained at the time the act was under consideration:

> Perhaps the most predominant characteristic of the current attack upon labor's rights is the rediscovery of the individual. This rediscovery of the individal finds reflection in a host of bills now before the Congress to alter and amend our Federal labor code.

His remarks were intended to show the iniquity of recognizing rights of individual employees, not to compliment Congress on the new legislation. As an admission by a union representative however, it shows that somehow the rights of a workman were considered hostile to labor's rights, and at least some unions felt that workmen should have no individual rights, but should exist only as a particle in a homogeneous mass identified by Mr. Pressman as "labor." This theory, so frankly expressed, is contrary to the concept of democratic government.

Certainly if a union is permitted to have any form of union security by agreement with an employer, it must be required to admit to membership, and hence to employment, any person who accepts the obligation of paying proper and reasonable initiation fees and dues. Forcing the discharge or black-listing of an employee because of failure to maintain membership "in good standing" in a union, with no restriction upon the reasons for which the union or its leaders can deprive the employee of "good standing," is a deprivation of personal freedom and dignity not to be countenanced. The so-called "free rider" argument is the only really good argument that the union ever advanced for the union shop. It cannot be denied that the union, under our system obtains benefits and performs services for all persons in the unit represented. It is reasonable that all persons in the group which benefits should contribute to the expenses of maintaining the organization. This is permitted under the present act. The provisions of the act dealing with compulsory union membership are fair and should be continued.

The provisions of the act giving the Federal courts jurisdiction over suits for damages for breach of contract are reasonable and proper. The policy should be, and theoretically is, to encourage in making and observing of collective bargaining agreements. To provide by law that they must be made but cannot be enforced defeats the very purpose which is allegedly one of the aims of the legislation. The Federal courts are certainly not antilabor. They are in a position to do justice, their interpretations have precedent value, and their rulings are subject to review. This provision of the act has not resulted in any "raids" on the union treasuries, having been used very sparingly. It has, however, caused both parties to give considerably more thought to actions which might be construed as breaches of the collective bargaining agreement, and have resulted in more complete observance of the terms of such contracts. That is, of course, a very good result. These provisions should be continued.

It is hardly necessary to continue section by section to point out the reasonableness of the rather mild regulation of labor unions contained in the act. As we have previously stated, for the most part these provisions are for the protection of the public and the individual working man, and are not of prime importance to employers as such. Nevertheless the Congress must be conscious of its obligation to the public and the individual working man, and should not lightly strip away such protection.

(3) Exemption of supervisors from coverage of the National Labor Relations Act:

There are some provisions which are the primary importance to employers and to the public. Perhaps the foremost such provision is the section which makes it clear that supervisory personnel are not within the coverage of the National Labor Relations Act.

The organization of supervisory personnel into labor unions, subject to all the requirements of unions, poses an extremely difficult and dangerous problem to management. If the unions are given unrestricted power to deal with their members and other working men as they see fit in accordance with the proposed legislation, the problem may well be an insuperable one in many instances.

Even under the National Labor Relations Act there was for many years a serious question whether or not foremen and other supervisors should be included as employees under the act. The National Labor Relations Board in the ordinary determination of a unit for collective bargaining for production and maintenance workers has customarily excluded supervisory personnel. This was true under the National Labor Relations Act. Eventually, however, the Board was confronted with the problem of units consisting entirely or primarily of supervisory employees. It then became necessary to meet the problem squarely. In two early cases (*Union Collieries Coal Co.* (41 N. L. R. B. 961, 44 N. L. R. B. 165); *Godchaux Sugars, Inc.* (44 N. L. R. B. 874) the Board held that supervisors could organize and insist upon representation under the terms of the National Labor Relations Act. Sometimes thereafter, however, the Board found it necessary to reconsider the question. and in the case of the *Maryland Dry Dock Company* (49 N. L. R. B. 733), the previous determinations were rejected and it was held in a carefully considered opinion that supervisors were not and should not be subject to the provisions of the National Labor Relations Act. This decision was followed in several cases. About 2 years after the Maryland Dry Dock Co. decision, the Board reconsidered the problem, and in the case of *Packard Motor Car Co.* (61 N. L. R. B. 4), returned to the theory of the Union Collieries and Godchaux cases. The Packard case was followed in a number of later cases.

The Board's reversal of its previous position, as would appear from the opinion in the Packard case, was evidently not without some misgiving. Eventually the case reached the United States Supreme Court where, by a 5 to 4 decision, the court in *Packard Motor Car Co.* v. *N. L. R. B.* (330 U. S. 486) (1947) held that under the act as then written foremen and supervisors were covered employees and that the court could not change this situation, saying, through Mr. Justice Jackson:

> It is also urged upon us most seriously that unionization is from many points bad industrial policy, that it puts the union foreman in the position of serving two masters, divides his loyalty and makes generally for bad relations between management and labor. However we might appraise the force of these arguments as a policy matter, we are not authorized to base decision of a question of law upon them. They concern the wisdom of the legislation; they cannot alter the meaning of otherwise plain provisions.

Chief Justice Vinson and Justices Douglas, Burton, and Frankfurter dissented from the majority view, and Justice Douglas wrote a strong dissenting opinion.

The decision of the Board and the Court invited action by Congress on this matter. Title I, section 2 (3) of the Labor-Management Relations Act of 1947 finally resolved this difficult question by providing that supervisors should no longer be considered as "employees" within the meaning of the National Labor Relations Act. It is essential that this provision be continued in any future legislation.

The reasons for the exemption of supervisors have been set forth many times. Nevertheless, they continue to be vital reasons and are as important, if not more important, today.

Management cannot operate a plant or any business effectively without representatives at the first level of supervision. This is even more important where the operations are extended and large numbers of persons are employed. It is true in our company.

The foremen and supervisors at the first level of supervision are the representatives of management in dealing with the rank and file employees. They are the ones who enforce the company rules, mete out or recommend discipline, recommend discharges or promotions, handle first step grievances with the union representatives, and are truly, as Justice Douglas said, "the arms and legs of management in executing labor policies." So far as many an employee is concerned, his foreman is management, for in a large enterprise it is unlikely that he will ever have any personal contact with the president or vice president of the organization, but he does have daily and constant contact with his supervisor.

The foreman's status as a part of management has been recognized by the Board and the courts in holding that the actions of a foreman or a supervisor are in effect the act of the employer. The dual status of unionized foremen is unfair to foreman and employee alike. As Justice Douglas observed in the dissenting opinion in the Packard

> If the foremen were to be included as employees under the act, special problems would be raised * * *. Foremen are also under the act as employers. That dual status creates serious problems. An act of a foreman, if attributed to the management, constitutes an unfair labor practice; the same act may be part of the foreman's activity as an employee. In that event the employer can only interfere at his peril.

Quite apart from the legal difficulties arising from the dual capacity, there is a vitally pressing and important problem created by the divided loyalty which results from including the foreman in collective bargaining organizations. The fact is that a foreman who is also a union member must constantly be torn between his duties as a representative of management and his obligations as a union member. Discipline in the plant must suffer, as indeed it has suffered in those organizations where foremen have been unionized. As the Board said in the Maryland Drydock case, supra:

> The very nature of a foreman's duties make him an instrumentality of management in dealing with labor. The duty of supervision with which he is principally charged implies a delegation of authority with respect to the selection, promotion, and discharge of the workers in his section. Although the delegation of authority is no longer plenary in modern factories which have a central personnel system, there is no doubt that even the function of advising or recommending action with regard to personnel is sufficient to command respect and instill fear in the minds of subordinates. To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests.

The dissenting statement of Mr. Reynolds in the Jones & Laughlin Steel case, supra, is significant:

> The decision of my colleagues in this case also runs rampant over the familiar and well-established rule of law which requires that one who undertakes to serve one employer must not also place himself under obligation to serve the conflicting interest of others. This is the rule of fidelity which since time beyond memory has rendered it impossible for an attorney to represent both the plaintiff and defendant in a legal action, prohibits a real estate agent from collecting a commission from both the vendee and the vendor, proscribes the purchase by the executor of an estate of the assets of such estate, disqualifies the witness to a will as a beneficiary thereto, etc., common sense principles familiar to all laymen.
>
> I believe the majority decision completely ignores this rule when it lends encouragement to a bargaining relationship which cannot help but place supervisory employees, in their role of managerial representatives, in a position where their obligations as fellow union members of rank and file employees come in direct conflict with their primary duty to management. It is not enough, in my opinion, to say, as the majority has, that managerial discipline can be exercised effectively to discourage indiscretions of supervisory employees which arise from any such conflict of interests. The granting of legal sanction to a relationship which creates even the temptation within a supervisory employee or agent to wander from the path of his primary duty to the employer or principal appears to me to be repugnant to the rule of fidelity. * * *
>
> * * * To assert that our action here does not divest the respondent of a substantial degree of control over its property, in my opinion, not only disregards the evidence, which the majority minimizes, but ignores everyday human experience in industrial relationship.

As a practical matter, I believe that foremen and supervisors neither want nor need coverage of the Wagner Act to govern their relations with their employers. The tendency and usual result of any collective bargaining agreement is to encourage the grouping of the workers covered into job classifications having specified duties and limitations and to discourage the performance of duties outside those specified. It is not intended to encourage the ambitious employee to improve his place except by attaining seniority. Whether this is a good or a bad result need not be debated here—the important point is that this characteristic of unionized employees is fatal to the concept of a supervisor who is expected and required to do whatever may be necessary to carry out his function as an arm of management regardless of any job specifications or seniority. The successful conduct of any business, including ours, depends to a large extent upon the ambition and initiative of those persons who have been selected to act on behalf of management.

To say that business can operate efficiently if the "arms and legs" of management be cut off but the policy making head retained is absurd. If we hope to continue to be efficient producers of the goods needed by this country and the world, we must have our foremen and supervisors undivided in their loyalty and an integral part of the management team.

I strongly urge that the provision of the Labor Management Relations Act exempting supervisory personnel from coverage of the N. L. R. A. be continued in any new legislation.

(4) The provision of the Labor-Management Relations Act requiring that plant guards, if organized, may only be represented by a labor organization which has no affiliation with any organization admitting to membership employees other than guards, is reasonable and should be continued.

If the provision of the act restricting representation of guards to labor organizations not representing or affiliated with organizations representing employees other than plant guards, and the other safeguards provided in the act, are removed as proposed, it would mean that the union would control and tenure of employment of every plant guard admitted to membership. The union and the union alone would have the power to make agreements with the company determining the conditions upon which any particular plant guard might continue to hold his job.

Under the circumstances the union would properly require that every plant guard become one of its members, and that the company discharge any guard who ceased to be a union member. The union ordinarily requires that as one of the obligations of membership the employee would never knowingly wrong a brother union member or see him wronged, and that the employee would cease work at any time the union might call upon him to do so. For failure to carry out this obligation, the employee might be summarily suspended or expelled from union membership and thus from his job.

Beyond any reasonable doubt, the existence of such obligations and duties and of the union's power to punish violations thereof by depriving the violator of his membership and so of his employment will often place the plant guard in a hopelessly false position. Neither the National Labor Relations Act nor the Labor-Management Relations Act has ended labor strife, and perhaps no statute can ever accomplish that purpose. In any event, the persons responsible for the safety and operation of industrial establishments must always have available some agency capable of keeping the peace from day to day, and during strikes and similar disturbances of protecting against all hazards the building and machinery necessary to the continued production of goods.

Municipal police and constables are inadequate for this purpose, and the municipalities cannot be expected to provide at their expense the type or quantity or protection needed. The executive officers, foremen, and other classes of people recognized as management are not trained or competent to do this essential work if the need for it arises. If it is to be done as it must be done, only a competent responsible force of trained guards can do it. They can do it only if their regard for the property rights of the owners of the establishment is wholly disentangled from any loyalty or obligation to a union of production workers.

This is no reflection on the honesty of union members. It is simply to recognize the fact that the plant guard's duty is to protect the company and its property, as no group of union members can be expected to protect them in the course of any modern labor dispute. It simply recognizes a fact which was recognized by the CIO union in Southern California Gas, 10 N. L. R. B. 1123 (1939) that—

> * * * in the event of a strike the interest of watchmen would be alined against the remainder of the employees.

It is true that plant guards are not part of management to the same extent as foremen and supervisors. Nevertheless, it is a fact that as a part of their day to day duties they are required constantly to check up on the reported violations of rules or safety conditions by the production and maintenance workers. If they are admitted to union membership in the same union, they cannot properly perform these duties. Perhaps the better remedy would be to remove them entirely from coverage of N. L. R. A., but the limitation contained in the present act has to some extent at least relieved the situation. It should be continued.

I have pointed out a few provisions of the Labor-Management Relations Act which I strongly urge be continued in any future legislation. The name of the act which incorporates them is of no importance, nor is the language in which they are couched if it truly contains the substance, but the provisions themselves are absolutely essential to good labor relations.

Mr. IRVING (presiding). Is there something else you would like to touch on?

Mr. FRENCH. This matter of supervisory employees was the thing we wanted to emphasize. I will rest the situation with the observation that in coming here tonight and representing our company, rather than speaking in a representative capacity for other organizations, I am speaking only for our company, and the most important single thing in your deliberations, from an operating point of view—which is the point of view we want to take—we would urge very strongly the continuance of the prohibition against organization of supervisory employees. It is difficult enough to do business under all existing laws, rules, and regulations, but if the management group is divided against itself by compulsory recognition of supervisory unions, the day of efficient and effective management may very well disappear. That is the part of the Act which is the heart and soul, so far as we are concerned.

Mr. IRVING. Mr. Perkins?

Mr. PERKINS. I have no questions.

Mr. IRVING. Mr. Burke?

Mr. BURKE. Yes. About this supervisory thing—you have addressed yourself specifically and particularly to that as being what you are most interested in. Could you give me some idea of where you feel the break-off should be as to the level of supervision? What I am getting at, you know in an ordinary production plant there are varying levels, from the plant superintendent, the division superintendent, the general foreman, the line foreman and group leaders and straw bosses, generally, and so on, you know?

Mr. FRENCH. Yes.

Mr. BURKE. Would you recommend any specific place in that line of organization where a break-off might be?

Mr. FRENCH. Yes. Under our contract with the steel workers' union there is a general clause which excludes foremen who are in charge of any class of labor, which is, perhaps, not the best definition in the world, and yet in the ordinary process of collective bargaining we have worked out a dividing line between the union and the company on that. Working supervisors who are not exempt under the Wages and Hours Act on the payment of overtime are included in the bargaining unit, and that includes working supervisors. For example, he may spend about 75 percent of his time doing work with his hands, and he is in a bargaining unit covered by the steel workers' contract, and we have found no difficulty with that particular classification.

Mr. BURKE. There has been a great deal of difficulty, generally, in the working foremen and working supervisory type of job?

Mr. FRENCH. I think, in other industries, there has been difficulty; but in our industry, by and large, there has been a great effort made to come to a point right there at the working supervisory level, and make salaried supervisors on a level at that point.

Mr. BURKE. You feel that that is proper, that the working supervisor, as long as he does some of the work with his hands, some of the regular production work or maintenance work, as the case might be, should be a part of the bargaining unit?

Mr. FRENCH. We think the rules established under the Wages and Hours Act, the 20-percent rule, if a foreman does not work at the same kind of duties as the men under him for more than 20 percent of the workweek, we think that is a pretty good rule. People whose work is predominantly supervisory, that is, 80 percent is supervisory and only 20 percent is manual, then they should be considered as supervisors.

Mr. BURKE. Then, there was another question I wanted to ask on a different type of separation. I do not know how your contract reads, but many contracts in industry read that when a worker is advanced to the position of foreman, or to a supervisory position, he may, or may not—but he usually may not—still be a part of the bargaining unit, but in many cases if his record is right with both the union and management, his seniority is held intact for him until the termination of his job either by demotion or by lack of work, by the company, as a supervisor.

Do you believe that that type of thing is valid in contracts?

Mr. FRENCH. That is very desirable. We have a very interesting clause in that regard which we worked out with the steelworkers, and have had it for I believe about 6 years. Where a man has come out of the bargaining unit, for example, the top man in the crew, and is promoted to the foreman's job, and then because of a recession in operations he goes back, because of accumulated seniority he gets all the original seniority he had, plus what he had as a supervisory employee. However, if he becomes a foreman from outside he has no such seniority, and we do not believe it is fair to ask the bargaining unit to take such a foreman back into the ranks, when he did not come out of the ranks.

Mr. Burke. That is the usual type of contract, although some firms have kicked about it, in taking an individual back that they may have felt was undesirable as a foreman. They felt that the union was really stepping over the line in insisting that he come back as a worker.

Mr. French. Of course, it is to the benefit of the foreman to be able to go back, particularly, in an industry like ours, where you have continuous operations, and where your shift may change. You may be on three shifts or two shifts, and the foreman who was on the third shift, if he is an old employee, he will want to protect himself by going back into the unit, and the company will be benefited because they maintain the services, and when operations go up again, you have him on the pay roll.

Mr. Burke. You feel your objections to the organization of foremen generally would not apply to the case we have been discussing?

Mr. French. That is right. He goes back into the unit. When he goes back up to the foreman's job, he would step out of the bargaining unit, and it is up to him to be a good supervisor, and it is up to him not to create difficulties so they will not want him back.

Mr. Burke. Many companies, I know, have objected to that kind of a clause in the contract, because they feel the same objections apply to organization, generally.

Mr. French. We treat it quite to the contrary. We feel we could not ask a foreman to step out of a seniority unit and take a supervisory job at the risk of declining operations a year or two later, and then he would not have a job. It is advantageous to both sides.

Mr. Burke. That is all.

Mr. Irving. Do you object to the foremen organizing themselves into a union separate from other unions in the plant?

Mr. French. That is our primary objection.

Mr. Irving. I was under the impression the firm objected to a foreman being a member of the same union as employees. I was not aware they objected to them having their own collective bargaining unit.

Mr. French. It would be almost impossible to have your management group divided by that kind of a proposition. In other words, you have foremen meetings on every Friday, and you show them your order book, and the work they have to do the following week, and they have to be part of the same team as the general superintendent of the plant. Some day those very foremen are going to work up to the ranks, and if they are divided into a separate bargaining unit, and come in with demands, that divides the management team, and makes it substantially impossible to operate.

Mr. Irving. Mr. Smith?

Mr. Smith. I have no questions.

Mr. Irving. Mr. Velde?

Mr. VELDE. No questions.

Mr. IRVING. I want to thank you, Mr. French, for coming before us, and to say we appreciate your presentation.

Mr. FRENCH. Thank you very much for the opportunity. It was a pleasure to be here.

Mr. IRVING. Thank you.

Mr. Hazard.

TESTIMONY OF LELAND HAZARD, VICE PRESIDENT AND GENERAL COUNSEL, PITTSBURGH PLATE GLASS CO.

Mr. HAZARD. My name is Leland Hazard. I am vice president and general counsel for Pittsburgh Plate Glass Co.

Our company produces plate glass, window glass, automobile safety glass, industrial paints, house paints, paint brushes, heavy chemicals, and cement.

These products are made in 30 plants in various States and distributed through over 200 sales branches, sales offices, and warehouses located in substantially every State in the Union.

Our company employs approximately 27,000 workers, and we negotiate each year about 180 labor agreements with affiliates of CIO, A. F. of L., and district 50, United Mine Workers.

We are all agreed that labor is necessary—skilled, semiskilled, and unskilled labor.

Are we also agreed that management is necessary, that decisions about investments, plants, equipment, machines, products, research, production are necessary?

To those who deny that management is a necessary function, my remarks will not prove helpful.

To those who are concerned about the need for management, as well as about the interests of labor, I offer these observations upon the proposed legislation.

Too much has been said about prerogatives of management and rights of labor. Around these phrases are clustered ideas and emotions which tend to obscure the fact that labor is as dependent upon management as management is dependent upon labor, and that the public is dependent upon both for the products which make our American standard of living the highest in the world.

Collective bargaining has proved to be the best method for reconciling the interests of workers with the necessities of management.

Some managements were slow to recognize this fact, and the Wagner Act was the result. Under that act some unions forgot that management is necessary to production and that production is necessary to the national welfare, including the welfare of workers, and the Taft-Hartley Act was the result.

It is too late to deplore either act. It behooves us now to seek that minimum of legislation which will leave the interests of workers and the necessities of management to be reconciled under laws which do not throw the weight of power either way.

Assuming the necessity for management, I would like to make a few observations about the proposed legislation in the light of that assumption.

I want to speak mostly, gentlemen, about the closed shop, and I will omit some of the latter portions of this presentation that have to do with other features. I am principally concerned in my presentation with the closed shop. Under the closed shop, management cannot select employees; it may not be able to train employees; it cannot be assured of retaining the same employees; it must discharge employees at the direction of the union for reasons deemed sufficient by the union and possibly unrelated to the efficiency or continuity of the enterprise.

Let me give the committee an illustration from our own experience. We have a sales and warehouse branch—typical of many others—which would provide permanent employment for about 50 glaziers. Under the closed shop, we were compelled to accept intermittent services from some 150 different individuals—three men rotating on each job. The union would send us a glazier for a week, then take him away and send us another glazier for the same job. Perhaps 3 weeks later we would get back the first glazier. And so it went.

It is apparent that under such conditions it would be impossible to develop group skills, employee morale, or the continuing relationships which benefit employer, employee, and the public.

If the relief from the closed shop which the law now provides is continued, we should be able to increase services and lower the cost of services substantially. We should be able under our programs already started under the 1947 act to supply more of our products to more people at lower prices.

And all this could be done without impairment of union security. I can say this in good faith, because as early as 1940 we voluntarily adopted a cooperative attitude and policy toward union security. We took the position that whenever a union had the representation rights in a plant, then we would cooperate with that union in obtaining a 100 percent dues-paying membership. We wrote this policy into our labor agreements and carried it to the extent of lay-offs and discharges in the few cases where those measures were necessary in order to obtain the 100 percent regular dues payments.

Under these labor agreements we retained the right to select and hire new employees but agreed that after 30 to 60 days each employee was obligated to pay a specified union initiation fee and to maintain the payment of regular union dues. This did not include the payment of fines or assessments or subject the employee to discharge for bad standing in the union—except for failure to pay regular union dues.

You will readily see that this form of union security is substantially that authorized in the present law. Congress did not take this provision for union security out of thin air. Our plan had been passed upon and approved by the National Labor Relations Board. It was a matter of public record. In our case, at least, it had been practiced to the satisfaction of our unions of production workers and our management for a period of 7 years prior to the Labor-Management Act, 1947.

I have been talking about union security in our plants.

In the sales branches and warehouses, where we engage in glazing contract work, the situation is different. These service establishments for supply and installation of glass and the servicing of painting contractors' requirements are closely related to the construction industries. There the power of the unions was sufficient to impose the closed shop upon us. By the secondary boycott and other coercive measures we were saddled with the closed shop and all of its adverse consequences. The impairment of management efficiency which I have previously mentioned, resulted. The public has paid the bill.

Now I am sure the committee will be interested in our success in eliminating the closed shop after enactment of the 1947 law. In our service establishments we negotiated over a hundred labor agreements without the closed shop.

We did not concede any of the various bootleg provisions which some unions, and I may say some employers, acceded to, to circumvent the law. We had no strikes or work stoppages as the result of the elimination of the closed shop.

I think this is cogent evidence that neither the workers nor the unions considered the closed shop essential to union security. The unions continued to receive dues from 100 percent of our workers in the establishments where they had representation rights.

Now the committee may be thinking that the proposed legislation does not require the closed shop—that it would merely permit the closed shop; that we would be free to refuse a resumption of union demands for the closed shop and then fight it out on the basis of economic strength.

It must be remembered, however, that in the construction trades no single employer is operating alone on a given construction job. It takes many employers to construct an office building or even a private residence. If a single employer elects to oppose the closed shop and his union decides to strike to impose the closed shop, not only that employer's operations must stop but also in many cases the entire construction job.

Provisions in the present law restricting the use of the secondary boycott are of great help in avoiding this consequence but, important as it is to retain those provisions, they are not enough on the closed-shop issue. In most construction operations, as a matter of physical fact, the job cannot go on when one subcontractor is forced off the job. For example, if a glazing contractor is forced off the job, the plastering and substantially all the other interior finish work must be suspended.

This, gentlemen, I believe to be an important point. I wish to pause now to emphasize it before making this point.

It must be remembered that the Wagner Act compelled, and the law continues to compel, collective bargaining without regard to the relative economic strength of the union and the employer. Doubtless, except for the law, there would still be some die-hard employers able to refuse to bargain with unions. Since the Government intervened to throw the weight of its power in support of bargaining rights for unions—the Wagner Act—it must assume the correlative obligation to protect the necessities of management. The die-hard union, clinging to what was originally an organizational technique, the closed shop, must be as much an object of governmental restrictions as was the die-hard employer. Having given unions bargaining rights regardless of their ability to get them on their own, the Government must give management protection against those excessive demands of unions, such as the closed shop, which jeopardize the necessities of management. I would like to skip the next paragraph which refers to the fact that the closed shop restrictions in 20 States have been sustained by the Supreme Court.

In my opinion, based upon the experience of our company and my studies and observations of other industries, the closed shop is a curtailment of the individual's rights to work and a usurpation of the management function of selection of employees. The closed shop deprives the employer of the right to hire the best qualified workers; it deprives workers of the opportunity of obtaining permanent employment on the basis of individual merit; it places upon the consumer the extra cost of inefficiency and featherbedding; it prevents ingenuity, better services and lower prices.

And these benefits which the public rightfully demands can be had without harm to unions or workers. The closed shop is not necessary to a union's right to bargain for wages, hours and working conditions. It is not necessary to the right to strike. It is not necessary to the union's financial security. It is an outmoded, antiquated and unsuited to modern industrial relations and personnel management as the yellow-dog contract.

I would like to add what Mr. French said about supervisors just this observation. The Government has already assumed a very difficult role in its intervention into labor-management relationships in the field of organization of production workers. There is about as much problem there as can be solved for some time to come.

Why would it not be well to let us work with that, and leave this segment of management, known as foremen, outside of Government regulation for awhile?

In closing I want to say just a word about the anti-Communist affidavit. This provision of the law has had practical results in our company. One of our largest unions obtained resignations from certain officers of an important local because of the Communist affidavit requirement. This union did a fine job of clearing itself of those who refused to sign the affidavit.

I am not one who regards any legislation as perfect or beyond all criticism. I did not so regard the Wagner Act, nor do I so regard the present law. It has been proposed that the latter act should be amended to make the anti-Communist affidavit a requirement for the employers' agents as well as for union officers. This seems to me a reasonable suggestion. Unless maangement and labor work together to make our American democracy and our free enterprise outshine communism, all our thought and talk about labor legislation will be largely useless. It seems to me that the anti-Communist affidavit is certainly one point upon which management and labor could readily agree and be mutually proud to be cosigners of the affidavit.

Now, just let me add this. The times call for great restraint—restraint on the part of management, restraint on the part of labor. The American people are plainly telling us that. I think we know in our hearts, both management and labor, that neither of us had a mandate from the American people. Rather we both have the duty to respect and improve our separate functions—labor to labor, management to manage. If we forget our functions and quest only for power, the American people will turn away from both of us. And if that day comes—the day when the state takes over because either management or labor has gained too much power—we shall not like it, either of us.

My belief is that if we can forget the hard words, the thoughtless, inflammatory, irresponsible talk and get down to substance, not many changes in the law as it now stands are needed. Alexander Pope had a line for it: "He governs best who governs least."

I thank you gentlemen for the privilege of appearing here.

Mr. **Irving.** Are there any questions?

Mr. **Perkins.** No questions.

Mr. **Irving.** Mr. Burke?

Mr. **Burke.** Yes.

Mr. Hazard, I think your testimony will be particularly valuable to the committee because you are rather singularly placed as an employer in that type of establishment in which you employ labor in both phases that well illustrates the difference between the closed shop and the union shop; is that not correct?

Mr. **Hazard.** That is quite true, I think; yes sir.

Mr. **Burke.** In other words, in one phase of your business you have the skilled craftsman who has taken advantage of and has been a part of the closed-shop type of union for many years, in fact, some centuries.

Mr. **Hazard.** That is right.

Mr. **Burke.** You also have the mass-production industry, and I believe I am familiar with at least a part of it, because I believe you have an industry-wide agreement in part of your operation, at least, do you not?

Mr. **Hazard.** That is correct.

Mr. **Burke.** In mass production, the closed shop would not work, would it? That is, we both found early in the game that a closed shop was just not workable so far as mass production was concerned, because turn-over was too great, and there were other elements and factors that went into it. Then a device, so far as union security was concerned, was brought about, and the name "union shop" was given to it. And the difference between a closed shop and a union shop is that the requirement for a worker to be a member of a union before employment is not present in the case of a union shop.

Mr. **Hazard.** I think, Mr. Congressman, if I may say this, that there is another distinction between the closed shop and the union shop which frequently is overlooked. It is considered only a matter of timing, whether the employee becomes a member before he is employed or 30 days after he is employed. But it really is not the difference in time; it is the fact that in the latter case, the employer may select his employee. In the former case, in the closed shop, the employer may not select his employee. That, in my opinion, is the great difference between the two forms of shop.

Mr. **Burke.** I am glad you brought that out, because I would have come to that. The reason for that, going way back, is that in apprenticeable trades, the journeyman committee decided when the apprentice became a journeyman; is that no true?

Mr. **Hazard.** That is a reason that is probably lost in antiquity. It is very old.

Mr. **Burke.** On that, we may agree or we may disagree. But the evolution of our industry really comes about this way, that the hand tool is an extension of a man's hand, and the machine tool, of course, is an extension of the hand tool. And in the days of the hand tool, the craft was highly important. It still is in many cases, particularly in the type of thing in which you are required to hire skilled tradesmen; is that not right? The handcraft is very important to your business?

Mr. HAZARD. I would not say that the skills of the hand tool are any greater or more important than the skills with the machine. They certainly were important sometimes and at other times were not so important. And that is true with the machine, also. The requirement of skill is very great at times and lesser at other times.

Mr. BURKE. I am speaking of those phases of your stand entirely upon the handcrafts. You talked of glaziers, and people of that sort.

Mr. HAZARD. Yes.

Mr. BURKE. I was not speaking so much of the maintenance forces as the semiskilled and skilled men in the plants, and particularly the glass plant that you operate. But the handcraft union was established for two purposes, first, to protect the interests of the worker himself, and next, to protect the interests of the public; is that not right? And they were given the responsibility of furnishing to employers the people that were sufficiently skilled to operate the handcrafts for which they were trained.

Mr. HAZARD. Mr. Congressman, you are asking me a series of intermittent questions, or intermediate questions. Coming right to our distribution units where we engage in subcontracting, glazing subcontracting, if we could select and retain and train and groom these skills that you mention into permanent employment, we could have a very much higher efficiency than we have under the closed shop, and our costs could be lower and the installation of glass reduced in price to property owners.

Mr. BURKE. Do you lay that to the closed shop itself or to the operation of it?

Mr. HAZARD. Yes; we do, because it deprives us of the opportunity to select employees or to retain them for a continuous period of service; so we do not get the accumulation of skill and know-how built up that we would if we had the right to select the employees and retain them, or keep them permanently.

I cannot do any better than the illustration that I gave you. We worked 50 men, and we had to take 150 around the annual clock.

Mr. IRVING. Has not that inability to have the same employees right along been due somewhat to a shortage of glaziers during the war period?

Mr. HAZARD. I have watched it for about 10 years. That is the length of time I have been with the company. It seems to be about the same whether there is a high level or a low level of activity; in other words, whether there is a shortage or a surplus of glaziers, it operates the same way. We get a man for a week and then lose him and get him back 3 or 4 weeks later.

Mr. IRVING. Of course, there has been a shortage of skilled mechanics in construction trades, for 8 years at least—anyway since the preparation of the war effort started—and I thought that was true of glaziers. In fact, I am sure it is. My recollection in the few places that I have had experience with is that your glaziers were pretty much the same people in the same plants. I happen to know of a few plants, and I did not know there was any shifting from one plant to another or from one job to another except where there might be an emergency, or when they were needed for a certain job. They then might take them out of the job, or the plant for that job.

Mr. HAZARD. You understand, Mr. Chairman, I am not speaking of production plant. I am speaking of distribution establishments. For example, in Kansas City, Mo., we have a warehouse and sales branch, and that establishment acts as subcontractor on the installation of glass. It is there that we get this rotating and shifting, not in our plants, but in these local establishments.

Mr. IRVING. I understand thoroughly what you are talking about. There was a number of large defense plants built in that area with just hundreds and hundreds of panes of glass.

Mr. HAZARD. Yes.

Mr. IRVING. And there were not adequate glaziers there to take care of them and take care of the other work. I presume that that had something to do with the shifting of the glaziers.

Mr. HAZARD. We would like to be able, by having the right to select and train our own glaziers to make sure that we, at least, had an adequate supply and had opportunities to work on plans giving them annual employment on a steady basis.

Mr. IRVING. I do not think there is anybody opposed to annual employment. They have had pretty nearly that the last 8 years, and I think they enjoyed it very much. It is probably the first time in history that they have had such steady employment over such a long period, although I think maybe there is a lack of that at this time, or partial lack of it. I will not say there is too much of a lack of it. It is causing a little unrest because their security is not as great as it was.

I am familiar with your plant in Kansas City and several others there, and it is my opinion that your firm and the other firms and their own employees pretty steadily, that there was no shifting around that you spoke of.

One thing that I would like to bring out is this. Are you opposed to the right of contract? I mean, if the employer and employees want to make a closed-shop contract, are you opposed to that? It seems to me that is a fundamental right guaranteed in the Constitution, that if I want to make a contract with you and you want to make a conract with me, that is a fundamental right.

Mr. HAZARD. Well, that is what employers used to say about the yellow-dog contract.

Mr. IRVING. So far as I know, that was a little different type of contract. Would you deny those that do want that prilivege the right to have it?

Mr. HAZARD. That is a good question, Mr. Chairman, and I have thought about it a great deal.

Mr. IRVING. I mean to say that some did and some did not. This present labor-management act denies everybody the right of entering into that kind of contract.

Mr. HAZARD. That is right.

Mr. IRVING. And I would say that the law should say for those that want to, they should have that right, which I believe they still have under the Constitution.

Mr. HAZARD. I would like to answer your question, because it is an extremely important question. I think if it is established that the closed shop interferes with necessary management functions, then you would have to prohibit it outright.

Mr. Irving. Wait a minute. My question was predicated on the fact that management wanted it. They would not want anything that interfered with them, that I could see.

Mr. Hazard. Let me say if management should come before your committee and establish there are situations in which management cannot function without a closed shop, then you would have reason to raise this question. What I am laying before you is that a necessary management function cannot be performed under the closed shop. The selection, training, and building of employees into an affidavit unit cannot be done. You must either let management do that, or it does not get done. And the meaning of that is higher prices and higher costs and less production.

Mr. Irving. Of course, Mr. Hazard, that is contrary and contradictory to the historical facts in the case of trade unions in the construction industry. They have had closed-shop contracts for decades.

Mr. Hazard. And we have had high costs for decades, too.

Mr. Irving. No; I would not say that necessarily, and I would not lay the high cost to labor either. That can be proven. While there have been great increases in the cost of materials, there is too much being said about the cost of labor bringing up the costs. I think that we should have an investigation of that, because I think sometimes is to blame because of agreements between employers which enter into the fact that costs are higher.

Say the employee's rate is $1.50. He is billed out at $3. Then there is a 10 or 20 or 35 percent cost added for overhead, and so forth. The employee does not get that extra $1.50.

I am speaking about plumbing, steamfitting, electrical work, and perhaps your own work. I am not too positive that you do not use the same formula in billing the public for your work.

Mr. Hazard. I should think that labor might be wall advised not to insist upon a closed shop, and then management would have all the responsibility for the costs and would not be able to duck the question any longer. As it is, I agree with you now that I do not know how much of the high cost is due to the closed shop in construction and how much is due to other things. You cannot tell.

Mr. Irving. Personally, I cannot agree that has anything to do with it, particularly. I think it is being used as an excuse or an alibi, in my opinion.

Now, I am familiar with the construction industry. I am speaking in such a positive manner because I have actually worked in the industry. There are many of these people here who have not done any manual labor or any work and they have had no experience in collective bargaining. They have had no experience in trying to negotiate contracts or wage scales, so it is very easy for them to say, "Why, just go ahead and do these things." But I would like to see them do them once or twice. I would like to see them organize a plant once and see how easy it is under the Taft-Hartley law.

The law, in my opinion, was made so that people could not organize, and so that, finally, the strength of the unions would be dissipated.

I think I have used about all of my time. I thank you. And we will let the gentlemen on our left ask some questions.

Mr. Smith, have you some questions?

Mr. SMITH. I would like to make a speech in direct opposition to what you have just said.

Mr. IRVING. That is your privilege, of course.

Mr. SMITH. But I am not going to.

Mr. IRVING. Thank you.

Mr. SMITH. But this idea that materials just grow some place without any cost to it is ridiculous. Every time you cut down a tree you pay an increased cost to the saw, the truck, the tractor, and everything in it. They have all been jacked up. And I am also not unmindful of the fact that bricklayers are only laying 400 bricks a day where they used to lay 1,000.

Now, then, I have that off my chest.

Mr. IRVING. And I can agree with almost everything you said, Mr. Smith.

Do you have any further questions?

Mr. SMITH. Yes; I want to ask the witness a question.

On page 4 of your statement, I notice there you said you had 100 percent union dues-paying members in your shop. And in order to get that, you had to deny to the employee the right to join the union if he did not want to; in other words, when he did not want to join the union, you fired him.

Mr. HAZARD. That is right.

Mr. SMITH. Then you come in and say that the closed shop is necessary for your business. If it is good today, why was it not good then?

Mr. HAZARD. I did not say the closed shop is necessary; I said just the reverse. I think, Mr. Congressman, I should make——

Mr. SMITH. But you were making a closed shop in those days.

Mr. HAZARD. No; that is not a closed shop.

Mr. SMITH. I know the difference between a closed shop and a union shop.

Mr. HAZARD. It is not even a union shop. What we did——

Mr. SMITH. Why is it not a union shop if you fire a man if he does not belong to a union?

Mr. HAZARD. I will be glad to tell you, sir. A union shop is one in which if the employee gets in bad standing with the union for any cause, then the employer must discharge the employee. What we did in 1940, and what the Taft-Hartley Act provides today, is that the employer is not required to discharge except for failure to pay dues. The employee can be in bad standing for any one of 100 reasons. But so long as his dues are paid, the union cannot require the employer to discharge him. And that is a tremendous difference, one which I think many employers overlook. So we not only never had a closed shop under this plan; we did not even have the union shop. What the union had by contract with us was financial security only. We think that is all it is entitled to, and when it goes beyond that, it impinges upon management's function.

Mr. SMITH. Of course, I agree with that statement, but I could not understand why you were firing people back there because they did not belong to the union.

Mr. HAZARD. Only for failure to pay dues.

Mr. SMITH. That is all.

Mr. IRVING. Mr. Kearns.

Mr. Kearns. I would like to ask this: What is the initiation fee for the glaziers around the Pittsburgh area? Do you happen to know?

Mr. Hazard. No, I don't happen to know.

Mr. Kearns. How many apprentices do they allow in the union? So many per member in good standing, or do you have difficulty getting apprentices in the union?

Mr. Hazard. We have had some difficulty; yes, sir.

Mr. Kearns. Why?

Mr. Hazard. We don't know.

Mr. Kearns. The work was there to be done?

Mr. Hazard. Yes.

Mr. Kearns. You needed more men. That is the big thing, Mr. Chairman, about the closed shop, which I have been thinking about. It thwarts the possibility of earning a livelihood where men are kept out of the union. That is what I cannot understand about the closed-shop element in some of our trades, especially A. F. of L. unions where they keep them out.

Mr. Irving. If I might take a minute, I might try to answer you. I think the security of the past has had a great deal to do with that. A bricklayer normally works 2 or 3 months out of the year, the carpenter about 6, and the laborer works 7 or 8 and, like everybody else, he wanted to project as much work as he can.

Mr. Burke. Would the gentleman yield?

Mr. Irving. Yes.

Mr. Burke. Aren't you talking about the closed union rather than the closed shop?

Mr. Irving. I?

Mr. Burke. Mr. Kearns.

Mr. Kearns. I think both of us are, as far as the closed union is relative to the closed shop. Do you think the public thinks of them both in the same way? They can't get in the union.

Mr. Irving. However, I will say to my knowledge that the apprenticeship matter has been liberalized a great deal and there are committees set up, particularly in my area, for apprenticeships, and they include management and, I believe, the public and the unions, and they have regular meetings of these apprenticeship councils, as they are called, and committees, and they finally discovered there was a need for more of that type of skilled worker, not particularly glaziers, but any type of skilled mechanic.

They have liberalized that some. I suppose it is something like the bar association when they only pass a certain number of the eligible lawyers. I understand quite a few can't pass the bar association and, of course, they can't practice law, either. Maybe that is the same with the medical society; I don't know. They have pretty stiff examinations and regulations.

I have been told only about half or two-thirds of the law students finally pass the bar and become lawyers. I don't know what the rest of them do.

I think it is an excellent foundation for business and politics and for Congressmen and different people. We have lots of lawyers on our committee and lots of them in the Congress.

Mr. Hazard. I wonder if I may be permitted to suggest——

Mr. Irving. I think I am taking all my time and I believe you have taken all of yours.

Mr. HAZARD. The analogy is not quite complete, because anyone can go to law school and the function of giving a law examination is not a private function but a function of the State itself giving an examination to protect the public against unqualified practitioners, whether in law, medicine, or what not, but anyone can go to school and try to get ready to pass the examination.

Anyone cannot get employment as a bricklayer, as a plasterer, or as a glazier. He must first funnel himself through a private institution—the union.

Mr. KEARNS. I want to make a comment there. He did make a very fine contribution, where he said that management and labor both had a real obligation to the people. In other words, the legislation we write here isn't merely to serve management or labor, but the thing involved is service to the public.

I think that is the thing this committee and our whole committee writing legislation should be considering.

Mr. IRVING. I have very much to separate union people, working people, or any of them from the public. They are part of the country. So is management.

They do have an obligation and a responsibility definitely. I cannot disagree with that. I have not taken all of my time here today.

I would say in regard to your thought—you state that you put people out and I notice a little contradiction about firing people because they don't pay their dues. That is like a closed shop.

But supposing the unions found they had people in their unions that were perhaps placed there because of their antiunion feeling—they were in there just to wreck the union—and they couldn't take them off the pay roll. They couldn't do anything about them.

True enough, they might expel them, but under this law they could still work among the union members and get their work done. The same thing goes for a Communist.

Now, you force the Communist out of the officership of a union, but the union can't take him off of the job under this present law, and he can still circulate among the union members and practice his evil ways.

I want to say from experience that a whole lot of influence and a whole lot of things that are agitated in a union are agitated on the job. There is more conversation and there are more things carried on on the job than there is in the union meetings and by the officers. I think that we should go one step further. If the union finds Communists in the union, then let them take them off the job. Do you have any objection to that?

Mr. HAZARD. I have these observations to make: I think it is a serious responsibility that the union assumes to determine who can work and who can't work.

Now, it is true that you may have found it hard living in the union with a Communist or a person of a certain color or of a certain religion or certain ideas.

We find it hard in management. There are people in management with whom I don't agree. I don't like their ideas and I think they are dangerous, not in the public interest, but I can't exercise and wouldn't undertake to exercise the right to say they can't manage because I don't like their ideas. I have got to find a way to live with them.

I think that is your problem in unionism. Otherwise, you assume a very serious responsibility to say that some people can work and other people can't work. That is more power than you ought to wish to possess.

Mr. IRVING. I can see that they would have a great influence, particularly if they were allowed to work on the same job. You could do nothing about it. I think it would be a good thing if you could find some reason for taking them off the job. Then they would leave the union.

Otherwise, they can stay in that union and they can multiply greatly and propagate or whatever you want to call it.

However, I think we have taken too much time. We have two more witnesses, and I want to thank you on behalf of myself and the committee for your very fine cooperation and the presentation you have made here. We are glad you came.

Mr. HAZARD. Thank you, Mr. Chairman.

Mr. IRVING. Next is Mr. Elbert M. Cushing, of the United States Rubber Co.

Mr. Cushing, will you come forward, please? The chairman will refrain from now on, from questioning witnesses.

Mr. Cushing, you will have 15 minutes to read or summarize your statement, either way. It will be made part of the record if there are no objections, and I hear none.

TESTIMONY OF ELBERT M. CUSHING, DIRECTOR, INDUSTRIAL RELATIONS, UNITED STATES RUBBER CO.

Mr. CUSHING. Mr. Chairman, I think I can read the entire statement in probably 20 minutes, if you could give me that much time.

Mr. IRVING. Go ahead. We will take a little time off the rest of them.

Mr. CUSHING. Mr. Chairman and members of the committee, my name is Elbert M. Cushing. I am director of industrial relations for the United States Rubber Co. I am grateful for the opportunity to appear before this committee since I believe that it is considering one of the most important problems facing the present Congress.

Much has been said both for and against the present law governing labor relations. At the outset let me say that generally speaking we have found the law to be beneficial to both employees and employers. It follows that if this be true then the public has also benefited. Unfortunately, the history of labor legislation in this country has been characterized by violent swings of the pendulum which have proven to be unhealthy for the parties affected by it. I would like to feel that any labor legislation coming out of this Congress would be with us for a long time and not be the subject of debate 2 or 4 years hence. Good or bad, the Labor-Management Relations Act was made a strong issue and remains one at this time, so that I fear that the political aspects of the problem may result in legislation which will set labor-management relations back 15 years. Obviously this would be tragic and would only have the effect of throwing the industrial welfare of the country back into the arena at next election time. If the legislation is sound, having a basis which is fair and equitable to all parties, there need be no fear that it will play an important role in the next election. Labor-management relations must eventually be removed from the atmosphere which now surrounds it, and placed in the hands of parties who experience the relationship, if we are to obtain good employer-employee attitudes.

A good unbiased law, which favors neither management nor labor, which places responsibilities on the shoulders of each can, and will, accomplish that end.

I feel that personally I can appraise the problem with my thinking unhampered by any great amount of unfavorable experience with labor. In my 20 years in this field nothing has happened that has made me believe that labor unions are made up of anything but people. The United States Rubber Co. is considered a company which enjoys a good relationship with labor and we believe that much is due to what we like to think is a reasonable attitude. Now with these two things in mind let us look at the Labor-Management Relations Act of 1947.

I believe certain changes could and should be made in the law. However, much of the law should remain as is, since the little experience we have had with it indicates that it forms a good basis for industrial peace. You, gentlemen, are undoubtedly acquainted with figures on work stoppages in the period prior to the act and those subsequent to its enactment. Also, you are aware of the gains realized by employees under the act and the increase in union membership.

My company has followed what appears to be the general pattern. Here is United States Rubber Co.'s experience regarding hours lost through work stoppages. Those were all illegal, unauthorized work stoppages for which the union claimed no responsibility.

(1) 1946—1,269,000 lost hours.

(2) 1947—724,550 lost hours (98 percent first 8 months, prior to the effective date of the present law).

(3) 1948—324,342 lost hours.

The unions, while saving employees money by decreasing work stoppages, have been able to negotiate increased benefits for their members, some of which are (*a*) 11 cents per hour increase in wages; (*b*) 6 paid holidays, when no work was performed; and (*c*) increased vacation payments.

Over and above the foregoing a greater desire to work problems out across the table has manifested itself. Since the enactment of the law my company and the United Rubber, Cork, Linoleum, and Plastic Workers of America have held labor-management meetings on a divisional basis, i. e., a footwear division meeting, tire division meetings, and mechanical goods division meeting. There are no negotiations of issues at these meetings. Each party advises the other of the problems facing it, renders constructive criticism, and solicits the aid of the other in the solution of the problems. The results have been favorable.

You may say, "Your company may have held the same meetings regardless of the law." That may be true, but the actual fact is that the law did not prevent the parties from getting together; and by this we believe that in part it was responsible for such meetings. In some respects it has forced irresponsible elements in unions to conform to what the great mass of union people believe is the honest, proper way to conduct themselves. The law has been a tremendous aid to labor leaders, most of whom are trying to do a businesslike job in the control of irresponsible elements within their organizations. Many labor leaders privately admit that the law has been helpful in some respects. Of course, they can't openly admit this in view of the position labor generally has taken on the act.

I would like to scan the law quickly and point out our thinking on its provisions.

National Labor Relations Board: Regarding the National Labor Relations Board we see very little wrong with it in its present form, although we have had no occasion to use it. Generally the size of an administrative board has little bearing on how well it administers the law creating it.

Rights of employees: The rights of employees to engage in, or refrain from engaging in, union activity should be continued.

Unfair labor practices: These should be included in any legislation. This section of the present law has placed the responsibility on both parties, as it should be. The relationship between employer and employee is close, and in any such relationship burdens must be borne by each. It is my belief that the lack of equal distribution of responsibility and the failure to impose sanctions on unions by the Wagner Act led to many of the abuses which gave rise to the Labor-Management Relations Act of 1947. It is probably also true that the lack of a law imposing sanctions on the employer gave rise to the Wagner Act. However, let us not consider legislation which will force us to run through either cycle again.

In addition to the present unfair labor practises enumerated in the present law, I would respectfully suggest the inclusion of a clause making it an unfair labor practice for either party to fail to follow procedures established by their agreement for the handling of grievances.

The right of free speech in union matters should be preserved. This has created a healthy condition which is good for labor despite the fact that they may complain about it. It causes them to conduct their organizing campaigns on a higher, sounder level; it has not hurt their membership, and the figures bear this out.

The definition of what constitutes collective bargaining is reasonable as now construed, and should be retained. The construction which has been placed on the definition under the Wagner Act, placed the employer in a position where despite the factors surrounding a demand, a negative answer was not considered a counterproposal and thus he could be guilty of an unfair labor practice. This undoubtedly creates a one-sided situation which should be avoided. History proves that a good resounding "No" sometimes reacts to the advantage of all, whereas a concession injures all.

Representatives and elections: Considerable argument has been had on section 9 (a) of the act, which deals with collective-bargaining representatives. All I can observe regarding this section is that in my experience whenever a union has been chosen by a majority of the employees as the sole collective bargaining agent, then the best relationship with that union can be achieved by dealing solely with the properly designated officials of the union. This thought was carried into our present agreement with the United Rubber, Cork, Linoleum, and Plastic Workers of America. If section 9 (a) of the act tends to hamper the parties in this respect, then it is contrary to the best principles of labor-management relations.

I can say that we have not found it so in my company nor in any company I have observed.

If this portion of the law should be changed, care should be taken that the right of management to talk with its employees, to gather information, to reprimand or give commendation where necessary, and to give orders and instructions must not be abridged.

The right to request elections should be retained in its present form.

The provision regarding elections to determine whether a union may bargain for a union shop should be deleted. It is a waste of time and taxpayers' money. It is misleading and has been a source of discontent.

Section 9 (f) and (g) regarding the filing of reports and non-Communist affidavits should be continued and in all fairness could be extended to apply to employers. I think we are all aware that this requirement in the law has forced communistic elements in certain unions out into the open where they can be counted. It has helped the better element in certain unions to clean house and rid themselves of adherents to foreign philosophies.

Limitations: It is my personal belief that States' rights on matter of union security should be preserved. Curtailment by State legislatures of union-security problems does not assault the general principle of collective bargaining, and use of the interstate commerce clause by the Congress to overcome the exercise of the State power will lead to unnecessary criticism and opposition to any new legislation without obtaining benefit for the group which alleges it will be benefited.

I wish to refer now specifically to section 14 (a) of the present act which exempts supervisors from the definition of the word "employee" for the purposes of the law.

This section is by far the one which my company and I feel is most important to preserve.

All the reasons which caused my company to be among the first to recognize labor unions in the rubber industry have prompted us to most strenuously resist the organization of foremen and supervisors.

The foreman is a part of management and as such is charged with the responsibility of administering the principles and policies of management in supervising and directing the working force. By becoming a part of a labor organization he subscribes to a set of principles and policies which, unfortunately, are sometimes opposed to those of management.

When a foreman becomes a part of a labor organization it hampers the control which his superior has over his activities. It follows that if management is not able to control those within its own group, then it loses effective control of the business and the result is chaotic and injurious to the successful operation of the business, which in turn reacts against the best interests of labor, management, the stockholder, and the public.

Obviously, any business must have an effective management group. If foremen are to be removed from this sphere, then it will be necessary to superimpose another layer of management personnel above the foremen in order to assume the duties and responsibilities which the foreman cannot perform because of his adherence to principles which at times do not coincide with those of management. This would be costly and certainly not in the best interests of the foreman himself.

It should also be remembered that experience with the organization of supervisors prior to the present law demonstrated that various levels of supervision were included in a bargaining unit. Since, in manufacturing plants, it is usually the case that lower supervisors outnumber the upper level of the group it is quite conceivable that officers, et cetera, will be chosen from the group having the greater number.

The result well could be that a man might be bargaining with an employer for his own boss. Such a situation is not pleasant to contemplate but could and probably would happen if supervisors are grouped in the same category with wage employees under the law.

You will recall that at the time the Labor-Management Relations Act of 1947 was debated on the floor of Congress, many predictions were made that exclusion of supervisors from the protection of the law would encourage strife. Work stoppages were predicted on the theory that supervisors and foremen would strike for recognition. This failed to materialize and in fact many companies established plans and programs which benefited the supervisory personnel. It was also urged and argued that industry would remove the protection granted many people under the law by designating them as supervisory personnel. This has not materialized in fact—could not so long as the National Labor Relations Board continues to function as it has been in the past.

There have been in the past, and probably will be in the future, many protestations that a labor organization made up of supervisory personnel can be independent, but I and many, many others with experience in the field of labor relations are convinced that as a practical matter such an organization could never operate in a truly independent manner. To believe otherwise is to ignore some of the most important aspects of unionism.

Conciliation Service: While my company has had very little occasion to use the Conciliation Service, we believe that the Service in order to receive acceptance must remain an independent agency. The reasons are obvious and need no further exploration.

National emergencies: While, generally speaking, labor relations should be left in the hands of the parties, it is also true that interests of the entire country must be protected even at the cost of restricting the rights of a few. Therefore, I believe it is absolutely essential that the President have the means of effectively handling problems which threaten the national welfare. To hold otherwise is to admit the possibility of the economy of the country being brought to its knees in the interests of a few people.

Suits by and against labor organizations: It is a true premise that good labor relations are not made in court. My company has never exercised its right to sue a labor union, although we have felt that we had that right, prior to the enactment of the Labor Management Relations Act. The record indicates that most employers believe in he premise stated since only 37 suits were instituted by employers, 19 by unions, and no judgments rendered which indicates that most suits have been withdrawn. However, we believe that the inclusion of the provision has had an influence on certain employers who in the past treated their obligations of contract too lightly. Further, it has been used by responsible union people to control members bent on violation of contract. We recommend on this basis that it be retained.

Restriction of payments: This section should be broadened to permit the deduction of initiation fees and rejoining fees, as well as dues, under a voluntary pay-roll deduction arrangement. The hue and cry raised against the provision as it is has not been borne out by the facts, and in the case of United States Rubber Co. on June 1, 1947, only 72 percent of the people eligible for union membership were having dues checked off, whereas today 89 percent of those eligible are having dues checked off. This despite the fact that in some locations there was in effect on June 1, 1947, an involuntary type of check-off, which had been ordered by the National War Labor Board and which we were unable to bargain out in contract negotiation.

Secondary boycotts: I believe that most people looking at the secondary boycott in an unbiased manner will agree that it should and must be controlled. Too many innocent victims are made to feel economic pressure for a cause in which they personally have little or no interest. The secondary boycottt provision should remain.

Summary: To summarize, we feel that most of the law should remain as it is but that it could be strengthened by—

First, applying the requirement of reports and non-Communist affidavits to employers as well as unions.

Second, eliminating the necessity for elections to permit unions to bargain for union shops.

Third, permitting the deduction of initiation and rejoining fees on a voluntary basis.

Fourth, eliminating the requirement of a vote on the employer's last offer in national emergency cases, and

Fifth, adding a provision to the unfair labor practice section requiring both parties to an agreement to follow procedures set forth in the agreement for the settlement of grievances.

Finally, I wish to state that I believe it would do no credit to this Congress to completely destroy a piece of legislation which the facts show to be beneficial to labor, industry, and the public. What little experience we have had with the law indicates that with very little change it will serve well everyone for many years to come.

Again I wish to stress the importance of maintaining the status of supervisory personnel in its present position. Employers have proven that they can satisfactorily manage their business under most conditions, but I feel certain that the organization of supervisory personnel will lead to lowering the efficiency of management, higher costs, decreased productivity, and these in turn will result in a lower standard of living.

Let us also remember that a law governing labor relations which is not fair and equitable in its distribution of responsibility will certainly come up for change at some future date, and what industry and labor in this country need least is a constantly changing set of rules on which to base their relationships. The closeness of the relationship between employee and employer is such that it cannot prosper except in an atmosphere of stability and permanence.

Thank you.

Mr. IRVING. Mr. Perkins?

Mr. PERKINS. No questions.

Mr. IRVING. Mr. Wier?

Mr. WIER. No questions.

Mr. IRVING. Mr. Smith?

Mr. SMITH. I would like to have you explain paragraph 4 on page 10, eliminating the requirement of vote on the employer's last offer in national emergency strikes.

Mr. Cushing. As I understand it, the present law provides that in a national emergency situation where an employer has made an offer, that the employees be given an opportunity to vote upon that last offer. I understand that there has never been a case where a vote of that kind has been held that they voted other than based upon the recommendations of their union leadership, which was to turn down the last offer.

It seems to me it is a waste of time and a waste of the taxpayers' money. That is the only point I make.

Mr. Smith. Do you think the union officials should be the ones to decide the matter?

Mr. Cushing. No, sir; I didn't say they should decide it. I said the union official makes a recommendation to the membership, and the membership follows the recommendations. Therefore, you are holding a vote for something to which you know the answer before you hold the vote.

Mr. Smith. That is all.

Mr. Irving. I think we will let you off easy. We thank you for coming before us. We thank you for your fine statement and your fine attitude.

Mr. Cushing. Thank you, sir.

Mr. Irving. We have one more witness, Mr. William J. During, vice president and general manager of Precision Castings Co., Inc.

TESTIMONY OF WILLIAM J. DURING, VICE PRESIDENT AND GENERAL MANAGER, PRECISION CASTINGS CO., INC., SYRACUSE, N. Y., ACCOMPANIED BY COUNSEL, HARRY A. SMOYER

Mr. Irving. Do you have copies of your statement to be made part of the record?

Mr. During. I do, sir.

Mr. Irving. Without objection, it will be made part of the record following your testimony.

Mr. Irving. I hope you will limit your testimony to about 15 or 20 minutes. The hour is getting late.

Mr. During. In addition to that, I have also brought copies of the outline of my statement, if you would like them.

Mr. Irving. Is that different from what we have here?

Mr. During. It is a condensed copy; yes. It may be helpful to you.

Mr. Irving. To the members of the committee?

Mr. During. That is correct. I would like to read the outline.

Mr. Chairman, I would like to introduce Mr. Harry H. Smoyer of Cleveland, Ohio.

Gentleman, my name is William J. During. I am vice president and general manager of Precision Castings Co., Inc. Only for the purpose of showing that I understand the problems of employees I want to state that I started in industry a long time ago as an apprentice tool and die maker at 6 cents per hour. I have been connected with Precision for 25 years, first as chief engineer, and in my present capacity since 1942.

One year ago, and before lay-offs became necessary, the number of employees engaged at our 4 plants was about 1,900.

I am here to show you how certain sections of the amended National Labor Relations Act have worked in actual practice and why, in my opinion, they should not be repealed.

At the end of the old Wagner Act our Fayetteville, Cleveland, and Kalamazoo plants were each under contract with the International Union of Mine, Mill, and Smelter Workers, Casting Division (CIO).

In 1944 negotiations with this international was represented by a former candidate for the Cleveland City Council who ran openly as a Communist.

In the 1945 and 1946 negotiations this international was represented by a member of the 1946 New York City Provisional May Day Committee for the Communists' May Day parade.

I don't believe our employees knew this.

By the summer of 1947 this international union had a well-established reputation, that it was Communist-dominated or controlled.

At that time the average Precision employee was powerless to clean up such a situation. His employer was required by law to deal with that union. If his employer were to tell him the facts and urge him to get another union, the employer was then chargeable with an unfair labor practice.

In time of war, with Russia on the other side, the position of every Precision worker would have been very precarious.

The old Wagner Act needed at least four things to meet this situation:

(1) The employer and everybody else must have the unqualified right to tell the facts.

(2) The individual employee's job must be protected if he undertook to oppose the union by reason of the facts.

(3) The law must contain a procedure whereby employees could procure an election to vote a union out and compel its decertification, as well as a procedure whereby they might vote for another union; and

(4) The United States Government must take a position against Communist-dominated unions and give the advantage to those unions which are neither so dominated nor controlled.

The new Labor-Management Relations Act supplied these rights and remedies.

The employees of Precision and their company used these rights during the first 6 months of 1948. The result is that our Fayetteville employees are now represented by UAW-CIO and our Cleveland employees by A. F. of L. Our Kalamazoo employees had a choice between these unions but elected to have no union. The Syracuse plant employees have never had a union.

The full statement which I have filed tells in some detail how these rights were used and this result obtained. The outline is as follows:

The new act was first applied when this international union demanded recognition for the Syracuse plant in November 1947.

It was invited to petition NLRB for an election. Having determined to boycott the NLRB, it refused.

The company urged it to comply with the law. It refused.

The company petitioned for an election. The Board gave the union 10 days to comply. It again refused. The Board then dismissed the petition.

Under these circumstances the company refused that union recognition.

The new act was next applied after the union on December 24, 1947, sent its 60-day notices to modify the existing agreements which had March 1, as their expiration date.

The company's notices, dated December 29, offered to meet and confer if and whenever the international union complied with the law.

In the alternative, the company notices provided for the termination of the contracts March 1, 1948.

On January 2, 1948, the company advised its employees by letter as to what is had done and why.

On January 8, the international union replied to the company's notices stating "No contract, no work" as its policy. Next day it characterized the requirements of section 9 (h) as "yellow-dog affidavits."

The company next announced to its employees that come March 1 there would be no changes in wages and working conditions until proper bargaining relationships were again established.

The union next procured votes favoring a strike March 1 at Kalamazoo and Cleveland.

So that its employees might act on facts, the company next procured and displaced to its Fayetteville and Syracuse employees documentary evidence concerning the Communist and "fellow traveler" records of certain representatives of the international union.

The result was that when the Fayetteville employees voted, there was a heavy majority against a strike. This was late in February 1948.

The company attempted to show the same evidence to its Cleveland employees. Under instructions from the international union, the Cleveland shop committee let most of the employees out of these meetings. The result was that their previous strike vote stood.

At Kalamazoo the union tried the same thing. The employees, however, refused to follow them. They saw the evidence and decided to disregard their strike vote.

On March 1, 1948, the international union threw picket lines around all four plants.

At Fayetteville the great majority of the employees kept on working. The picket lines lasted only 2 or 3 days. At the Syracuse plant the story was the same.

At Kalamazoo a majority of the employees kept on working despite statements by their union leaders that all other plants were closed down tight; so the union maintained quite a picket line until four of the employees came to the Fayettevile plant to investigate for themselves.

When they saw with their own eyes that they had been lied to, they telephoned the facts to the other workers, which ended the strike at Kalamazoo except for a few die-hards.

At Cleveland, where the employees had been kept ignorant of the facts, the plant remained closed until about April 7, because the workers were led out of our meetings by the union before they could see and read the facts. These same facts were transmitted to our employees through the mails, with the further result that the plant was soon reopened and the strike was called off by the old union about April 21.

We were then in this position, namely, the available jobs in our plants were manned by old employees who had repudiated the international union. But that union was still the certified bargaining agent.

The olw Wagner Act provided no procedure whereby that certification could be avoided intelligently and expeditiously.

The bill now before you provides no such procedure.

Under the amended act they were free to take effective action. It contained the thoroughly American and efficient procedure whereby the employees could vote themselves out of that situation if no other union claimed their bargaining rights.

Our employees and our company used the machinery of the new Labor-Management Relations Act. New NLRB elections were held promptly with the results stated before.

The facts I have outlined show that section 9 (c), the free-speech provision, should be retained. It was absolutely necessary in handling this kind of a situation.

These same facts show why those portions of section 8 (a) (3) and 8 (b) (2) which protect an employee from discharge for other than nonpayment of dues should also be retained. Our employees were all working under union-shop contracts. Without this protection the leaders among our employees who stood out against communism would have lost their jobs.

These same facts show that the right given in section 9 (b) to employees and employers to file petitions for elections should also be retained.

The company's petition settled the situation at the Syracuse plant.

The employees' petition for decertification was highly instrumental in settling the situation at the Kalamazoo plant.

These same facts show how completely followers of the "party line" can obtain control of the operations of a single company, and likewise of an industry; a situation which we could not possibly live with in wartime.

The old union's noncompliance with the non-Communist affidavit under section 9 (h) made it practically an illegitimate one.

The old Wagner Act saddled many American employees with Communists and "fellow travelers" as their union leaders. The bill before you, H. R. 2032, would do the same thing.

I firmly believe that the great majority of the American workmen want no Communists or "fellow travelers" in such positions of leadership. Section 9 (h) helps to keep them out. In my opinion you will be rendering a very valuable service to the Communist Party if you recommend its repeal. It will be the "shot in the arm" that the Communist Party in this country is looking and waiting for.

If you bring about the removal of this provision from the law, the average workman would say something like this: "In 1947 my Government took a position against communism in labor organizations and agreed to back me up if I took that same position. Now my Government has backed off from that position. Whose side is my Government on, my side or the Communists' side?"

Should you ask, I want you to know that I would gladly sign such an affidavit as is required by section 9 (h).

That is the outline of my story as to how these provisions of the amended act have worked. In the short space of 6 to 7 months under these provisions our whole situation was transformed into one of complete satisfaction to both our employees and our company.

In my opinion you cannt afford to destroy the machinery that made this transformation possible.

Thank you.

Mr. Irving. Do you have any questions, Mr. Burke?

Mr. Burke. Yes; just one question.

On this non-Communist affidavit, do you feel that that was solely responsible for the control of Communists in the labor movement?

Mr. During. The non-Communist affidavit section was responsible for the suspicion that we had that the international officers were either Communists or were Communist-dominated.

Mr. Burke. You didn't know that before?

Mr. During. Not definitely. It was through their refusal that we decided to investigate on our own, and then we exposed the results of that investigation and it was then that the employees took it upon themselves to change their tactics.

Mr. Burke. Then you feel that any labor-union official who refused to sign was of necessity a Communist?

Mr. During. No; not by any means. We in this situation only checked their records by their own utterances in the newspapers, their positions in Communist organizations, and the claims of the Daily Worker on them as members. We showed just those facts to our employees. We made no statements of accusation ourselves whatsoever.

Mr. Burke. Suppose there were no non-Communist affidavits, and suppose there were no labor unions, and suppose there were no such things as problems in labor relations.

Mr. During. You are speaking of Heaven, now?

Mr. Burke. Yes. But, as an officer of a corporation, if the Government came along and said to you, "An officer of a corporation over here in another part of the country, and over here in another part of the country, and over here in another part of the country, have been found to be Communists or Fascists, or 'what have you,' and, therefore, in order to carry on your business we must know, and you must prove, that you are not a Communist, or are not a Nazi or a Fascist"; how do you feel about that?

Mr. During. That is perfectly all right with me.

Mr. Burke. You would not feel that you were being accused of guilt, and had to prove your innocence?

Mr. During. Not at all. I do not look at it that way. I like to stand up and be counted as a loyal American.

Mr. Burke. What do you think your background would amount to, your reputation for patriotism as a good community citizen, and so on; does that not mean something?

Mr. During. It certainly does, and I do not consider the signing of a non-Communist affidavit would be any reflection on my background.

Mr. Burke. Well, I did.

Mr. During. We are of a different opinion.

Mr. Burke. I signed one.

Mr. During. Oh, I see; I beg your pardon.

Mr. Burke. I signed it because I felt that my feelings as an individual had to be sacrificed for the good of the people that I represented. In other words, I felt that they had to be given full opportunity to use every bit of bargaining procedure that was their command to use, and it could not be done if I did not sign it, but I felt that it was a reflection upon my Americanism and patriotism in order to be required to do it to carry on my daily business.

Mr. DURING. That, of course, is your individual prerogative.

Mr. BURKE. That is true, but there are many people who feel the same way, and it is not with those people so much a matter of propaganda throughout the country. I know your attorney, and I have known him for several years. In fact, we have met across the bargaining table, and we had pretty fair relationships.

Mr. DURING. That was one of my reasons for inviting Mr. Smoyer because he has had many years of fine experience both under the Wagner Act and the National Labor Relations Act, in adjusting labor differences, and if there are any questions you would care to put to him I am sure he would be happy to answer them.

Mr. BURKE. It is getting rather late in the evening, so I will not ask any more questions.

Mr. IRVING. Mr. Smith, have you any questions?

Mr. SMITH. I only want to say the Precision Castings Co. has certainly been precise in their statement, and it is one of the most precise statements that has come before the committee. I want to congratulate you on the way you have prepared your statement.

Mr. DURING. Thank you, sir.

Mr. IRVING. I want to add the same words. They are very easy to follow, and have been well gotten up, and I want to say the full committee appreciates your coming here, and we thank you.

Mr. DURING. We feel you fellows have a tough job ahead, and anything we can do to help you, we are more than happy to do, and thank you.

(Mr. During's prepared statement is as follows:)

STATEMENT BY WILLIAM J. DURING, VICE PRESIDENT AND GENERAL MANAGER, PRECISION CASTINGS CO., INC., SYRACUSE, N. Y., CONCERNING H. R. 2032, WITH PARTICULAR REFERENCE TO SECTION 8 (a) (3), SECTION 8 (b) (2), SECTION 8 (c), SECTION 9 (c) (1), AND SECTION 9 (h) OF THE NATIONAL LABOR RELATIONS ACT AS AMENDED IN 1947

I'm here to show you how sections 8 (a) (3), 8 (b) (2), 8 (c), 9 (c) (1), and 9 (h) of the amended National Labor Relations Act, as it appears in Labor-Management Relations Act, 1947, have worked in actual practice and why they should not be repealed.

Sections 8 (a) (3) and 8 (b) (2) protect an employee from loss of his job because of his expulsion from his union by reason of his criticism of its leaders or their policies, for example, with respect to communism, or by reason of his trying to get a new union.

Section 8 (c) is the free-speech section of the act.

Section 9 (c) (1) is the section which gives employees the right to file petitions for decertification. The same section gives employers the right to file petitions for elections.

Section 9 (h) is the section which requires the filing of non-Communist affidavits as a condition precedent to using the facilities of the National Labor Relations Board.

THE COMPANY AND ITS BUSINESS

Precision Castings Co., Inc., is a New York corporation. Its principal office is at Fayetteville, a suburb of Syracuse, N. Y.

The company is engaged in the business of manufacturing and machining zinc, aluminum, and magnesium alloy die castings. These operations are carried on in its Fayetteville, N. Y., and Cleveland, Ohio, plants.

At its Syracuse, N. Y., die and tool shop, it is engaged in the construction of casting dies and trimming tools and in experimental die-casting.

The company owns Precision Castings Co., a Michigan corporation. This subsidiary operates a plant at Kalamazoo, Mich., where it is engaged in buffing, polishing, and plating the products of the Fayetteville, N. Y., and Cleveland, Ohio, plants.

Ours is not a large company when it is compared with General Motors and other similarly large companies. But ours is an important industry, both during peace and wartimes, because we engage in large volume production at low costs per item. Our competitors in our industry and the unions with which we deal usually rank us as the second largest in the industry.

During the latter part of 1948 a decline in our business necessitated many lay-offs from our working force. We hope this is a temporary condition. It was caused largely by the amount of time other members of my organization and I had to devote to labor matters during the first 6 months of last year when we might otherwise have been out after new business. You see, it is from the dies which we secure in the spring of the year that we manufacture during the next fall and winter. However, 1 year ago, and before lay-offs became necessary, the number of employees engaged at the various plants and their offices were as follows:

	Fayetteville	Cleveland	Syracuse	Kalamazoo	Total
Factory	740	520	103	257	1,620
Office	139	47	20	40	246
Total	879	567	123	297	1,866

SOME OF OUR BASIC BELIEFS

Our company is not opposed to collective bargaining. It is not opposed to unions. It is not opposed to contracting with strong unions. It believes they should be responsible for their contracts and equally responsible to their membership and to the public for any attempted excessive and arbitrary use of power, just as we are. We oppose communism and we don't believe that Communists should be assisted by our Government in their positions of leadership in American labor unions.

We believe that the American workman is first of all an American and that when he has the facts, if he has the machinery for a choice, he will prefer to give custody of his bargaining rights to labor unions which are dominated neither by Communists nor by so-called fellow-travelers.

THE OLD WAGNER ACT PROVIDED EMPLOYEES NO MACHINERY TO COMBAT COMMUNISM

The old Wagner Act did not give him that choice. It provided the procedure whereby an employee could give exclusive control over his bargaining rights to a particular union. But it contained no procedure whereby he could get those bargaining rights back unless he could induce another union to put on a campaign for his bargaining rights. He could only do this at the risk of expulsion from his union on charges of dual unionism if the new union were unsuccessful. Unions for the most part refused to try to unseat established organizations. The employees were practically helpless.

Under the old Wagner Act it made no difference how much force, violence, coercion and intimidation the union organizers employed in their organizing campaign. Once the union was certified the individual employee was required to be bound by the acts of the union and subject to the domination of the particular group which controlled it. In many cases these were Communists or fellow-travelers.

Under the old Wagner Act, if an employee suddenly awakened to the fact that he was being represented by Communists and fellow travelers, there was little he could do about it. He had to go on paying his dues to a group whose policies were dependent upon whether the wind was blowing from or to Moscow.

THE 1947 LABOR-MANAGEMENT RELATIONS ACT PROVIDED THE MACHINERY

The Labor-Management Relations Act, 1947, changed all this. Under the provisions I have referred to the employees became masters of their own destinies in such situations. Under these provisions they have had the right to determine whether the character and performance of their representatives was satisfactory to them and to take effective action in accordance with their conclusions. That should be the inherent right of every American workman. I don't believe it is debatable.

H. R. 2032 WOULD ABOLISH THESE RIGHTS

It is because the bill that is before you (H. R. 2032) would take away these rights that I desire to place before you the facts as to the status in which Precision employees found themselves, (a) when the old Wagner Act was amended, (b) their present status, and (c) how they reached that status under these particular provisions of the Labor-Management Relations Act, 1947.

In that connection I will show you that the privileges they exercised under the present law were privileges that are thoroughly American and which should not be again taken from them now that they are a part of the American law of labor relations.

I am sure that when you hear the facts you would want the right to continue to exercise those privileges were you American workmen. I believe that the allegiance to his country of the average American workman is second only to his allegiance to Almighty God.

AT THE END OF THE OLD WAGNER ACT—WRITTEN CONTRACTS IN EFFECT AT THREE PLANTS WITH THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

At the end of the old Wagner Act, August 23, 1947, the Fayetteville, N. Y., the Cleveland, Ohio, and the Kalamazoo, Mich., plants had all been organized by the International Union of Mine, Mill and Smelter Workers, casting division, an affiliate of the Congress of Industrial Organizations.

At that time there were in effect at each of said three plants collective bargaining agreements. Each of these contracts provided for the union shop. The Fayetteville and Cleveland contracts provided for the check-off of union dues, fines, and assessments without individual authorizations from the employees. The Kalamazoo contract provided for the check-off of dues and initiation fees on individual authorizations.

The Fayetteville agreement was between the company, said international union and its local union No. 704. It was made October 30, 1946, supplemented in July 1947, with respect to wages, and its expiration date was March 1, 1948. The Fayetteville plant was organized by this union in 1943.

The Cleveland agreement was between the company, said international union and its local union No. 705. This agreement was made October 31, 1946, supplemented in July 1947, with respect to wages, and its expiration date was also March 1, 1948. It was also organized in 1943.

The Kalamazoo agreement was between the subsidiary company, said international union and its local union No. 736. This agreement was made October 29, 1946, supplemented in July 1947, with respect to wages, and its expiration date was also March 1, 1948. It was organized in 1946.

THE CONTRACTS WERE NEGOTIATED WITH INTERNATIONAL REPRESENTATIVES WHO HAD COMMUNIST RECORDS

It may be of interest for you to know that in the 1944 negotiations of the Cleveland and Fayetteville agreements the employees and the international union were represented by an individual who was a candidate for the City Council of Cleveland, Ohio, in the 1935 primaries and that at that time he ran openly as a Communist. According to the Cleveland Press of December 11, 1941, this same individual was demoted from his position as assistant director for Ohio district 50 of the United Mine Workers under circumstances stated by that newspaper, as follows:

"C. I. O. sources here said replacement of District 50 officials with picked followers of John L. Lewis had been quietly under way since August, the principal victim being followers of the Communist Party line who have clashed head-on with Lewis' isolationist policies."

In 1945 and 1946 Fayetteville and Cleveland contracts were also negotiated by the company with an individual of Communist reputation. He was a member of the 1946 New York City provisional May Day committee for the May Day parade sponsored each year by the Communist Party.

We feel certain that neither the Fayetteville nor the Cleveland employees knew of the Communist reputations of these representatives supplied to them by this international union.

We feel equally certain that had they known of their Communist reputations, the old Wagner Act provided no remedy to them—no way by which they could certainly avoid being represented by them.

I imagine that the members of this committee are very jealous of their right to decide who shall represent you as committee counsel. The American workman, under the old Wagner Act, could not even avoid being represented by avowed Communists.

THE REPUTATION OF THIS INTERNATIONAL UNION

By the summer of 1947 the House Committee on Un-American Propaganda Activities had dug up and published the Communist or "fellow traveler" reputations of several of the officials of this international union. The daily newspapers had branded it as Communist dominated or controlled. The Daily Worker had claimed some of its officials as its own.

THE STATUS OF OUR EMPLOYEES UNDER THE OLD WAGNER ACT

This then was the situation of the average Precision employee under the last days of the old Wagner Act. He was powerless to clean up the situation in the conventions of his union. His employer was required by law to deal with his union whether Communist dominated and controlled or not. If his employer were to tell him the facts and urge him to get another union, the employer was chargeable with the unfair labor practice of interfering, restraining, and coercing its employees in the exercise of their rights to organize and to bargain collectively.

In time of war, with Russia on the other side against the United States, the position of the average Precision worker would have been no less than precarious under the old Wagner Act.

You might say that under the old Wagner Act the employer could not have been successfully prosecuted for telling the employees that their union was Communist dominated or controlled. Possibly that's true, but he would have had to go to the United States Supreme Court in order to get the charge dismissed finally.

But, that is no answer. It would have been impractical and inadvisable for our company to declare to its employees the Communist and "fellow traveler" reputations of the officers and leaders of this union. Their answer based upon the old Wagner Act, would simply have been "What can we do about it? We are not going to try to lick the whole Communist Party. If the United States Government doesn't care enough about it to back us up, we'll just have to endure it."

Thus, employees and employers were practically powerless in the face of situations similar to that which prevailed in the plants of our company.

If there ever was a mandate from the people to do something about such a situation, Congress received that mandate in the 1946 election.

WHAT THE OLD WAGNER ACT NEEDED TO CORRECT SUCH SITUATIONS

What was wrong with the old Wagner Act when it was applied to the Precision and many other similar situations? There were several things which the old act did not provide which must be supplied to take care of them. These were:

1. The employer and everybody else must have an unqualified right to tell the facts.
2. The individual employee's job must be protected if he undertook to oppose the union by reasons of the facts.
3. The law must contain a procedure whereby an employee could file a petition for an election and thereby vote a union out and compel its decertification, as well as a procedure whereby they might get an opportunity to vote for another union.
4. The United States Government must take a position against Communist dominated or Communist controlled unions and give the advantage to those unions which were neither Communist dominated nor controlled.

Given these rights and remedies, the employees and their employers who found themselves in such situations might be expected to correct them.

THE ACT AS AMENDED IN 1947 SUPPLIED THE NECESSARY RIGHTS AND MACHINERY

The Labor-Management Relations Act, 1947, became law June 23 of that year. That law supplied the rights and remedies which were needed.

Section 8 (c) of the amended National Labor Relations Act guaranteed the unqualified right to tell the facts.

Section 8 (a) (3) and 8 (b) (2) of that act protected the individual employee's job, even under a union shop agreement.

Section 9 (c) (1) of that act provided the thoroughly American procedure of election for the decertification of a Communist dominated or controlled union.

Section 9 (h) of that act, by requiring the filing of non-Communist affidavits as a condition precedent to the use of the facilities of the National Labor Relations Board, definitely put the United States Government into a position against Communist dominated or controlled unions and gave the advantage to unions whose officers were willing to make and file affidavits against Communist Party membership or affiliation and against being anti-American in their beliefs and purposes.

USING THEIR RIGHTS THE EMPLOYEES VOTED THE OLD UNION OUT AND NEW UNION IN

The employees of Precision and their company used these rights. Without these rights they would have been powerless. Having exercised these rights, the employees of our Fayetteville plant are now represented by the UAW-CIO. The employees of the Cleveland plant are represented by the American Federation of Labor. The employees of the Kalamazoo plant had a chance to vote for either of said unions but elected to have no union. The employees of the Syracuse Die and Tool Plant have never had a union.

HOW THE NEW RIGHTS WERE USED AND HOW THE NEW MACHINERY WORKED

Here are the facts as to how the Communist dominated or controlled International Union of Mine, Mill and Smelter Workers was voted out of three plants and unions of good reputation voted into two of them. And, mark you this, what our employees and our company did could not have been done under the old Wagner Act. Nor could it be done under the bill H. R. 2032 which is before you for your consideration.

THE UNION DEMANDS RECOGNITION FOR A FOURTH PLANT—THE SYRACUSE DIE AND TOOL SHOP

The rights created by the act as amended in 1947 were first exercised in connection with our Syracuse Die and Tool Shop.

On November 24, 1947, the International Union of Mine, Mill and Smelter Workers requested recognition as bargaining agent for the employees of that plant. On that date a meeting was held between representatives of the company and of the union with respect to the union's request for recognition.

At that meeting the company proposed that an election be conducted by the National Labor Relations Board and promised recognition in the event the union received a majority vote. This had been the procedure employed at the other three plants for effecting recognition.

THE UNION DETERMINES TO BOYCOTT THE NATIONAL LABOR RELATIONS BOARD

In that same meeting the union answered that it could not petition for an election because its international union had determined to boycott the National Labor Relations Board and that it had not complied with sections 9 (f), (g), and (h) of he National Labor_Relations Act. The union requested that the company consent to an election under supervision by an agency other than the NLRB or that other means be devised to take the place of an election.

THE COMPANY STANDS BY THE AMENDED ACT

The company refused to agree to any other procedure than that provided by the National Labor Relations Act, but requested the union to put its suggestions in writing for the purpose of further consideration. This was done, and upon further consideration the company decided to stand by the law.

THE COMPANY FILES A PETITION FOR AN ELECTION

Meantime the company filed a petition with the regional office of the NLRB at Buffalo, N. Y., for an election to be conducted at the Syracuse plant. Under the old Wagner Act it could not have done this. Section 9 (c) of the amended act gave it that right. The NLRB gave the union ten (10) days to comply with the law. It refused. The NLRB then dismissed the petition.

THE COMPANY URGES THE OLD UNION TO COMPLY WITH THE LAW

While all of this was going on, two representatives of the international union called upon our representative in Cleveland on two different occasions. They again requested that we avoid the NLRB and avoid NLRB certification. They were urged to bring their union into compliance with the law. Their answer, in substance, was "You run your own business and we will run our union." In short, they refused to comply with the law as to the filing of non-Communist affidavits. These conversations were on December 5 and 15, 1947.

THE UNION SENDS NOTICES OF ITS DESIRE TO MODIFY THE AGREEMENTS

Because of the March 1, 1948, termination date, it was incumbent under the new law upon the union and the company before January 1, 1948, to send notices to each other of their desire to modify or terminate the agreements.

The union's notices to the company were dated December 24, 1947. The text was the same for all three plants. They expressed a desire to modify the agreement at each plant and offered to meet and confer for that purpose.

THE COMPANY SENDS NOTICES TO MODIFY, CONDITIONED ON COMPLIANCE, OR, IN THE ALTERNATIVE, TO TERMINATE

The company's notices to the union were dated December 29, 1947, and their text was the same for all three plants. The notices were friendly in tone. They expressed a desire to continue the bargaining relationships. They contained offers to meet and negotiate new contracts if and whenever the international union complied with sections 9 (f), (g), and (h) of the amended National Labor Relations Act. There never was any doubt but that the officers of the local unions would have been glad to sign the affidavits. In the alternative the notices provided for the termination of the agreements as of their expiration date, March 1, 1948.

THE COMPANY NEXT FULLY ADVISED ITS EMPLOYEES AS TO WHAT IT HAD DONE

On January 2, 1948, the company mailed to the homes of each of its employees a letter explanatory of the company's notices. The text of the letters was the same for all four plants. The letters epitomized the notices, stated the reasons behind the notices, quoted the applicable provisions of the law, and closed with the following paragraphs:

"Precision has no quarrel with its employees or with their representatives. It sees no necessity for any quarrel. It hopes that by merely stating its position, the international can be induced to abandon its policy of noncompliance so that both it and the local union can comply with the law. It wants its employees to have all the rights under the law. It wants these rights for itself.

"Meantime, let all of us carry on our daily tasks in the usual spirit of friendliness and cooperation, and in accordance with the existing contract."

THE INTERNATIONAL UNION ANNOUNCES A "NO CONTRACT, NO WORK" POLICY

Under date of January 8, 1948, the international union, by the director of its die-casting division, replied by letter to the company's notices of December 29, 1947. He stated the union's policy to be "No contract no work."

There was no evidence that our employees were ever called to any union meetings before this policy was determined and thus stated. Notices of such meetings would have appeared on the bulletin boards had such meetings been held.

THE INTERNATIONAL UNION DESCRIBES NON-COMMUNIST AS "YELLOW DOG" AFFIDAVITS

On January 9, 1948, there was distributed by the union to the employees of the Kalamazoo and of the Cleveland plants a circular over the signature of the director of the casting division of the international union. The circular characterized the non-Communist affidavits required by the law as "yellow-dog affidavits."

THE COMPANY ANSWERS THE EMPLOYEES' QUESTIONS AS TO WHAT WILL HAPPEN COME MARCH 1ST

Having decided that if the union persisted in its refusal to comply with the law the contracts between the company and the union would be terminated March 1, 1948, and having informed its employees to that effect, the company was beset with questions from the employees as to what would happen to their wages, hours, working conditions, vacations, etc., come March 1, 1948, and no union contract.

In order to answer these questions the company prepared and distributed to its employees on January 14 a letter of reassurance as to what would happen March 1, and thereafter. The following two paragraphs from that letter show the spirit and intention of the company:

"We hope that the international union will comply with the law before March 1, and that a new contract will be negotiated by that time.

"But if it doesn't, Precision isn't going to change the wages, policies, and procedures that are set up in the present contract. Precision is going to go right on working. Because we can't have a union shop without an NLRB election we will not be able to maintain that, and we will not be able to maintain the check-off without a contract. But every other working condition will be the same and will continue that way until proper bargaining relationships are again established."

THE UNION TAKES STRIKE VOTES AT CLEVELAND AND KALAMAZOO

In its communications to our employees the union avoided the real issue. It raised false issues with our employees and upon the basis of false issues the union conducted strike votes at the Cleveland and Kalamazoo plants early in February. At both of these places it reported that a majority of the employees voted in favor of a strike come March 1.

The employees of the Fayetteville plant delayed their strike vote as long as possible.

THE COMPANY PROCURES AND PRESENTS TO ITS EMPLOYEES THE FACTS AS TO THE COMMUNIST AND FELLOW TRAVELER RECORDS OF CERTAIN OFFICERS AND REPRESENTATIVES OF THE INTERNATIONAL UNION

The sole issue between the company and the international union was communism. The newspapers and trade papers had branded the international union as Communist-dominated or controlled. The employees would need the facts before they could be sure of their situation and before they would do anything about it.

The company, therefore, carried on an intensive search for documentary evidence of the Communist and fellow traveler reputations or records of the officers and representatives of the international union. There was a lot of it.

The company decided to show this to the employees so that this evidence could speak for itself. By the photostatic process it had this documentary evidence "blown up" so that when posted on a large board the employees in the room could see and read it for themselves.

The company then held meetings with its Fayetteville employees in its conference room. By packing the room to its capacity about 125 employees could be seated.

The company then displayed the evidence. It woudld take a lot of time for me to tell you what the evidence showed. Each of those sessions lasted about 2 hours and there were 10 of them, including 1 at the Syracuse plant. It is sufficient to state that after those sessions there were few employees who had any doubts about the fact that certain officers and representatives of their international union had well-established reputations or records as Communists or fellow travelers.

Our employees reached this conclusion not from anything we said. Rather they arrived at that conclusion from the published data concerning them which they saw with their own eyes.

FAYETTEVILLE EMPLOYEES VOTE AGAINST A STRIKE

The result was that when the Fayetteville employees voted there was a heavy majority against a strike. This was late in February.

THE COMPANY MAKES THE SAME EVIDENCE AVAILABLE TO THE CLEVELAND AND KALAMAZOO EMPLOYEES

The company decided to make the same information available to its Cleveland employees. It scheduled and held the same sort of meetings. But, it appeared that the representatives of the international union had instructed the local shop committees to lead the employees out of the meetings. No one was compelled to attend any of the meetings. The Cleveland shop committee led most of the Cleveland employees out of the meetings. The result was that most of the Cleveland employees never heard the facts and as a result their previous strike vote stood.

At Kalamazoo the union tried the same thing; that is, to lead the employees out of the meeting. The employees refused to follow. They saw the documents. They decided to disregard their strike vote.

THE STRIKES OF MARCH 1, 1948

On March 1, 1948, the international union threw picket lines around all four plants.

AT FAYETTEVILLE AND SYRACUSE

At Fayetteville the great majority of the employees paid no attention to the picket lines. There was ample police protection. They kept right on working. The picket lines lasted only 2 or 3 days. At the Syracuse die and tool shop the story was the same.

AT KALAMAZOO

At Kalamazoo a majority of the employees kept on working. However, the union falsely advised the employees that all plants of the company were closed. It maintained a picket line which provoked considerable violence until a delegation of Kalamazoo employees, half workers and half pickets, visited the Fayetteville plant and saw with their own eyes that the Fayetteville plant was working full. They telephoned that information back to Kalamazoo and only token picketing was carried on after that.

AT CLEVELAND

At Cleveland, where the employees had been led out of the meeting by their shop committee upon instructions of the representatives of the international union who thereby kept them ignorant of the facts, the plant was closed. It remained closed until about April 7, 1948, when it was reopened with a small number of employees which increased from time to time until about April 21, when the old union called the strike off and withdrew its pickets.

THE CLEVELAND STRIKE LOSS WAS LARGE AND WOULD NOT HAVE OCCURRED IF THE EMPLOYEES HAD BEEN PERMITTED TO SEE THE EVIDENCE

There were 520 factory employees before that strike. Their average hourly earnings at straight time were about $1.40. They were working an average of 45 hours per week. That means 47½ hours pay per week.

During the almost 6 weeks that the plant was closed, the employees lost over $200,000 in wages and the plant lost so much business that more than 100 employees never did get back to their jobs.

The only reason the Cleveland employees and our Cleveland plant sustained these staggering losses while the other plants did not, was the fact that the Cleveland employees were prevented bp their union leaders from hearing the facts before they were led out on strike.

ESTABLISHING NEW BARGAINING RELATIONSHIP

We were then in this position, namely, our plants were running and the available jobs were manned by our old employees who had repudiated the International Union of Mine, Mill and Smelter Workers. But that union was still the certified bargaining agent for all three plants.

THE OLD WAGNER ACT WOULD NOT HAVE WORKED

Under the old Wagner Act there was no procedure whereby that certification could be voided intelligently and expeditiously except through the process of the company subjecting itself to an unfair labor practice charge for refusing to bargain and that kind of case might consume 2 years before a definite and conclusive decision could be obtained.

THE PRESENT BILL WOULD NOT HAVE WORKED

The bill now before you would return employees in situations like ours to that same condition where they had no remedy. Under the old Wagner Act they were really slaves of the union in such a situation. Under the present bill they would return to slavery in such a situation. Under the amended act they were free to take effective action.

In my humble opinion it would be a grave mistake for this committee to recommend that in such a situation they be returned to that kind of slavery.

It would be a grave mistake because the amended National Labor Relations Act contained thoroughly American and efficient procedure whereby the employees could vote themselves out of that situation if no other union came around and claimed the bargaining rights.

Here is how that law was applied in our situation and how it worked:

THE NLRB PROCEDURE WAS EFFICIENT AND EXPEDITIOUS AT ALL THREE PLANTS AT KALAMAZOO

At Kalamazoo a large group of employees got up a petition which they proceeded to file with the NLRB to decertify the old union. That started the American Federation of Labor and the UAW-CIO on a campaign for votes. This was in February. Both the AFL and UAW-CIO filed petitions. Then the petition for decertification was withdrawn by the employees.

On June 24, 1948, the NLRB conducted an election. The contending unions were UAW-CIO and UAW-AFL. The vote was: UAW-CIO, 48; UAW-AFL, 20; no union, 64.

Because there was no clear majority, a run-off election was held July 26, 1948, when the vote was: UAW-CIO, 44; no union, 81.

Thus, at Kalamazoo, despite the difficulty of removing all the "monkey wrenches" which the old union threw into the machinery, the NLRB completely handled the situation in 5 months, including two elections.

AT FAYETTEVILLE

At Fayetteville the matter was handled even more expeditiously. There the election was held May 4, 1948. The contending unions were the American Federation of Labor and UAW-CIO. The results were: UAW-CIO, 368; AFL, 269; neither, 22.

The "neither" vote is very significant because of the fact that the old union having been barred from the ballot by the NLRB under the law, put on a very strenuous campaign for "neither" votes.

Thus, at Fayetteville, despite all sorts of objections from the old union, the NLRB handled the matter in just about 2 months.

AT CLEVELAND

At Cleveland the story was about the same. There the contending unions were the American Federation of Labor and UAW-CIO. The election was held June 22, 1948. The results were: AFL, 168; UAW-CIO, 130; neither, 8.

Here again the "neither" vote is signficant because of the campaign put on by the old union which was barred from the ballot by the NLRB for "neither" votes. But the Cleveland employees had been given the facts by mail as to the Communist reputations of certain officers and representatives of the old International Union and when they had the facts they reacted just as the typical American employees at the Fayetteville and Kalamazoo plants. They took back their bargaining rights from those who were followers of the party line.

OUR PRESENT SITUATION

Our employees and our company used the machinery provided by the amended act and this is where we landed.

At Fayetteville, in July 1948, we made a 2-year contract with UAW-CIO. Our employees and our company have been happy under that contract, except that we wish we had more business.

At Cleveland, in July 1948, we made a 2-year contract with AFL. Our employees and our company have been happy under that contract. There, too, we wish we had more business.

At Kalamazoo the employees each have a printed complete statement of all working conditions covering wages, paid holidays, vacations, etc., which is in every sense a contract between them and the Company.

At the Syracuse plant there is still no union. There never has been.

CONCLUSION—SECTION 9 (C), THE FREE-SPEECH PROVISION, SHOULD BE RETAINED

The facts I have presented show that section 9 (c) of the amended act, the free-speech provision, should be retained in the law. It proved absolutely necessary to handling the Communist and fellow-traveler situation in our plants. There can be no reasonable objection to the manner in which it was used.

THOSE PORTIONS OF SECTIONS 8 (A) (3) AND 8 (B) (2) WHICH PROTECT AN EMPLOYEE IN HIS JOB SHOULD BE RETAINED

These same facts show why that portion of section 8 (a) (3) and of section 8 (b) (2) of the amended act which protects an employee from discharge from his job by reason of his expulsion from his union for other than nonpayment of dues should be retained.

Our employees were all working under union shop contracts. Without the protection of those provisions the leaders among our employees who stood out against communism and the followers of the party line would have been expelled from the union and their discharges would have been compelled.

THE RIGHT OF EMPLOYERS AND EMPLOYEES TO FILE PETITIONS AS PROVIDED IN SECTION 9 (C) FOR ELECTION SHOULD BE RETAINED

These same facts show that the right given to employees and employers to file petitions for elections with the NLRB in section 9 (c) of the amended act should be retained.

The company's petition to the NLRB settled the situation at the Syracuse plant.

The employees' petition for decertification was highly instrumental in settling the situation at the Kalamazoo plant. The NLRB was efficient.

THE NON-COMMUNIST AFFIDAVIT REQUIREMENT OF SECTION 9 (h) SHOULD BE RETAINED

These same facts show how completely followers of the party line can obtain control of the operations of a single company. In the same manner they can control an entire industry. In wartime the production of that industry is dependent upon the Kremlin's instructions. This is indisputable.

No one can doubt that neither the UAW-CIO nor the AFL would have touched our situation were it not for section 9 (h) of the amended act which for all practical purposes made the old union an illegitimate one.

The old Wagner Act saddled many American employees with Communists and followers of the party line for their union leaders. The bill before you (H. R. 2032) would do the same thing.

No one can possibly doubt that a great majority of the American workmen want no Communists or fellow travelers in their labor organizations or in positions of leadership in those organizations. Section 9 (h) helps to keep them out of those positions. In my opinion you will be rendering a valuable service to the Communist Party if you recommend that the Congress take that provision out of the law. Should that be done I believe we will all live to regret it. It will be the shot in the arm that the Communist Party is looking for. It will negate our Marshall plan for Europe.

The average American workman would say something like this if you bring about the removal of this provision from the law: "In 1947 my Government took a position against communism in labor organizations and agreed to back me up if I took that same position. Now my Government has backed off from that position. Whose side is my Government on, my side or the Communist's side?"

Should you ask, I want you to know that I would gladly sign such an affidavit as is required by section 9 (h) and that I would consider it a privilege to thus stand up and be counted on the side of my country.

That is my story about how these provisions of the amended act have worked. In the space of 6 or 7 months under these provisions our whole situation was transformed to the mutual satisfaction of our employees and of our company.

In my opinion you cannot afford to destroy the machinery that made this transformation possible.

Mr. IRVING. I want to make this announcement: This committee will now adjourn until 10 o'clock in the morning, when we will take up where we have left off tonight. Tomorrow is Saturday, but we will begin working again tomorrow at 10 o'clock.

(Whereupon, at 10:35 p. m., an adjournment was taken until the following day, Saturday, March 12, 1949, at 10 a. m.)

NATIONAL LABOR RELATIONS ACT OF 1949

SATURDAY, MARCH 12, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Augustine B. Kelley (chairman) presiding.

Mr. Kelley. The subcommittee will please be in order.

I have here a letter from Mr. Paul A. Strachan, president of the American Federation of the Physically Handicapped. He was unable to appear in person, and they directed this letter to the committee. They are very much interested in this legislation because they feel they have not been dealt with fairly by management and, without objection, I would like to have this placed in the record.

(The letter referred to is as follows:)

American Federation of the Physically Handicapped, Inc.,
Washington, D. C., March 10, 1949.

Hon. Augustine B. Kelley,
Chairman, Subcommittee, House Committee on Education and Labor,
United States House of Representatives, Washington, D. C.

Dear Mr. Chairman: As I am informed your subcommittee is holding hearings upon H. R. 237, a bill to repeal the Taft-Hartley Act, I desire to submit this statement, for the record.

In order to make plain my reason for approving H. R. 237, it is necessary for me to cite some history. As you know, for many years my concern has been, to advance the welfare of physically handicapped people. However, unfortunately, except for isolated instances, prior to World War II, industry stands convicted of callously ignoring the handicapped, and until the wartime stringencies for manpower forced industry and business to employ handicapped, they had been completely left out the economic scheme.

Gradually, handicapped began to be absorbed into various jobs, and more than 1,350,000 of them were employed during the war years. Yet, today, the trend is, again, insofar as the handicapped are concerned, "First to be fired, and last to be hired!"

With this in mind, it is my conviction that since industry and business failed, signally, to take any steps beneficial to handicapped, but to the contrary, jacked up physical demands higher and higher, on the pretext of saving insurance money, I say, on the evidence, the only friend the handicapped have, is organized labor, which has in many instances, written into union contracts requirements that give handicapped equal opportunity, if otherwise qualified, with the nonhandicapped.

Anything, then, that is detrimental to the best interest of laboring people is, likewise, detrimental to the interest of the handicapped, and the weight of testimony on H. R. 237, coming from working people and their representatives, indubitably points out the dangers and difficulties engendered by the Taft-Hartley Act, and the necessity for its repeal.

Therefore, I am convinced that continuance of the Taft-Hartley Act would endanger the economic advancement of our millions of handicapped citizens, by denying them the full privileges and benefits of collective bargaining through the unions of their choice, and I hope your committee will unanimously approve H. R. 237.

Respectfully,

PAUL A. STRACHAN, *President.*

Mr. KELLEY. Also I would like to ask unanimous consent of the committee to place in the record an excerpt from the report of the regulatory commission or task force working for the Hoover Commission. The substance of the article is regarding the general counsel, as set up under the National Labor Relations Act of 1947.

Without objection I would like to have that placed in the record.

(The excerpt referred to is as follows:)

D. THE GENERAL COUNSEL

Another problem that has caused us considerable concern is the position of the general counsel. As indicated above, he is a prosecutor, an administrator, a policy maker. The incumbent, Mr. Robert Denham, has noted that his powers "are broad and absolute and his authority final to an outstanding degree seldom accorded a single officer in a peacetime agency."

The existence of such an office, independent both of the Federal departmental structure and of the Board, marks a departure from previous administrative practice. If permitted to set a pattern for future Government organization, it may lead to a diffusion of responsibility.

Such an official is in a peculiarly exposed position. In view of the wide powers of the office, it is inevitably subject to heavy pressure from all sides, and lacks the protection of either a multiheaded agency or an executive department in resisting such pressures. Experience during the first year indicated a tendency to develop close working relations with the joint congressional committee established by the act. To the extent that this has involved advice and suggestions with respect to interpretation of the act and its application to specific situations, the practice seems doubtful and likely to blur the desirable separation between the legislature and administration.

But the administrative position of the general counsel is also anomalous. Thus the field offices under his supervision are engaged partly in representation work which is the direct responsibility of the Board, and partly in investigating, issuing, and prosecuting complaints, on which the general counsel has final authority to appoint the regional directors and other employees. In part, as has been seen, the work of the general counsel is essentially prosecution of violations of specific offenses under the act. But insofar as his actions establish policy, they are of the kind frequently assigned to an independent commission.

The unusual position of the general counsel has given rise to several internal administrative problems. One is significant enough to be noted here: In unfair labor practice cases, regional directors issue complaints, though only with the approval of the general counsel in some types of cases. The finality of refusal to issue a complaint has led to demands for an appeal; and it has been further urged that an appeal to the same unit in the counsel's office whose advice was followed in the original refusal is illusory, and that the appeal should be to an independent body. This problem highlights the nature of the authority the general counsel is exercising.

Our conclusion is that the present position of the general counsel is an unstable one. Various proposals have been made for integrating the position more securely into the Government structure. Some have suggested assigning him to the Department of Labor or of Justice, but each has serious draw-backs as the preceding discussion of his functions should indicate.

Our staff recommends the creation, by Executive order, of a council of labor under the chairmanship of the Secretary of Labor, and including the General Counsel and other Federal officials concerned with labor problems. The function of the Council would be to coordinate Federal labor policy and to advise the President on appropriate action. This represents a compromise between the present independent status of the general counsel and his subordination to a department head.

Others have strongly urged that the office should again be placed under the Board. To this the objection is made that the prosecuting functions should be separate from the hearing of complaints. But as has already been indicated, only in part are his present duties genuinely prosecution: some parts are administrative and parts are a species of rule or policy making. It may be that the administrative and policy-making functions could be subordinated more clearly to the Board's control while still maintaining an adequate separation of the truly prosecuting activities.

Mr. KELLEY. Mr. Turner, do you have any copies of your statement?

Mr. TURNER. Yes, sir.

Mr. KELLEY. Would you distribute them to the members?

Mr. TURNER. At this time?

Mr. KELLEY. Yes.

TESTIMONY OF PHILIP C. TURNER, PRESIDENT, FOOD PRODUCERS COUNCIL, INC., BALTIMORE, MD.

Mr. TURNER. Mr. Chairman and gentlemen of the Labor Committee of the House, my name is Philip C. Turner, Equitable Building, 10 North Calvert Street, Baltimore, Md. I am past president of the Maryland Farm Bureau Federation and am president of the Food Producers Council, Inc., an organization made up of 150 farmer-owned and farmer-controlled member organizations operating in 8 States. Our membership includes fruit and vegetable producers and their organizations, State farm bureaus, State granges, purchasing co-ops, and milk-marketing co-ops. Our organization represents many thousands of individual farmers.

Our council was formed in 1945 at the instigation of farm leaders.

I have appeared before both the Senate and House Labor Committees in the past, pleading for the passage of a fair labor relations act. I presented at that time a bill of particulars appealing to Congress to pass remedial laws that would stop high-handed practices of racketeering by some labor leaders, particularly those in the trucking industry who handled perishable food products.

At that time, I presented as evidence signed affidavits from truckers, which are available to you in the Congressional Record of the last Congress, setting forth the racketeering which prevails in a lot of markets. The rackets complained of were forced unionization of truck drivers, the forcing of exhorbitant payments for unloading produce in the wholesale fruit and vegetable markets, and refusing to allow truck drivers to unload their own trucks.

A recent letter from Vilas W. Shook, secretary-treasurer of local 401, affiliated with the International Brotherhood of Teamsters and addressed to all unemployed members of local 401, reads as follows:

WILKES-BARRE, PA., *December 9, 1948.*

Attention: All Unemployed Members of Local No. 401:

It has been brought to my attention that some of you are on the streets and around certain receiving platforms of houses that are under contract with our union doing what is commonly termed "jockeying trucks."

Let me advise you that it is strictly a violation of the Hobbs Act, also the Taft-Hartley law to pressure, force, compel or coerce anyone to employ your services to unload these trucks as they dock at platforms.

You may or may not know of the congressional investigation against the Goldberg and Turk Daniels of local No. 929 of Philadelphia, Pa., for those of you who don't, let me inform you that they have been indicted and I mean the entire local union when I use the term "they" for merely asking the driver pulling in to load as follows: "Do you have a teamsters' book?"

I want to say, since that was written by this gentleman, they have been convicted. However, if it had only been for that one violation they probably would not have been convicted, but they were guilty of pretty nearly everything under the name of Heaven, and they were tried and convicted, with eight women on the jury and four men.

> I might add it looks very black for that local at the present moment, so please carry in your minds, effective as of this date, your local union will at no time tolerate anything that is a violation of any law.
>
> If you are fortunate enough to have these drivers as mentioned employ your services, there is nothing wrong in that.
>
> If you have difficulty, do not contact your local officers because we will have to ignore any and all requests concerning this matter.
>
> If you get into any trouble regarding trucks, you are strictly on your own. These laws are very vicious. Be careful.

Gentlemen, I will leave it to you as to whether those things enumerated above are vicious, and a law is needed to control them. It is just in reverse to what he stated.

You will note that this labor union official speaks of the Taft-Hartley and Hobbs laws as being vicious. It is our contention that it is vicious to oppose a law simply because it does not give license for the vicious practices enumerated in this letter.

We have had the Taft-Hartley Act for practically 2 years. It has accomplished much in bringing about better understanding and more equitable settlement of labor problems which would be fair to labor, industry, agriculture, and to the consuming public.

At a public New York hearing, held some months ago, astounding evidence was given by the president of local No. 202, A. F. of L., truck drivers' union testifying under oath. He said:

> Anyone picking up this contract between the union and the produce merchant would say, "This union is worse than Jesse James or Dillinger; worse than Stalin," and nobody could be worse than he is. But there are reasons for it all. And there is an honorable intent. That is important.

He further said that he wrote the contracts himself and that they were "rough," "harsh," and "terrific." He admitted that he possessed the power arbitrarily to destroy the business of any commission merchant in the city of New York. With the kind of organization we have, and the commodity over which we have jurisdiction, you know a strike wouldn't last very long, would it? He contended, however, that he exercised his dictatorial power benevolently in the interest of the members of his union, the merchants, and the public. He said that he loved free enterprise systems—

> You see I have been fortunate * * * and I practice it.

He further said, if he were defeated for office and someone took over in whom he did not have faith, like the Communists—

> I would destroy all these contracts. * * * I would go on the side of these employers, and work for them.

The facts developed through other witnesses established conclusively that despite the noble professions, employers were forced to surrender their constitutional rights in order to do business in New York City. Only one employer testified that he closed his doors rather than to sign these contracts; many commission merchants testified that they signed the contracts without reading them and were required to go to union headquarters to execute the agreements. Farmers and their drivers testified that they were required to pay tribute to local

No. 202 to unload their produce in New York City. The union denied this. The farmers produced receipts. One man had $200,000 worth, to my knowledge.

Local No. 202 enforced a 5-day week in the New York markets. In Philadelphia, Teamsters Local No. 929 has done the same thing. The movement is growing and may well result in the loss of millions of dollars to farmers and fruit growers through the depreciation and spoilage of high perishable crops. This means less food at higher prices to the consuming public.

The attitude of some witnesses and the reluctant and evasive testimony of other witnesses who appeared, created a very strong suspicion that there was collusion between the leaders of local No. 202 and the bargaining committee of the market associations, and that by virtue of this collusion local No. 202 has grown into a Frankenstein, the mention of which arouses such fear of retribution in the minds of the commission merchants of New York City that they have surrendered many of their rights as employers. The handling charge which some of these merchants have established for unloading farmers' produce, which the drivers are paid to do, appears to merely be a subterfuge to cover a union racket.

Farmers thought that when the Hobbs Act became law, their troubles would be over, as it supposedly would stop the practices enumerated above. To date we only know of two convictions under the Hobbs Act, namely, Philadelphia and New Orleans. There have been hundreds of charges that have been ruled out because there has been no violence in connection with extortion and robbery being practiced.

The author of this bill, Judge Hobbs, has stated that the Department of Justice is not carrying out the intent of Congress in its interpretation of the Hobbs bill. Surely legislation can be enacted that would correct all the evils we have tried to cover in this report.

We contend that a man with a truck who travels the highways of this Nation pays taxes on that truck to the Federal Government, the State, the county and the towns and cities. After being properly taxed by these agencies, it is a reflection on the intelligence of our American people that we stand idly by and allow an agency, such as the teamsters union to usurp taxing power that is only the prerogative of the State.

We hope you gentlemen will agree on legislation that will be fair to labor and at the same time put labor, industry, and agriculture on an even footing, all equal under the law. We beg of you that any bill enacted into law shall put an end to practices that injure both the producers and the consumers of food, while only selfish labor leaders benefit.

Gentlemen, we feel under the Taft-Hartley Act that we have had a period of peace, and there has been a lessening of the evils we complain of here, with that law in effect. We feel that if you change the Taft-Hartley Act by taking out some of the more drastic things that we will have a great upsurge of this trouble that is being gradually whittled down, and we hope that you will keep the best portions of the Taft-Hartley Act.

I was here yesterday listening to some of the witnesses who were picking the law to pieces, part by part, and I want to say labor, to my knowledge, has not been injured by any provision of the Taft-Hartley Act. I am not going to argue to not make some modifications, but taking it as a whole, I want to say the members of the teamsters' union over in Baltimore have been behaving themselves, and, I think, if all the other unions would do the same everything would be all right. I will say for the Baltimore teamsters' local that they have not caused us any trouble and, I think, it is only fair that I say that.

Mr. Kelley. Do I understand you to say that labor organizations have not been injured by the Taft-Hartley Act?

Mr. Turner. I cannot see that it has. There have been less strikes and we still have the highest wage rate that was ever held in this country, and I have made a close study of all strikes, and I know we have had less strikes, and labor is being well paid.

Mr. Kelley. Do you think that is an argument in favor of the Taft-Hartley Act?

Mr. Turner. I would generally suppose so.

Mr. Kelley. That does not seem logical to me, because if you can compel labor not to strike or, at least, make it so difficult to strike, that is not saying they are satisfied or happy about it.

Mr. Turner. I have never been able to find where that is true, where labor unions have been injured, and have been kept from striking to their detriment where they had a just cause. I think the Labor Relations Board, when you have these hearings before them, it has been my observation—take the man I just read about here, who named all of those things up there and said that they were vicious legislation and vicious law——

Mr. Kelley. I am not offering any defense for outright racketeering, but when you say labor organizations have not been injured, how about the typographical union, which is a closed shop, if you please—that industry or organization has been in a turmoil ever since the Taft-Hartley Act went into effect.

Mr. Turner. I understand you are saying you are not protecting racketeering, and I want to say we have no fear of the God-fearing men in labor, but what we are trying to do is break up some of the leaders, and what they are trying to do. I believe in collective bargaining, and I believe in giving them all the rights that are fair, but whittle them down to everybody's size, and make laws——

Mr. Kelley. Of course I agree with you that you cannot treat one group of people different from another, but if you want to take care of the labor leaders who are racketeers then you should take care of the business racketeers.

Mr. Turner. Yes, and treat everybody alike. The consuming public has not been given enough attention in all of this controversy, either, and they are the ones who have the biggest stake in this.

Mr. Kelley. Of course, when you say the consuming public that goes back again to the workers and their families, because that is the great majority of the consuming public, and then you get right back to labor again.

Mr. Turner. Have wages fallen because of the Taft-Hartley Act?

Mr. Kelley. No; they have not because you have contracts which are effective.

Mr. Turner. The contracts have run out, and have been renewed, have they not?

Mr. Kelley. Most of them were made before the Taft-Hartley Act went into effect.

Mr. TURNER. We want to stop things like the thing John L. Lewis is doing this morning.

Mr. KELLEY. That is not a strike, but it is a stoppage of work that was permitted under the contract. It is no strike. What did the coal operators sign the contract for if they did not agree to it? And now there is screaming and yelling from many sources that there is a coal strike on.

Mr. TURNER. Is there a filibuster going on in the Senate.

Mr. KELLEY. I think so.

Mr. TURNER. Is that a filibuster or not a filibuster? A strike is a strike and a filibuster is a filibuster, as I understand.

Mr. KELLEY. That has no connection with what we are discussing. Mr. Bailey?

Mr. BAILEY. Mr. Turner, you understand the committee is conducting hearings on H. R. 2032?

Mr. TURNER. Yes, sir.

Mr. BAILEY. In listening to your presentation you seem to be discussing not the proposed legislation but the existing Taft-Hartley legislation. Have you ever read H. R. 2032?

Mr. TURNER. Yes sir, I read all of the definitions, all of the issues that are brought up in that bill, yes, sir. I read it over, and we are all familiar with it.

Mr. BAILEY. You stress particularly in your presentation the fair boycotts in jurisdictional strikes.

Mr. TURNER. That is right.

Mr. BAILEY. Are you aware of the fact that H. R. 2032 has inhibitions against boycotts and jurisdictional strikes?

Mr. TURNER. It has, yes.

Mr. BAILEY. In subsection 12.

Mr. TURNER. I do not think there are enough curbs in that bill to to answer the purpose.

Mr. BAILEY. They curbed the matter complained about.

Mr. TURNER. No. I am sorry to say I do not think there is anything in that bill, or that there is enough to stop any of the practices that we complain of.

Mr. BAILEY. You mean, then, you must have the power of injunction, the power to break strikes, is that what you mean by being strong enough to handle it?

Mr. TURNER. Only in the case of where the national welfare is at stake, and then, I believe, the President should have the power of injunction. If he had not had it during the last coal strike this country would have been in chaos.

Mr. BAILEY. And, you believe, sincerely, in the mandatory provisions of the injunction under the present Taft-Hartley Act?

Mr. TURNER. When the welfare of the country is in danger——

Mr. BAILEY. Do you believe in the Constitution?

Mr. TURNER. Absolutely.

Mr. BAILEY. Do you believe in the right of a trial by jury?

Mr. TURNER. I do.

Mr. BAILEY. Do you believe that they get it under the mandatory provisions of the existing act?

Mr. TURNER. I think so.

Mr. BAILEY. Do you think that any strike is so serious that the trial judge could not sit 48 or 72 hours and hear both parties to the dispute, and consider the matter on its merits? It is un-American and it cannot be justified.

Mr. TURNER. I think it is American. When somebody strikes and endangers the public welfare of this Nation, the health, and so forth, I think the President should have power to get out an injunction to stop a strike, and the President did do it.

Mr. BAILEY. Do you think this Congress or any legislative body should pass legislation to contravene our constitutional guarantees to a trial by jury? I say again it is un-American, and it cannot be justified.

Mr. TURNER. There is a difference of opinion on that question by different people. I say the power of protecting the people of the United States is paramount in here, and the President should have the power to only use it when the things are jeapordized in this country.

Mr. BAILEY. Why, then, should you have the mandatory procedures in your injunction process?

Mr. TURNER. Because, as a rule, John L. Lewis does not listen——

Mr. BAILEY. And why should the mandatory procedure apply to labor and not apply to industry?

Mr. TURNER. I say to put everybody in the same boat.

Mr. BAILEY. The Labor Board must issue a mandatory injunction in the case of labor, but the mandatory power does not apply to the employer; why the discrimination?

Mr. TURNER. I do not think there is a discrimination, and I think if there are some things that should be corrected in the Taft-Hartley bill, I would say let us correct them, but I think they are only minor things that need correcting. I sincerely think so. I am 70 years old, and I have tried to be fair, and I think I have been a good citizen, and I would not do anything to hurt any group in society knowingly, but after looking at the way the Taft-Hartley bill has worked over the last 2 years I think it has been a big improvement. The Wagner Act was passed at a time when labor unions were weak and needed to be boosted, but all powers were in the labor hands at that time, and nothing in industry, and now I think they are whittled down.

Mr. BAILEY. I do not agree with you that the objections to the present law are minor. You cannot use the phrase "minor" as to anything that contravenes your constitutional rights. It is not minor; it is a major proposition.

Mr. TURNER. I do not believe it is a slave law, as has been claimed.

Mr. BAILEY. That is all.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. I have no questions.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. No questions.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. Mr. Turner, you said last, I believe, that you do not consider the Taft-Hartley law a slave-labor law. Do you consider it to be what the proponents have called it, a bill of rights for labor?

Mr. TURNER. I will tell you, there would not have to be many changes in it to make it just that.

Mr. JACOBS. I wonder if you would mind enumerating for me the provisions of the Taft-Hartley law which you think afford any superior rights to labor.

Mr. TURNER. I do not think the Taft-Hartley Act gives them superior rights. I think it would take care of both industry and labor, and I hope the farmer.

Mr. JACOBS. I agree with you as far as industry is concerned, but particularly what is there in the Taft-Hartley law that you think helps labor?

Mr. TURNER. Helps labor?

Mr. JACOBS. Yes.

Mr. TURNER. I will say this, that I think the fact that the provisions are there by which strikes are settled, and they do not have these tremendous work stoppages, that takes money out of their pockets when the children need it, by the long period of strikes and, I think, it has a tendency to stop the strikes, and they do not have the hardship of going for months without a pay check.

Mr. JACOBS. That is very specific, but they had that same system under slavery; they did not have any strikes under slavery, did they?

Mr. TURNER. Even labor unions have stopped trying to enslave labor. All of them came out of the slave law that existed, because it was so ridiculous, and there is nothing that can show they are going to be enslaved.

Mr. JACOBS. I do not care what the labor union said or the proponents said, but the union said it was a slave-labor law, and the proponents said it was a bill of rights for labor. Specifically what provision in the Taft-Hartley law do you think creates any rights for labor, or protects any rights for labor?

Mr. TURNER. I am just a little deaf, sir. You will have to raise your voice a little.

Mr. JACOBS. I say, particularly what provision in the Taft-Hartley law do you think protects labor?

Mr. TURNER. I would say more expeditious settling of strikes.

Mr. JACOBS. No. What provision? Are you familiar with the Taft-Hartley law?

Mr. TURNER. Yes, sir, I have read it a good many times since it was passed.

Mr. JACOBS. Then I am asking you what specific provision—I am not asking you what effect—but what specific provision?

Mr. TURNER. That helps labor?

Mr. JACOBS. Yes.

Mr. TURNER. I would say—well, I am not a lawyer. I am just a country boy, and I cannot carry things in my head right along. But I do think that the expeditious way in which all strikes are handled, the labor disputes are handled, has proved a great benefit to everybody, including labor. And I would say that that is one of the big gains in labor.

Mr. JACOBS. In other words, you are not able to name a specific provision which you think protects labor's lot?

Mr. TURNER. I think that secondary boycotts are bad. I would say an open shop instead of a union shop helps labor. Jurisdictional strikes are bad. They are very bad for the union. A jurisdictional strike is terrible for the union employees, as well as it is for the public. And you go on down the line of 15 or 20 points in the Taft-Hartley bill, and they have mutual benefits for everybody concerned. That is my honest opinion, and I think that can be substantiated.

Mr. Jacobs. Then you say secondary boycotts and jurisdictional strikes are provisions that you have in mind; is that correct?

Mr. Turner. I think they are.

Mr. Jacobs. Now, are you not a member of the Fresh Vegetable and Fruit Growers Association?

Mr. Turner. I am employed by them. I am a farmer, and I am employed by these organizations that I list in my statement. We are made up of farm organizations.

Mr. Jacobs. Have you not got a questionnaire that you have been circulating?

Mr. Turner. I cut it out of the paper and sent it out for information to our men.

Mr. Jacobs. Do you have a copy with you?

Mr. Turner. I do not believe I have. It was questions without answers. It was raised in here and I mailed it out because some of our people said, "We would like to know some of the provisions of this Taft-Hartley Act," and I thought that gave it very clearly.

Mr. Jacobs. I see. What paper did you cut it out of?

Mr. Turner. The Baltimore Sun.

Mr. Jacobs. The Baltimore Sun?

Mr. Turner. Yes, sir. I believe the Baltimore Sun. At least, I think I am right on that.

Mr. Jacobs. I expect you are. I believe the Baltimore Sun is the newspaper over in Baltimore that has referred to the Taft-Hartley law as a bill of rights for labor, or words to that effect; is that correct?

Mr. Turner. I would say "Yes." Most of the best presses of the country have.

Mr. Jacobs. Yes. And the Baltimore Sun takes a great deal of advertising from industry, does it not?

Mr. Turner. Well, now, I would not say it takes any more than the run of papers.

Mr. Jacobs. About like other papers; is that correct?

Mr. Turner. Yes, sir; about like other papers.

Mr. Jacobs. All right. Now, then, on this question of a bill of rights for labor, do you remember some difficulty the carpenters' local in Baltimore had a few years ago?

Mr. Turner. You heard me say a few minutes ago——

Mr. Jacobs. Do you remember it? That is what I want to know.

Mr. Turner. Yes, sir; I remember all the labor trouble we have had around in these various cities along the coast here.

Mr. Jacobs. I do not mean all of it. I mean that specific case. Do you remember the difficulty that the carpenters' union had?

Mr. Turner. Yes. There is one thing I would like to say in connection with that. I have just——

Mr. Jacobs. No. I want you to answer my question.

Mr. Turner. Labor has behaved itself very well in Baltimore. I want to give a tribute to them where they do, and I say they have, and they are satisfied, or seem to be, and have no troubles. As a matter of fact, I know some of them personally. They do not have any trouble, except that they are carrying on like their national organization by opposing this legislation. They are like all other union men, almost all other union men, in opposing the legislation.

Mr. Jacobs. You have said that once before. What I am trying to get at is, do you recall about 3 years ago when one of your judges on the supreme court of Baltimore issued an injunction and seized the carpenters' local, upon the placing of $700,000, and threw all of their local officers out of office. Do you recall that, or do you know anything about that?

Mr. TURNER. I have an indistinct recollection. I want to say that Judge Goldsborough was from Maryland, and maybe we have some more judges.

Mr. JACOBS. I am not talking about Judge Goldsborough.

Mr. TURNER. And we have some judges over there that may be as strong as he is, and whenever there is racketeering, they break it up.

Mr. JACOBS. Do you recall the case? That is what I am asking.

Mr. TURNER. I have a faint recollection of that case.

Mr. JACOBS. You do.

Mr. TURNER. How many years ago was it?

Mr. JACOBS. In 1946; almost 3 years ago.

Mr. TURNER. Yes, that strike was settled——

Mr. JACOBS. There is no strike in the case I am talking about. I am talking about an injunction that was issued by a judge of the supreme court of Baltimore.

Mr. TURNER. Maybe his injunction would not have been upheld by the Supreme Court of the United States, or was not. I do not know.

Mr. JACOBS. I am not talking about that. I am asking you a simple question. Do you remember the case?

Mr. TURNER. Indistinctly. I will say that.

Mr. JACOBS. Do you not recall that that was the case where the president of the international carpenters' union put up a $700,000 bond and the court seized the local and had all the officers thrown out of office? Do you not recall that?

Mr. KELLEY. The gentleman has 1 minute remaining.

Mr. TURNER. I will have to say that I do not remember enough about that to know just what happened in regard to that.

Mr. JACOBS. Then you are not too familiar even with the labor matters in Baltimore, are you?

Mr. TURNER. Well, yes; I do know we do not have very much trouble there, and they get just as big a wage as they do in any other city that I know of.

Mr. JACOBS. Are you aware of the fact that the Baltimore carpenters work for 34 cents an hour less than the carpenters in Washington?

Mr. TURNER. Well, that might be a more just price than they have over here. I do not know.

Mr. JACOBS. What I am trying to get at is this, Mr. Turner: If you do not recall anything about the case, I am not querying about it further. But you have come here as a witness to testify about labor relations, and I am calling your attention to a very notorious case that was litigated in your own city less than 3 years ago. Now, you do not remember anything about it at all; is that right?

Mr. TURNER. About throwing people out of office? I do not remember that; no, sir.

Mr. JACOBS. You do not remember anything about it?

Mr. TURNER. No, sir.

Mr. JACOBS. That is all.

Mr. KELLEY. Mr. Wier.

Mr. Wier. Mr. Turner, let me ask you a couple of questions here with regard to the problems that you can handle, as a business agent. I assume that you are a business agent; are you not?

Mr. Turner. I am employed by the Fruit Producers Council, an eight-State organization in the Northeast here, and the organization of that was brought about by the former organizations, and they did it because of these racketeering practices in the fruit and vegetable matters. They have gone on since 1945, and they passed the Taft-Hartley bill, and with the Taft-Hartley bill we all thought everything was cleared up and we were about to go out of business, until the election came along and things were changed, and after the election we had a little upsurge of these acts by labor unions, and we have gone back into action, such as coming here today to testify here to try to get some of the salient features of the Taft-Hartley Act left in the bill.

Mr. Wier. Of course, the question I asked you is whether your capacity is representing these fruit growers and vegetable growers as a business agent.

Mr. Turner. Yes; I suppose.

Mr. Wier. You made some reference here as to the difficulty in the operation of the delivery, and I assume that all of your complaints have been lodged with the courts.

Mr. Turner. That is whom you refer it to all the time, the courts.

Mr. Wier. You make reference here particularly in your presentation that your complaints are based mostly upon extortion.

Mr. Turner. That, and robbery; yes, sir.

Mr. Wier. Did you say robbery?

Mr. Turner. Extortion and robbery are the words used in the Hobbs Act. Unfortunately, Judge Hobbs claims that the Congress has not carried out the intention of the law. There have been only two convictions that I know of under the Taft-Hartley bill, and that was because there was not somebody knocked in the head in regard to the complaint. Extortion and robbery can be economic. We know of cases where they refused to let a man unload, refused to let him join the union, and refused to let him do anything, and he could not unload the fruit up there at Wilkes-Barre, Pa., and it spoiled, and the man lost $700 on the load. Now, extortion and robbery, I think you will find, are mentioned in the Taft-Hartley Act, and still we put these 50 cases up, and the Department of Justice says you have to knock somebody in the head to convict him. That is why I am pleading with you to give us something to correct this wrong.

Mr. Wier. I am interested in that explanation, particularly in view of the fact that you make these two charges against a certain union, or unions, in your locality, and I am going to ask you if you are aware of the fact that both of those types of cases that you referred to have for years and years been covered under the civil law?

Mr. Turner. Have been what?

Mr. Wier. Are not extortion and robbery violations of our civil laws?

Mr. Turner. They may be. Now, most of our troubles are in New York and Philadelphia, and they convicted a man under the Hobbs Act because they did use physical violence. Three men have been convicted because of high-handed racketeering in the Philadelphia market. Up in Philadelphia, there was a hearing held by a subcommittee from this honorable body, the Eightieth Congress, and in New York they uncovered the worst set of racketeering, and I read some of the excerpts from that hearing there. The head of the union acknowledged it was a terrible state of affairs.

Mr. WIER. In those cases that you are trying to explain here, what in the Taft-Hartley law promotes machinery that the civil laws of your State do not cover?

Mr. TURNER. I think I can answer that. You have a union in a wholesale house or a commission house, and this farmer drives up, or any trucker drives up, with a load of produce and asks him whether he has a union card, and if he has not, they may ask him to join the union, or not. But they will ask him to pay anywhere from $14 to $20 to unload the load. Now, if by any chance he could get busy and unload that onto that commission man's platform and pile it up, those people would not touch it, and that is a secondary boycott, I contend.

Mr. WIER. Would you agree——

Mr. TURNER. And that would come under the Taft-Hartley bill.

Mr. WIER. Will you agree, Mr. Turner, that even without the Taft-Hartley Act, you have a law in your State and in the Government to do the very job that you ask the Taft-Hartley Act to do?

Mr. TURNER. I think it is a well-known fact that there are local laws. Around a lot of the cities we have a right to considerable politics, and the labor unions are so powerful that it is pretty hard to get anybody to move.

Mr. WIER. There is not any politics in the Taft-Hartley Act?

Mr. TURNER. What did you say?

Mr. WIER. There is not any politics in the Taft-Hartley Act?

Mr. TURNER. I would not be able to answer that. I think there has been right much politics in it during the campaign. I hope it has died down a little bit by now.

Mr. WIER. Again, I am going to ask, Do you not feel that you have all the protection that is necessary for the violations that you cite here this morning under civil law and under the Hobbs Act, to do the very things, with perhaps more severe penalties than the Taft-Hartley Act? What does this Taft-Hartley Act provide as penalties for the people who violate it?

Mr. TURNER. All I have to say is that before the Taft-Hartley Act was passed, the situations were a lot worse than they have been since we got it. And this letter that I wrote you from a union man to his own employers——

Mr. KELLEY. Pardon me. The gentleman has 1 minute remaining.

Mr. WIER. Now, let me ask you the last question. There would not be any suspicion in your mind on these complaints that you sent up here, that the commission houses were not a party to them, would there?

Mr. TURNER. You mean, the owners of the commission houses?

Mr. WIER. Yes.

Mr. TURNER. No, sir; they would not live in such abject terror of the heads of the unions if they were a party to them. But they are just terrorized. They do not like to talk to you. They look around furtively all the time. I have seen it so intense that they are afraid to talk to anybody.

Mr. Wier. Are these commission houses organized in an association?

Mr. Turner. In New York, I am glad to say, since the Taft-Hartley bill, they are having the first collective bargaining they have ever had. This labor union plan up there brought this out. Mr. Papa, of local 202, called the trade in and said, "Sign on the dotted line," without letting them read it, and they took it home and read it that night and the next day. That was exposed by the committee that went up there and got their sworn testimony. Mr. Wint Smith was chairman of the committee, with a Mr. Fisher and a Mr. Schwab, and they make a trip up there, and what they uncovered in the way of racketeering in the city of New York, really would make you ashamed of your country that it allowed things like that to go on. And it was the same way in Philadelphia.

Now, with the Taft-Hartley bill, we have had a lessening of those things. And I feel, and I feel sincerely, that we will have new growth, new life, like pouring water on a flowering plant and seeing it grow.

Mr. Kelley. The gentleman's time has expired.

Mr. Smith. Wait a minute, Mr. Turner.

Mr. Kelley. You are not through yet, Mr. Turner.

Mr. Smith. You represent primarily the farm interests in the northeastern part of the United States; is that right?

Mr. Turner. Yes, sir.

Mr. Smith. And you represent farmers?

Mr. Turner. Yes, sir.

Mr. Smith. And you are here testifying on behalf of those people engaged in agriculture?

Mr. Turner. Yes, sir.

Mr. Smith. And it is your considered opinion in your organization that under the Taft-Hartley Act, business conditions with the marketing of fruits and vegetables and milk are better than they were prior to it; is that right?

Mr. Turner. I say so without fear of contradiction.

Mr. Smith. That is all.

Mr. Kelley. Mr. Werdel.

Mr. Werdel. Mr. Turner, you say you are 70 years old, or 80?

Mr. Turner. Eighty. Maybe I look like I am 100. I do not know.

Mr. Werdel. Have you lived all your life in Baltimore?

Mr. Turner. Yes. I have a farm up there in Maryland that has been in my family since the days of the Revolution, when the country was first settled. It is a hill farm up in the northern part of Maryland. We have been there all that time.

Mr. Werdel. So your father and all your family have lived in Baltimore; is that correct?

Mr. Turner. Not in Baltimore. Out on the farm.

Mr. Werdel. In Maryland?

Mr. Turner. In Maryland; yes, sir.

Mr. Werdel. So you feel you are rather well qualified, then, to know what is American and what is un-American, do you not?

Mr. Turner. Yes, sir: I think I do. I try to keep abreast of the times, and I would say that I am a little fearful of where our country is heading. Whether, of course, it is American. I do not know. I hope so. We all do.

Mr. WERDEL. Now, Mr. Turner, you have acquitted yourself very well this morning on the other side of this committee. For your information, you have been questioned by one man who has been a labor attorney, by two men who were labor officials when they were elected, and another man, Mr. Bailey, I believe, has held some union capacity.

Mr. KELLEY. The gentleman will proceed in order. They are Members of Congress, regardless of what previous connections they might have had.

Mr. BAILEY. Mr. Chairman, may I correct the record?

Mr. KELLEY. Will the gentleman yield?

Mr. WERDEL. No; I do not yield.

Mr. Turner, the chairman, in his questions to you, implied that because there was no trouble under the Taft-Hartley law, we should conclude from that that the people who represent organized labor were injured by the law. Would you agree with that?

Mr. TURNER. No, sir; I do not think they were. I think the rank and file of labor has been helped. I do not think it has helped the heads of a lot of unions who constantly sue for more favors, more favors, every time they get one thing settled. I do not think they would be justifying their salary if they did not go after something else, regardless of the consequences to the economy of this country.

Mr. WERDEL. In other words, as I understand you, the law was passed to create, if it was in the power of Congress to do it, peace among employers and employees?

Mr. TURNER. Absolutely.

Mr. WERDEL. And it was thought at the time of its passage that it not only granted a means of controlling employers, but also labor leaders, and it considered the rights of employers, individual workers in labor unions, and the public; is that not right?

Mr. TURNER. Yes, sir.

Mr. WERDEL. So far as it has failed in that desired purpose, you are willing to see us consider amendments of it?

Mr. TURNER. Yes, sir.

Mr. WERDEL. Now, I believe you and I will agree that murderers do not like laws prohibiting murder; is that right?

Mr. TURNER. That is right.

Mr. WERDEL. And so far as it might stop a man from committing a murder who wants to commit one, he might object to it; is that correct?

Mr. TURNER. Yes.

Mr. WERDEL. We can say that of robbery, can we not, and arson? We can say the same thing of arson, can we not?

Mr. TURNER. Yes, sir.

Mr. WERDEL. People who want to cause disturbances, break the peace, do a public injustice, do not like the law, do they?

Now, under the Taft-Hartley Act, a closed shop is prohibited. Do you think that that has any benefits to the individual workingman?

Mr. TURNER. In a way I would favor the union shop over the closed shop.

Mr. WERDEL. Why?

Mr. TURNER. That is the one that allows the employer to hire a man and take him in, and he has to join the union in 30 days? Is that not the provision in that law of the union shop?

Mr. KELLEY. Thirty days; yes.

Mr. TURNER. And I do think that gives the employer a chance to have a little turn-over in employees. I would say this, though. I would not consider myself competent to pass on a closed shop or an open shop or those things. I do not think I should. I mean, not being familiar with it, I think it is something for you Congressmen to get from industry and labor, the merits of the closed shop, the union shop, and the like.

Mr. WERDEL. Mr. Turner, do you agree wih me in my belief that if an employer has a bargaining agent, a union, in his plant, the average employer is desirous of seeing that agent represent all of his people rather than a part of them?

Mr. TURNER. Yes, sir.

Mr. WERDEL. You do agree with that?

Mr. TURNER. Yes, sir.

Mr. WERDEL. In other words, if the employees have held an election and they want a union, then it is the usual employer's desire that he can deal through that union with all those people. Now, do you believe that the rule of the closed shop in industry as we know it today would have a deterring effect upon veterans getting jobs?

Mr. TURNER. I think the answer to that is obvious. It would.

Mr. WERDEL. We have some 15,000,000 veterans who may not be members of unions; is that the answer?

Mr. TURNER. Nobody can go in and get a job unless he is a union man.

Mr. WERDEL. There is some discussion before the Congress——

Mr. KELLEY (interposing). Pardon me. Will the gentleman yield there?

Mr. WERDEL. Yes, sir.

Mr. KELLEY. Did I understand you to say that there were 15,000,000 veterans that did not belong to unions?

Mr. WERDEL. That may not belong to unions.

Mr. KELLEY. A great many of them do.

Mr. WERDEL. I will not get into an argument with the chairman. But there was some discussion before the Congress at the present time that we may decide to consider permitting the closed shop, but demand that the unions be open; in other words, anybody who wants to join a union can get in. Now, do you see much difference between that approach to the subject of a union shop and that presently in existence under the Taft-Hartley Act? In other words, if the union was open, then anybody could go into it who wanted to join it.

Mr. TURNER. I think that is getting a little over my head. I have not worked in a shop, and I would not feel that I was competent to pass expertly on that. I think industry and the labor people and you gentlemen having these hearings will come to the right conclusion. I hope you will. But I do not feel that I am competent to pass on the merits and demerits of the different degrees of closed shop, open shop, and so forth.

Mr. WERDEL. I believe that is all. Thank you very much.

Mr. JACOBS. Mr. Chairman——

Mr. KELLEY. Will the gentleman yield?

Mr. Jacobs' time has expired.

Mr. Jacobs. I am not asking——

Mr. Kelley. The gentleman's time has expired.

Mr. Jacobs. I am rising to a point of personal privilege.

Mr. Kelley. You may state it.

Mr. Jacobs. The reference of the gentleman who just concluded his examination to the witness having been examined by a labor lawyer obviously was a reference to me, for I am the only lawyer on this end that examined the witness. I am stating this for the record.

For the gentleman's information, I enjoyed a general practice of law and did represent labor unions before I became a candidate for Congress. For the gentleman's further information, upon my election to Congress, I not only closed my law business and stated that my only client would be the Eleventh Indiana District, but I likewise disposed of certain stocks that I held because it might create a conflict of interest with my vote in Congress and the interests that I had invested in.

I hope the gentleman has so divested himself of all interest that might affect his vote.

I might go further and say this: that there are two gentlemen who sit to the left of the chairman, both of whom have attempted to make personal attacks upon my integrity in these committee hearings, and I do not know why, unless it is for the purpose of creating a cleavage so that nothing can be accomplished. Now, still on the point of personal privilege, I would like to ask you, Mr. Turner——

Mr. Kelley. You cannot question the witness again. You are stating your personal privilege.

Mr. Jacobs. I want to ask the witness, Mr. Chairman, whether or not he thought my examination of him was in anywise unfair. And I ask it on the point of personal privilege.

Mr. Kelley. You may ask that question.

Mr. Jacobs. Do you think that any question or the method——

Mr. Turner. I have learned to take any question that any Congressman or Senator can shoot at me, and I think you are entirely within your rights if you want to get to the bottom of the thing. I would say that I have no kick coming on anything you asked me.

Mr. Jacobs. You did no think I was unfair at all?

Mr. Turner. I do not.

Mr. Kelley. Thank you very much.

The Chair would like to state this, and wishes that the members would try to remember it, that while I am in the chair and chairman of the subcommittee, there will be no reference to a member's background. He is a Member of Congress; he is fully entitled to sit here; he is fully entitled to question witnesses in the proper manner. And I will remind the gentleman that I did call the attention of the gentleman over to my left, Mr. Werdel, that he should proceed in order. And I expect that rule to be carried out, and I will see that it is while I am here.

Mr. Werdel. On a point of personal privilege, Mr. Chairman.

Mr. Kelley. Go ahead.

Mr. Werdel. I regret that my directing the witness to the caliber of the men who were questioning him was in any way embarrassing to either the Chair or the members.

Mr. Kelley. It was not embarrassing to me, I may say.

Mr. **Werdel.** If it was embarrassing, of course, I did not intend it to be such. I should like to say further on the point of personal privilege that the gentlemen who are here now would make me feel much better inside if they would also explain their actions in the dark of the night on two occasions when they secretly met on other matters excluding three members of their own party, to undo the actions of the committee that were done in daylight.

Mr. **Kelley.** Is that in reference to this proceeding?

Mr. **Werdel.** No. That is in reference to the pats on the back that the gentlemen are taking at the present time. I would be very pleased to hear their remarks along that line, and I would be able to proceed a little better today if I had that explanation.

Mr. **Kelley.** Let me say this to the gentleman. I do not know to what you are making reference. But there have been no secret meetings of members of this side and anybody excluded in regard to H. R. 2032. Everything is open and aboveboard. Of course, there have been caucuses on your side, which you have a perfect right to have, but there is nothing wrong about that.

Hereafter, the committee will proceed in order.

Mr. **Jacobs.** Mr. Chairman.

Mr. **Kelley.** Mr. Jacobs.

Mr. **Jacobs.** A 15-second statement on a point of personal privilege.

If I was to meet with members of my party and select men to meet with in caucus who I think are not going to report to Fulton Lewis, Jr., that is my privilege.

Mr. **Kelley.** I will remind the gentleman that the Chair wishes to proceed in order hereafter.

Now, the Chair wishes to say in reference to the statement made by Mr. Werdel, I think it was, when he invited me to make my own statement, which I am going to make, that I understood him to say that 15,000,000 veterans may not belong to unions, or to organized labor. Is that right?

Mr. **Werdel.** No. I said there are 15.000,000 veterans, many of whom may not belong to unions.

Mr. **Kelley.** That is true. But there are many millions that do. So let us keep that straight.

Mr. **Irving.** May I say something, Mr. Chairman?

Mr. **Kelley.** That is all, Mr. Turner. Thank you very much.

Mr. **Perkins.** Mr. Chairman?

Mr. **Kelley.** Your time has expired.

Mr. **Perkins.** I want to state a point of personal privilege.

Mr. **Kelley.** Well, let us just withhold that, if you will. We will get that later.

Mr. **Perkins.** With reference to the statement——

Mr. **Kelley.** Wait a minute. I did not recognize you, Mr. Perkins.

We will proceed with the next witness, Mr. J. T. Sanders, legislative counsel of the National Grange.

Very well, Mr. Sanders. You may proceed when you are ready.

TESTIMONY OF J. T. SANDERS, LEGISLATIVE COUNSEL, THE NATIONAL GRANGE

Mr. **Sanders.** Mr. Chairman and members of the committee, I have a statement, but I shall deviate from it at places.

By way of qualification of myself as a witness, I would like to say that I am legislative counsel of the National Grange. The National Grange is an organization of about 850,000 farmers, and their families, as members. I am not an expert on technical matters in labor and do not appear before your committee as such a witness. My training is that of an economist, with about 12 or 14 years of teaching at an agricultural college in agricultural economics, and some 10 or 12 years of research work with the Department of Agriculture and some of the State institutions.

The Grange is an organization of farmers somewhat similar to a labor union. But the Grange has at all times had a policy in favor of an abundant economy. We, therefore, have at all times since our organization in 1867, opposed strenuously monopolistic practices and restrictive practices of any kind, by industry, labor, or by agriculture.

It has been said that the recent election was a mandate for the outright repeal of the Taft-Hartley Act. We do not believe as a farm organization that the election can be so interpreted. When we state this, gentlemen, we do not have one iota of political implication in that statement. We believe that the farm groups of this land had about as much influence and responsibility for the surprising results of the recent election as any other cohesive group, and we know truthfully that the farm vote did not mean a mandate to repeal the Taft-Hartley Act.

The fact of the business is, we believe it was the direct opposite of that. And in stating that, I wish to emphasize again that we are very anxious not to have our statements interpreted in terms of politics, because the Grange has never taken an active part in promoting any party or any set of candidates, because that is not our purpose.

We believe that the Taft-Hartley Act has many valuable features in it. We believe that the primary purpose of the Taft-Hartley Act was to bring about more constructive, peaceable settlements between labor and capital, and to balance the bargaining powers of both labor and capital, to compel them to negotiate their disputes on a high standard, an ethical standard, with equal responsibility to both management and labor.

Now, we do not claim that the Taft-Hartley Act is a perfect act. We are quite sure that there must be faults in it because it has created a lot of controversy, and a little later on we will do our best to point out some of the faults.

First, we would like to explain why the Grange is opposed to monopolistic, restrictive practices and why we believe that the Taft-Hartley Act promotes the antimonopolistic policies which we have always stood for. Farmers, especially on family farms, operate with a high percentage of family labor, so-called, which is unpaid labor and which goes to waste if they do not use it. They have a lot of other fixed costs. By nature, this family labor is a fixed cost of the farmer. It wastes if he does not use it: therefore, he is going to operate his farm at full capacity. And the average family farm operates at about 75 percent fixed costs. Mechanization does not weaken that position of the family farm; it strengthens it. Therefore, we are sure that the policies of the Grange will prevail in the future in agriculture, namely, the advocacy of an economy of abundance, because we know that this policy is right, first, and, second, that it cannot be avoided by the very nature of the farm business.

We know that industry does not operate with such high fixed costs, that it operates as a rule with about 25 percent fixed costs, and therefore when depressions hit, it is to the advantage of the manager of a business, a nonagricultural business, to stop or reduce his output, throw labor out on the streets, and reduce his costs and save himself from greater loss by that method.

Now, those two clashing interests between agriculture and industry are the basis of all of our philosphy on labor. We cannot see why labor should not primarily fight for full employment and full output, because we know if it did do that, it would harmonize with the nature of agriculture, and that agriculturists would at all times be in favor of such labor policies.

It is our belief that the principal fear of labor unions should be the fear of unemployment. During every depression in the history of this country, since 1800, except two minor recessions, the purchasing power of wages has risen. The man that was employed during depressions, the industrial wage worker that was employed, was receiving more purchasing power income in the depression than he had before the depression came. Therefore, it seems to us that labor itself should insist on stability of employment and the power and right to settle its dispute and remain employed as much as possible.

Now, with that statement giving the background of the Grange, I would like to have the opening part of my prepared statement put in the record, and to read the latter part of the statement, beginning on page 8.

Mr. Kelley. Mr. Sanders, you just want to summarize your statement, I take it?

Mr. Sanders. That is correct.

(The first part of Mr. Sanders' statement is as follows:)

The National Grange is an organization for farmers somewhat similar to a labor union for workers. However, unlike many labor unions, we have always advocated an economy of abundance and have consistently opposed restrictive and scarcity policies in industry, in labor union policies as well as in agricultural policies. In taking this view, we believe firmly we are strong in our friendship for, and long time interest in, organized labor. Unless modern agriculture can operate under a condition of stable full employment and output in industry, no sound solution of the farm problem can be worked out. We, therefore, have a profound direct and continuous interest in your efforts to enact sound labor-management laws.

It has been claimed that the recent election constitutes a mandate to repeal the Taft-Hartley Act. In all humility, may we say that it is our conviction that farmers played fully as decisive a role in the determination of the surprising results of the recent election as did any other cohesive group; and we are certain that no mandate to repeal the Taft-Hartley Act could be read into the farmer vote. Quite the contrary is true.

Our statements in this connection cannot be taken as political in the least. We would like to state also that we care nothing whatever about the name of the act; that we are only interested in preserving in the law its many provisions that are vital to fuller employment and output and to a stabilized industrial peace and prosperity.

We believe that the basic purposes of the Taft-Hartley Act were to bring equality of bargaining powers and responsibility to both labor and management. We are not well informed on labor-management relations and do not pose as competent to judge the weaknesses and lack of clarity of the law. However, we do insist that its fundamental provisions of setting out unfair labor practices for labor and management alike, of democratically determining concert of action, of curbing restrictive policies and promoting peaceful settlement, are all principles that must be retained in our national labor laws. These, we believe, if refined and clarified, will function in the interest of labor and management and in the interest and welfare of agriculture and the nation.

The problem of equitable industry-labor relations as well as the problem of encouragement of strong democratic labor organizations is of great interest to us. We are heartily in favor of them. Likewise, we are strongly in favor of equitable fair rules to guide industry in its efforts to work out peaceable and sound relations with organized labor. But it is our conviction that both labor and management, in dealing with their mutual disputes, need to remember and emphasize more than they do, that each must recognize a paramount responsibility to the general public, since their right to freely bargain is granted and guaranteed to them by a democratic society, a right that must not be abused if that society is to continue.

Labor laws, the National Grange believes, should set up rules that would guarantee to both labor and management fair, equal, and no coercive rights, free from monopolistic advantage, but always limited by the paramount interest and welfare of the public. These are the basic principles and policies that have determined the labor management views of the National Grange presented in this statement.

The National Grange, at its November session, took the following action relative to the subject now before your committee:

"We believe the enactment of the Taft-Hartley Act has had a corrective effect on labor and management disputes. We favor such modifications in the act as may be necessary to correct abuses or weaknesses that are shown to exist."

The National Grange, at its last annual session, detailed our labor management policies in ten further specific statements, other than our stand on the Taft-Hartley Act, as follows:

(1) We believe free enterprise and democracy depend upon an economy of reasonably full production, and freedom from monopolistic practices for labor, industry, and agriculture alike; and that there is a sound social, moral and economic basis for these views.

(2) That management of industry should place a policy of high output and reasonably full employment above high prices and profits; and should be prohibited from using coercion and intimidation in its relationship with labor.

(3) That labor unions have a useful place in the nation in order that the combined economic strength of industrial and professional workers may offset the power of organized or big industry and finance.

(4) That organized labor has most to gain by adopting as its primary objective the maintenance of reasonably full employment and an economy of full production, a principal which applies equally to all economic groups and can be made a basis for cooperation between all groups.

(5) That we uphold the right of labor to strike and to organize on an industry-wide basis, especially in industries dominated by a few large units.

(6) That when a strike, or threatened strike, becomes a serious menace to public health, safety and the general welfare, the use of the injunction and compulsory arbitration is justified.

(7) That the Grange does not condone such restrictive practices as the secondary boycott, sympathetic and jurisdictional strikes, slow-downs, any unjustified reduction of the workweek, and feather-bedding by labor.

(8) That mass picketing which results in intimidation is unfair, but that all workers of a struck plant should be protected in their right to picket peaceably.

(9) That a majority of the workers in a plant must vote favorably by secret ballot before giving union-shop privileges to any labor organization; and that we oppose the closed shop.

(10) That we recommend to organized labor, the adoption of a parity wage automatically adjusted semi-annually to the cost of living. By this we do not mean to preclude labor from bargaining collectively through representatives of its own choosing to improve its working and living standards or obtain an increased share of the national income.

These labor-management policy pronouncements of our organization, the oldest general farm organization of this country, are given at the outset because we wish to assert and show in unmistakable terms, that we are not only not opposed to, but are very much in favor of, democratically organized labor; and that we are earnestly desirous that organized and unorganized labor obtain maximum equitable advantages for themselves, so long as these are gained by democratic processes and are not a detriment to the general welfare.

We list these pronouncements of the Grange at the outset also, lest our support of the Taft-Hartley Act be misunderstood as unjustified and hasty opposition to labor, or lack of cooperation with it, in view of the bitter opposition of labor leaders to this law. It has always been our purpose to support democratic and sound union labor and to aid in lifting its lot and the lot of unorganized labor. This is, we think, both enlightened self-interest on our part, as well as interest for the general welfare.

At the foundation of our labor policy are the three Grange guide posts that guide us in nearly all of our economic, social, and political policies. These guide posts will bear repeating over and over again in all our deliberations including those on labor-management problems, for they are also applicable as guides to your task. These three guide posts are as follows:

(1) All prosperity springs from the production of wealth; or anything which retards the production of wealth is unsound.

(2) The compensation of each should be based on what he contributes to the general welfare.

(3) The primary purpose of government is to protect its citizens from agression, both physical and economic.

We believe these guide posts are just as fundamental, sound, and as equitable, for guidance in labor and management policies as they are for agriculture. We know that free labor, independent management, and a prosperous free agriculture working together in such a manner that no one of them can obtain unfair or undue advantage over the other or the public, are basic requirements for the perpetuation of our free enterprise system.

The strength of this system arises out of the fact that each individual is left free, within the limits set by a free society, to exercise his own choice as to employment, religion and philosophy of life. Left thus to his own choosing we believe he becomes a thinking, energized, inventive individual, which results in the greatest possible effectiveness in economic life. Our national policy in regard to labor and management must, therefore, be based on the preservation and the strengthening of our free enterprise system.

Our views on labor-management problems also should be interpreted in the light of a definite understanding of the true economic nature of the average farm unit. This average farm unit is a business concern of relatively small size when compared with the size of other business units. The labor required by this farm unit consists largely of a farmer and his family who furnish about three-fourths of all labor needed, the operator being both manager and laborer in the concern. By nature, this labor is a fixed cost which cannot be reduced by the operator when his output is reduced. He either uses this labor supply or it goes to waste and he loses its value. Furthermore, the more mechanized agriculture is, all over the country, the larger is the percentage of farm labor supplied by the farmer and his family, which is the best index of the family farm; and, therefore, the strength and stability of the family-unit type of farm is not only not weakened but is made stronger and more enduring with the increased mechanization. A relatively large proportion of other costs than labor on the farm are also fixed costs so that at least two-thirds to three-fourths of all the costs of operating the average American farm are fixed costs that cannot be reduced when the volume of output on the farm is reduced. This being the case, it does not pay the farmer to turn himself out of a job in order to reduce his volume of production when prices are falling, since he loses more by reducing than by maintaining his output. Consequently the farm unit is characterized by full production, full output, and full employment at all times, during depressions and during prosperity alike. This obviously also holds true for agriculture as a whole.

But this is not true of nonagricultural industry in general. Industry operates with a large percentage of variable costs, about 75 percent of these being costs that can be reduced easily when the volume of output of the industry is reduced. Two-thirds of these variable costs are hired-labor costs. Therefore, the average industrial concern, when a depression hits, loses less money by reducing its volume of output and turning labor onto relief rolls or out on the streets, than it would if it undertook to maintain full volume of output and full employment. In contrast, the farmer loses less if he maintains full employment on his farm and full volume of output, and is thereby inevitably an abundant producer. He operates a concern that seldom, if ever, reverses its production gears. They are nearly always set forward and in high gear regardless of depression or prosperity. The Grange believes that all labor laws should seek to correct as much as possible this basic defect in our present labor-management economy, the defect of an unbalance of industrial output with the full output of farms. Certainly it is bad statesmanship and unsound economics to pass labor laws that encourage restriction of output and thus accentuates the defect.

To understand the farmers' attitude on labor-management disputes, it is necessary to appreciate this fundamental difference between the nature of the farm unit and the industrial unit as producing concerns. The farm unit being inherently and almost inevitably a full-production unit regardless of depressed prices or good prices, its operators approach labor-management disputes thinking in terms of the same pattern of abundant production under all conditions, and are impatient with labor and management for advocating policies and programs that go counter to a full output. Farmers have a wholesome and hearty dislike for such policies or practices.

Since abundant production in agriculture is almost inevitable, the farmer cannot see why it should not be the first and foremost requirement of both labor and management in their dealing with each other. A lack of appreciation on the part of the farmer of the nature of industrial production, as indicated above, and conversely, the lack of appreciation on the part of labor and management of the true nature of agricultural production is at the root of most of the misunderstanding betwen agriculture, on the one hand, and industry and labor on the other.

This attitude is basic to our support of the provisions embodied in both the unrepealed portions of the Wagner Act and most of the provisions in the Taft-Hartley Act. We believe the unrepealed parts of the Wagner Act and many of the provisions of the Taft-Hartley Act, in conjunction, operate as vital curbs to restrictive and unfair practices and thus encourage the maintenance of peaceful productive relations and fair settlements of differences between management and labor. We believe that these provisions, if clarified and strengthened, will, in the future, be powerful forces for peaceful stabilization, at high levels of industrial employment and output; and we urge your committee to proceed with grat caution in repealing these vital provisions.

These provisions also are of great importance to farmers in helping to maintain stability of income in farming. They will tend to stabilize full output in industry and to match the full stable physical output that inevitably flows from our farms during both good and bad times. We believe that this balanced stable production is not only a prerequisite to stability of farm income but of the stability and permanence of our democracy also. Sound labor-management laws are as necessary a part of the whole structure as sound agricultural laws.

Our detailed suggestions of needed retention or changes in labor laws are based largely on the labor-management philosophy of the Grange previously presented. In offering the following suggestions we believe that we have not given too much weight to this viewpoint of the great need of placing greater importance on stability of employment. It is our judgment that no labor-management laws are sound if they fail to promote maximum stability of employment, honest full measure of service on the part of the laborer, the payment of wages only for labor performed, fair wage rates, and decent safe conditions of labor. These can be promoted only in an atmosphere of good will, under democratic control, and with an absence of coercion and chicanery by both parties to the conflict. Finally, no laws are sound that do not place the necessities of the general welfare above the wishes of either labor or management.

In substantiation of our contention that greater emphasis must be placed on public welfare and full steady output, we would like to point out that we believe that this is the surest and sanest route for labor to attain a status of equitable and higher wages. High wages arise, we believe, out of relative scarcity of labor for jobs, and not when there is a surplus of labor seeking employment nor by curtailing output in our effort to make work. This is indicated by the fact that history reveals that membership of labor unions has been decimated by depression and greately increased when jobs were relatively sure. On the other hand during every recession or depression since 1800, except two minor ones, the purchasing power of the average wage paid to laborers has increased. In the days of depression labor's main fight should be for a job at a parity wage, not for a retention of wage rate and consequent loss of jobs. Only the laborer out of work suffers from depression; but unions are frequently well-nigh destroyed by them.

We believe that most of the provisions of the Wagner and the Taft-Hartley Acts tend to stabilize employment and constructive bargaining between disputants and thus promotes stability of labor and output. We repeat that only in the atmosphere of security of a job can equitable wage rates best be promoted. With this basic Grange policy as the central background, we would like to point out the main provision of the Taft-Hartley Act which we urge your committee to retain in the law of the land.

Mr. SANDERS. This is our view of specific provisions of the Taft-Hartley Act, and I would prefer to read this part. There are about five pages that I would like to read.

Mr. KELLEY. Are they contained in your manuscript?

Mr. SANDERS. Yes.

Mr. KELLEY. That is all right.

Mr. SANDERS. The National Grange believes there must be a reasonable guaranty of full production wherever such is possible without removing or restricting the rights of labor to insure for itself the protective rights granted by section 7 of the Taft-Hartley Act. The right of the individual not to engage in a strike should be conditioned or limited by legitimate union requirements. Coercion by an employer of an individual to limit this right is, we believe, contrary to the individual's rights and also to the right of the public to the benefits flowing from maximum production. We believe that the five provisions of section 8 on unfair practices of employers, namely, (1) coercion or restraint by employers on labor in the exercise of its rights, (2) preventing interference of employer with the administration of labor unions, (3) forbidding union discrimination by employers in employing laborers, (4) preventing discrimination or discharge of a laborer for testimony given or charges filed relative to the law, and finally (5) for refusal of employer to bargain collectively in good faith with a recognized union are all sound and should be retained in labor laws, for they tend to stabilize good relations between management and labor.

The union shop provisions of the Taft-Hartley Act are vastly preferable to the closed shop. The right to a union shop is a special grant of aid to unions against unfair competition. The key advantages of the union shop to labor is limitation of numbers and pressure on workers to join and give their financial support to unions. If these advantages are given unions, the individual worker must be protected in his right to obtain work in a union shop; and the public must be protected at least to that extent against restriction of membership and output. The Grange cannot support the privilege for labor of either the closed or the union ship if the Taft-Hartley provisions on the union shops are to be dropped.

We are strongly in favor of retention of the provisions, permitting an employer to select his workers regardless of union membership or nonunion status if they join the representative union within a reasonable time after employment and if they qualify to reasonable tests of union loyalty and obedience to democratically determined rules. We believe that no laborer should be expelled from the union and denied opportunity to work in a union shop except for failure to pay dues and abide by equitable democratically determined rules of the union.

We are in favor of banning, by law, the highly monopolistic, exclusive, closed shop, since we believe it is neither to the interest of labor in general nor of the general public. The closed shop is contrary to our belief in an abundant economy, to democratic unions, and to our opposition to all monopolistic agencies. We are especially opposed to the charging of excessive initiation fees or dues to restrict union membership and thus to restrict output. We know of instances where these practices are so used that they are nothing less than exploitation largely for the benefit of unscrupulous labor leaders. We would support stronger provisions on this matter than are included in the Taft-Hartley Act.

We believe that it should be declared unfair labor practice for either employers or employees to use coercion or threats in any of their collective bargaining or in dealings with individual laborers; that both labor and management should be allowed freedom of expression so long as their views, arguments and opinions do not carry promises of bribes or threats of reprisals; that it should also be an unfair labor practice for either labor or management to fail to bargain with the other in good faith; and that this bargaining should be on a basis of mutual recognition of equality of rights. We favor and urge the retention of these provisions in our labor-management laws.

We favor a legal ban on all secondary boycotts, strikes to force an employer to recognize a union not certified as a bargaining agent, strikes over interunion or jurisdictional disputes, and all make-work provisions in contract or featherbedding practices. These are wholly and at all times contrary to our philosophy of abundant production, and are, we think, indefensible by labor on any ground except on those of selfish gains to the damage of public welfare and to democracy. We urge the retention of these provisions in our labor laws.

In connection with jurisdictional strikes it appears sound to provide for settlement by mediation or arbitration. We believe the secondary boycott ban should extend to all goods, union made and nonunion made, since not to apply it to all goods, extends the force of its operation into other plants and fields outside those of the union directly involved.

If the non-Communist affidavit is to be required of union leaders, we believe that it is only fair and right that it be required in like manner of management. We can see no valid reason why unions should not be required by law to give a reasonably full accounting to their members and to the Government of their collections and expenditures. Expenditures for political purposes from regular income of unions should be prohibited by law, since such policies are certain to compel some members to support condidates to whom they are opposed. Welfare funds should be adequately guarded from misuse; and should be jointly administered by management and labor if they are jointly contributed or are determined on the basis of the product turned out as in the case of coal mining. We see no valid objection to collection of dues by wage deduction with the annual consent of the individual laborer.

We are in favor of the general principles of the determination of the representative union as provided in the Taft-Hartley Act. Some plan to prevent employers abusing unions by calling for such elections where rival unions are contending for representative status should be worked out.

Although we uphold labor's right to strike as a means of gaining equity; we believe that ultimate resort to a strike should be only by an affirmative majority vote and by secret ballot. Although strikes should be resorted to only after all free bargaining means have failed, we do not believe strikes should legally be the last resort for settlement of disputes.

We are in favor of labor laws that provide an independent public conciliation and mediation body similar to that provided in the Taft-Hartley Act. This agency should be so constituted that the general public, labor, and employers, can have unquestioned faith in its judicial integrity and in its freedom from bias for or leaning to either labor or management.

There is just as little logic and soundness for claiming that this agency should be attached to and under the dominance of the Department of Commerce as to claim that it should be under the supervision of the Department of Labor. We believe it would be a grave error to place the counciliation and mediation agency under either body. We suggest that there might also be added to this agency a national labor-management arbitration court or tribunal available with an adequate staff at any time for call and voluntary use by disputants. No resonable machinery should be wanting to stay off a strike or to end one that already exists as a means to obtaining a fair bargain in labor disputes.

We favor positive means of preventing strikes in industries where public health, safety, and welfare are in danger. The provisions of the Taft-Hartley Act for an 80-day cooling-off period and the use of the injunction if necessary to implement it, is, we believe, justified and should not be repealed. We cannot subscribe to the logic that acknowledges a possibility that need for emergency and extraordinary powers are likely to arise without concluding that such powers should clarly be incorporated in the law of the land. Public health, safety, and welfare, we believe, should be protected beyond a shadow of a doubt.

Both labor and management should be held equally responsible for fulfillment of their contract and subject to liability of damage for violation. This is the only way wage contracts can be made equally binding; and is necessary to develop sound satisfactory contracts that encourage maximum continuity of employment. We are heartily in favor of the provision in the Taft-Hartley Act requiring 60 days' notice, from both labor and management, of desire to change or terminate a labor-management contract.

We believe that it is not a wise and sound policy to unionize foreman and supervisory personnel with the worker force. Foremen carry out orders of management, and in many instances lay out plans for management, and therefore must represent management. To divide their responsibility between management and employees or to aline them definitely on the side of employees deprives management of the right to manage.

As we said in the beginning, we do not pose as experts on the fine points of the law. But we feel that we would be remiss if we did not point out some of the seeming defects on the act as it stands and as it appears to us.

It is our conviction that there are several portions of the law that make it possible for unscrupulous managers to unnecessarily harass labor unions and to undermine their membership. We doubt that it is right to permit, for example, labor employed for replacement for legally struck labor to be retained in employment and to be allowed to vote in subsequent elections for bargaining representatives. This can and probably will be used by unscrupulous management for purposes of union breaking. We see no serious objections if labor is serious in its protests, to dropping the requirement of the Communist affidavit, although it appears to us that this has done much good to strengthen union leaders' hands in clearing communistic influence out of unions. If it is retained it should similarly be required of management.

Possibly the provision in section 2 (13) which makes unions responsible for acts of agents even though the act subject to complaint was not specifically authorized, and other provisions, give opportunities for unjustified suits by management. Such suits can do no good, are destructive of strong unions, and militate against sound peaceful solution of labor disputes. The law, we believe, should be carefully scanned by experts for the purposes of eliminating any such undesirable provisions. It appears to us that the separation of the functions of the general counsel from the work of the National Labor Relations Board is a separation and a concentration of power that is not conducive to efficiency and harmony in the administration of the provisions of the act. However, as previously stated, we believe the conconciliation and arbitration work should continue separate. If the injunction is to be used on labor in secondary boycotts, we believe it should be applicable to management likewise. The law it seems to us should be changed to permit free political expression in the labor press; but we do not believe that general funds of labor unions should be contributed to any political party or candidates.

Mr. Kelley. Is that all, Mr. Sanders?

Mr. Sanders. That is all, sir.

Mr. Kelley. Very well. Mr. Bailey?

Mr. Bailey. I believe, Mr. Sanders, you will agree with me that the primary function of the National Grange is to look after the affairs and the interests of the farm groups?

Mr. Sanders. Yes, that was the primary purpose for its organization.

Mr. Bailey. Is it still the primary purpose?

Mr. Sanders. Yes.

Mr. Bailey. I believe you will agree with me that there were no restrictions against your farm group, or your groups, in the Wagner Labor Relations Act.

Mr. Sanders. Yes, sir.

Mr. Bailey. There are no restrictions against your farm groups in the so-called Taft-Hartley Act. I would like to remind the gentleman that within the last 3 or 4 days, this same committee that he is facing now has written out of the minimum wage and fair labor standards act all of the farm interests of this country. Now, I think the gentleman will agree with me that the only instances that he can cite on which the Grange has come in direct conflict with labor are some instances of secondary boycotts and jurisdictional strikes. If the gentleman has read H. R. 2032, section 106, he will find in this proposed legislation sections tending to take care of boycotts and jurisdictional strikes.

In view of that, I would like to ask the gentleman if he does not think it is somewhat presumptuous on his part to come in and advise the committees of Congress that they should pass legislation regulating everybody else in our society except the farm groups?

Mr. Sanders. In the first place, Mr. Bailey, if the specific instances that you enumerated were the only direct influence that labor has on agricultural prosperity, probably we would not be here. But agriculture is profoundly influenced by labor disputes.

Mr. BAILEY. I agree with you that you have a community——

Mr. SANDERS. We have just as much interest, almost, as labor does itself in seeing that constructive peaceable settlements of all labor disputes are brought about.

Mr. BAILEY. I agree that you have a community of interests but you do not work at it, you and the labor groups, as well as you should.

Mr. SANDERS. Possibly that is true. But I am not so sure that that is our fault as much as it is the labor union leaders'.

Mr. BAILEY. I think the gentleman will agree with me that if he expects good prices for his farm crops, there must be adequate wages paid to workers. Otherwise, they are not able to buy your products; is that right?

Mr. SANDERS. I would revise that by saying, yes, that if we expect good prices for our farm products, Mr. Bailey, we must have labor on the job turning out a fair, full output of nonagricultural goods to exchange for our goods. We feel, however, that labor should be paid a fair, reasonable wage for that work. I do not want to be misunderstood in my statement. We will thoroughly agree with you that when labor is turning out a full, reasonable and abundant output, such as farmers do at all times, we will have good prices for our products, and we can help to get labor good wages for its work.

Mr. BAILEY. Mr. Sanders, you referred there to the question that you doubted that the results of the November election were a mandate to the Eighty-first Congress to enact certain legislation, and particularly labor-relations legislation. You mentioned the fact that your group and the farm groups of the country had much to do with the results of the election in November, and I agree with you that they did have a lot to do with it.

Now, does that not stem, and did not that voting on the part of those farm groups stem, from the fact that the Government has been pretty kind to the farmers in the way of 90 percent of parity?

Mr. SANDERS. Well——

Mr. BAILEY. And one other question. As a member of the Seventy-ninth Congress, I supported appropriations to provide for storage for about 400,000,000 bushels of grain. Along came the Eightieth Congress, and I believe they reduced those appropriations so that you could only provide storage for about 50,000,000. Is it not true that some of the farm groups got caught with no place to store their grain, and were forced to sell it at a loss? And do you not think that that has something to do with the voting in the November election?

Mr. SANDERS. The voting of the farmers is very complex, and I doubt whether we could analyze it in a satisfactory way. I doubt very much whether the storage had as much to do with the farmers' vote as you imply by your question. In the first place, I think the farmers voted largely on the basis of a very complex judgment on the individual candidates in their area and voted for those that they thought would support an adequate farm program.

Mr. BAILEY. In other words, my party guaranteed you a return to parity and a removal of the sliding scale of parity as provided by the Eightieth Congress; that is true, is it not?

Mr. SANDERS. I rather prefer not to talk about the political angles of this. I might tell you, Mr. Bailey, that I am from Oklahoma, and you known my politics, probably.

Mr. BAILEY. I want to compliment you——

Mr. SANDERS. So I would prefer not to go into the politics of the election. I would very much prefer to let the statement stand, that we do not believe that the election was a mandate, a clear-cut, definite mandate, for repeal of the Taft-Hartley Act, and we known our membership think likewise. We know farmers, and we know that the farm vote did not have that implication in it.

Mr. BAILEY. You will agree with me that the question is open to argument, of course?

Mr. SANDERS. Oh, yes; I think so. Almost all of these questions are open to argument.

Mr. BAILEY. That is all.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. Nothing, Mr. Chairman.

Mr. KELLEY. Mr. Irving?

Mr. PERKINS. I yield to Mr. Jacobs, Mr. Chairman.

Mr. IRVING. Mr. Sanders, to continue Mr. Bailey's questions——

Mr. KELLEY. Mr. Irving, a moment, please. The Chair did not get this. But Mr. Perkins announced he yielded his time to Mr. Jacobs.

Mr. JACOBS. You may proceed first, Mr. Irving.

Mr. IRVING. There was no question but that the Democratic platform unquestionably pledged the party to repeal the Taft-Hartley Act, and there was no question but that everyone spoke, even the President, in very outspoken terms that they were going to repeal the Taft-Hartley Act. If any farmer voted for those candidates, he certainly knew that he had promised the people that because that was one of the major issues. So I cannot understand the position that the gentleman is taking. I know that when I voted the Democratic ticket for Mr. Truman that that was one of the things I expected him to do, for he was committed to do that. So I do think that it was a great deal more of a mandate than the Eightieth Congress had to pass such a law, because that was never an issue in the 1946 campaign.

The repeal of the Taft-Hartley law was not an issue in my own campaign. The previous witnesses here concerned themeselves a great deal with racketeering, and so forth, and the implication was that if you did not favor this law, you were a racketeer or a gangster, or something of that sort, by bringing in the fact that if you did not favor a law prohibiting you from murder, you were somewhat of a murderer, at least, in your heart.

I would like to say further that in my campaign I made many a statement—written statements—that I did not approve of and that I would do all I could to abolish racketeering and graft and corruption in labor unions, in business, in Government, and in politics, and that I would do all that I could to eliminate the causes of those things; that I favored laws which, if necessary, would harmonize with the interests of the employer and the employees as against those that would cause friction, confusion, dissension, and discord.

Now, can you agree that those are fairly good things to campaign on?

Mr. SANDERS. Yes, I would say that those indicate that you had a reasonably good platform.

Mr. IRVING. And I am against featherbedding and jurisdictional disputes in Government and Congress, the same as I am in labor unions and other businesses.

Mr. SANDERS. I am glad that you are, because the Grange tries to pitch its testimony on a high, the American, standard that we want labor to have a fair chance to bargain collectively for job security and a fair, decent wage. But we also want to see that labor does not abuse that privilege granted to it by society by racketeering methods, used by organized labor. And you and I admit that there are some racketeering methods. I do not say that that is a dominant characteristic of unionized labor. It is not.

Mr. IRVING. And you do not say that this is confined to labor unions, either, do you?

Mr. SANDERS. No, indeed.

Mr. IRVING. For the sake of the economy that you have raised those things——

Mr. SANDERS. Probably we have that method of operation, or action, on the part of all strata of our society, because we have bad elements in all strata.

Mr. IRVING. Now, you say that you are opposed to monopoly. I want to deal slightly with what Mr. Bailey brought out. Part of the committee was in favor of the minimum wage law and the fair labor standards act for agriculture, particularly where it affected industrial, or commercial-type farms, and where there could be a monopoly existing. But I am under the impression that most of the farm organizations, that is, their representatives, oppose any part of agriculture being included in this act. It does not seem quite consistent, in my opinion; nor does it seem consistent that, as Mr. Bailey brought out, you would want to go along with these restrictive and oppressive measures for one group, or for one class of our society, and not want any type of restriction or legislation for your own group.

Mr. SANDERS. We have 6,000,000 independent units that operate the farms of this country. And you well know that it is utterly impossible to organize farmers so as to control production. The fact of the business is, it is utterly impossible to control agricultural production by law. We did not control it in the early thirties. We reduced the total output of farms by only 2 percent, by our laws undertaking to restrict production.

Now, you do not have to worry much about a 100 percent competitive industry such as agriculture is. It simply cannot enforce restrictive desires, and there is no possibility of their getting together and doing it. We grant labor the right to organize and bargain collectively, and it comes to Congress and asks for certain privileges and rights and protections. But it must recognize that those rights give it a responsibility to society, and that is what we are talking about here. Labor unions should restrict their policies to those things that are not socially injurious.

Mr. IRVING. Of course, I think there are very few people who understand the full impact of the law. There were very few lawyers that understood the law when it was written. I do not know whether there are too many now that fully understand it. There are measures and steps in the law which, in my opinion, would weaken and finally destroy unions. Those are the parts of that law that I am definitely opposed to. I think unions are an essential part of our economy in this free-enterprise system, and I certainly am opposed to anything that would destroy them.

It has been said earlier in the hearings the law was hell for the employer and hell for the employee, and was a lawyer's paradise.

Mr. KELLEY. The gentleman's time has expired.

Mr. IRVING. Thank you.

Mr. KELLEY. Mr. Jacobs, you have 20 minutes.

Mr. JACOBS. Thank you.

Mr. Sanders, in regard to this question of a mandate, a farmer is a sort of a fellow who generally votes for what he thinks is fair. I think you and I will agree to that, generally speaking, would you not say so?

Mr. SANDERS. Yes, I believe the farmer probably is one of the most independent voters of the land, because he works hours and hours by himself, and he does his own thinking. He comes sometimes to some very erroneous conclusions because he does not rub his thoughts against a lot of people's thoughts in his daily work, and therefore, does not have them toned down, but he is very independent and votes what he thinks is right; yes, sir.

Mr. JACOBS. If there is an independent group of citizens left in the country you would say it is the farmer?

Mr. SANDERS. I believe so; yes, sir.

Mr. JACOBS. I think we will agree on that. Of course, there has been quite a change in the thinking on the part of the farmer in recent years in regard to labor matters; we will say in the last 15 or 20 years; you will agree to that, will you not?

Mr. SANDERS. Yes, I think the farmer has given a great deal more thought to labor matters than he did 15 years ago.

Mr. JACOBS. Those matters have come to him through newspaper articles, and by radio and by various means of communication, and he probably takes it with him to the field and to the barn, and studies about it considerably. The means of communication has improved his thinking on labor matters, has it not?

Mr. SANDERS. I do not mean to leave the impression the farmer does not have a lot of contact with the outside world. Nearly every farmer takes a daily paper nowadays, and reads his papers assiduously.

Mr. JACOBS. And most of them have radios now?

Mr. SANDERS. But the point I am trying to make is that he thinks independently because he does not have to argue with the other fellow a great deal.

Mr. JACOBS. What you are trying to say, I think, is the farmer probably had thought out all these issues when he voted. I think that is a fair statement?

Mr. SANDERS. I think he did, but, of course, I do think this, that you cannot pick out any one individual issue and say that when the farmers voted they voted for that issue, because they balanced that against a lot of other things, such as the other views of the parties or candidates.

Mr. JACOBS. But we could say this: Do you not think this would be a fair statement, that any commitment in a political platform was not utterly distasteful to the people at large, or else the party would not have been elected?

Mr. SANDERS. I doubt whether that could be applied to specific portions of either platform, because you can take both platforms so far as agriculture is concerned and both had a very reasonable and sound agricultural program in them.

Mr. Jacobs. What I mean by that, Mr. Sanders, is that you would agree that no plank in a victorious platform was utterly distasteful to the people at large; if it had been, that party would not have been returned to power.

Mr. Sanders. I presume that you might use such logic as that, but I would cross my fingers when I agreed to that.

Mr. Jacobs. We will assume your fingers to be crossed.

Mr. Sanders. I am thinking how complex it is, the way people vote in this country. If I were to explain why my wife voted the way she did, it would be entirely different from the basis of my vote.

Mr. Jacobs. I presume that is right. Taking an entire cross section, it is hard to determine why any particular person voted as he did. Let us go to another point. Those are pretty broad questions.

Mr. Sanders. Quite so.

Mr. Jacobs. I was quite intrigued by one statement in your prepared statement, on page 8, where you say—

> The right of the individual not to engage in a strike should be conditioned or limited by legitimate union requirements.

That is particularly interesting to me, in view of further statements you make on page 13; that is, in reference to employment of replacements of struck labor. That is the background of the question I wanted to ask you.

Mr. Sanders. Yes.

Mr. Jacobs. There has been talk of requiring a strike vote before labor can strike. What is your view as to whether or not, if a law would require a strike vote before striking, and if the result of that vote would be in favor of striking, those who voted against it should be bound by the decision of the majority?

Mr. Sanders. May I qualify my answer to that by saying if the shop were a union shop under the provisions of the Taft-Hartley Act, and, therefore, the laborers would undoubtedly, to a large extent, be union laborers and, therefore, the strike vote would clearly represent the majority of the opinion of the laborers. I think that the plant, or the union, certainly the members of the union, should respect that vote, because I believe that a majority should rule.

Mr. Jacobs. That is a moral proposition, I think, that we would all agree to, but would you favor a legal compulsion to that effect?

Mr. Sanders. To compel them to strike?

Mr. Jacobs. If they participate in the election that they should be bound by the result of the election.

Mr. Sanders. If they participate in the election certainly they should be bound by the results of the election, because I do not see how you could give labor the right to bargain freely and to democratically determine its bargaining actions without saying a majority should rule.

Mr. Jacobs. In other words, what we are arriving at there is that some of the proposals that are made lead to further thinking of those who say there should be a strike vote before a strike is called, and it should be supervised by governmental authority, and the natural implication is that those who participate in the election are going to abide by the results?

Mr. SANDERS. I should think so.

Mr. JACOBS. I sometimes wonder if some of those who have advocated such rules have thought that far.

Let us talk about union security election for a minute. I have correspondence from a rather large union who has requested me to support the continuance of the union security election. Would that sound a little amazing to you?

Mr. SANDERS. Of course—I am sorry, but I do not know your history, and therefore I would not——

Mr. JACOBS. I received it as a Member of Congress. You get a lot of mail from everybody, you know, as a Member of Congress, but I wondered if it sounded a little strange to you that a union would write and ask the union security election be continued. Would that seem a little strange to you?

Mr. SANDERS. We feel there are a lot of unions that might take a broad view of the thing, and ask for that; yes.

Mr. JACOBS. I will tell you the rest of the story. They said that after they won the right to represent the workers in the plant in a representation election then they were required to have a union security election, and that they felt that they were entitled then to have the union security provision in their contract without even bargaining for it. In other words, having held the legal election required by law that the employer would not be entitled to say "no" to the union security provision; how does that sound to you?

Mr. SANDERS. You are getting into some pretty deep technical matters for me. If you could explain that in less technical terms.

Mr. JACOBS. Let us put it this way—it is the same thing we were talking about a minute ago—the law came along and said to the union, "You must have an election before you can be established as a bargaining agent." That was in the Wagner Act. An election established the union as a bargaining representative, and now the Taft-Hartley law came along and said, "Before you can bargain for a union shop you must have another election"—and we will not talk about the fairness of the election, the requirement of the majority of all workers, whether they voted or not—but you must have an election.

These people who communicated with me said, "That is all right; we are willing to accept that provided they say the employers must grant the union shop if we win the election." Do you understand it now?

Mr. SANDERS. Yes.

Mr. JACOBS. In other words, let us clarify it this way, Mr. Sanders. The union security election only grants the union the authority to bargain for a union shop; you understand that?

Mr. SANDERS. Yes.

Mr. JACOBS. What they are saying is, "Let us keep the election, but if we win it automatically that makes the shop a union shop"; what do you think about that?

Mr. SANDERS. If the employer agreed to the election himself, and the election was called for the determination of the union shop or nonunion shop, I think the employer should abide by the results. If he is opposed to the union shop, and the election is against the union shop, he should abide by it.

Mr. Jacobs. Of course, the way the law is now, the law requires the election as to the union shop, and then after the union has the election, if it wins, the employer has the veto as to whether or not he will agree to a union shop; do you think that is fair?

Mr. Sanders. No, I would think the employer should register his veto to begin with, and say he is against it, and he would not accept it under the law. I do think an employer, if he is a mind to take such serious steps, and is so bitterly opposed to unions—which I do not agree that he should be—has a right to close his plant and lose all of his investment, and keep it closed the rest of the time if he wants to. I think such a man as that is rather reprehensible from the social viewpoint, even if he can financially stand the burden. But I suppose in a democracy we have to grant that right if we respect the right of property; and if he wants to he can close his plant down and stop working.

Mr. Jacobs. You definitely feel that employees have to strike for a unified front when they meet management across the bargaining table, to match the management front?

Mr. Sanders. I do believe this, that good management should recognize that good labor unions are an asset and not a liability and, I think, that a reasonable manager will recognize that good labor unions are a real asset to him.

Mr. Jacobs. And many business enterprises have done so, and have enjoyed good labor relations?

Mr. Sanders. Certainly.

Mr. Jacobs. There is one other matter I wanted to ask you about, and that is the matter of featherbedding. I think we are all against it. As I understand the term "featherbedding" it means to ask for something for nothing.

Mr. Sanders. Yes.

Mr. Jacobs. And, of course, it contains a good many variations, I suppose. For example, I bought an automobile and I paid a pretty good price for it, and the oil leaked out of the oil pan, and I took it back to the dealer I bought it from and asked him to tighten it up, and the bolts twisted off, and we found the bolts were practically made of pot metal, and we had to go to a junk yard and get prewar bolts before we could tighten the oil pan up enough to keep the oil from coming out. Would you not think that was fetherbedding when the company that put the automobile on the market and sold it with bolts that were made of such inferior metal?

Mr. Sanders. I do not know, but it certainly is an undesirable thing for a manufacturer to do. However, I do not think you would buy but about two cars of that make after you had been burned that way.

Mr. Jacobs. Unfortunately, I bought two of them at the same time, and had the same experience, but we did get enough bolts out of the junk yard; but, I say, is that not featherbedding, or getting something for nothing? Did I not have a right to assume that the bolts in the car were of sufficient good alloy, and that it would function as a transportation vehicle?

Mr. Sanders. No, you did not get something for nothing. You thought you bought good bolts to begin with, and you had a right to assume the company would give you good bolts, because that is what you thought you bought. I do not think that would be featherbedding on your part.

Mr. Jacobs. No, I do not mean featherbedding on my part, but on the part of the manufacturer. Oh, no, it was not featherbedding as far as I was concerned.

Mr. Sanders. I thought you meant you were trying to get bolts for nothing.

Mr. Jacobs. No. I say this, I felt I was sleeping on a bed that had a mattress stuffed with nuts and bolts.

Do you not think the fellow who sold me the car was featherbedding, the fellow who took my money for the car was featherbedding, to some extent?

Mr. Sanders. You mean the man who sold the car?

Mr. Jacobs. The manufacturer.

Mr. Sanders. Yes, I presume so, if he did that consciously, but I doubt very much that he intended to do that. I do not know how such an accident could occur in the modern automobile industry but I doubt very much whether the manufacturer ever dreamed of doing such a thing; and if it were taken to him he should certainly try to make it good—and maybe to the extent of giving you a new engine.

Mr. Jacobs. Regardless of that, when you buy something that is of inferior material, or is priced so high that the profit is, say, six or seven hundred percent, do you not feel that there probably is a little featherbedding in that somewhere?

Mr. Sanders. There are monopolistic prices, and that is just as reprehensible as it can be. I do not believe such can exist under a state of fair competition.

Mr. Jacobs. Do you agree this is featherbedding: A friend of mine, who is a farmer near Evansville, Ind., went in to buy a binder canvas, which had been selling for $5 apiece in the early '30's, and the dealer said, "This is $15." The farmer said, "It was $5, so how did it happen to be $15?"

The dealer said, "Do you not know there is a tax on cotton?"

This farmer friend of mine said, "Yes. I know there is a tax on cotton. It is 1 cent a pound."

So, he said, "Throw that binder canvas on the scales and weigh it, sticks, nuts, bolts, rivets, leather, and all, and see how much it weighs," and, as I recall, it weighed around 25 pounds, and there was a 2-cent-a-pound tax on the dollar. The binder canvas was raised in price $10, but when he weighed the whole thing the amount was not over a half dollar.

Would you not call that featherbedding? Would you say whether you would consider that featherbedding?

Mr. Sanders. You have asked a question that is very complex, and I am not sure I have gotten all of it. I doubt whether that would be featherbedding. It is not the type of featherbedding we are opposed to. May I say it is not the definition of featherbedding that I am trying to bring out here and that I am opposed to.

Mr. Jacobs. I am not trying to restrict it to one type of featherbedding. We are all Americans——

Mr. Sanders. I would not define that as featherbedding.

Mr. Jacobs. Would you not say if he was collecting $10 more for binder canvas, because of the 50-cent tax put on cotton, that he was getting something for nothing?

Mr. Sanders. You said the canvas weighed 20 pounds?

Mr. Jacobs. As I recall, it weighed 25 pounds—let us say 20 pounds.

Mr. SANDERS. You understand what the farmer got for that cotton was 20 cents a pound which would be $4 for his cotton.

Mr. JACOBS. But do not forget there is an awful lot of sticks and leather——

Mr. SANDERS. There are a lot of manufacturing process costs beyond the farmer, and I am not sure there is any featherbedding in that example.

Mr. JACOBS. This was back in the '30's and the canvas had been selling for $5, and all at once it became $15, and he asked why it was raised, and he said because of the tax on cotton, but that could not have been over 50 cents, and yet the price had gone up $10.

Mr. SANDERS. I can easily understand how that merchant would not be able to sell that very long at that price either. He would soon lose his trade.

Mr. JACOBS. Unless they were together on it?

Mr. SANDERS. Certainly.

Mr. JACOBS. What I am trying to drive at is this—and this is the final question—when it gets down to featherbedding, which means getting something easy for little or nothing, are you not getting into a pretty complex question if you try to regulate it by law?

Mr. SANDERS. I do not believe so. Let us take an example of featherbedding—I am not sure of the facts, but it was an advertisement by the railroads recently on the Diesel engine. The advertisement said unions were demanding two crews where one crew could do the work easily, and that there is no reason in the world for two crews on the Diesel.

That type of featherbedding is what I mean, and I think you could regulate that. I think it should be regulated somewhat, and that unions should not have the right to compel an employer to pay the wages of a man who does nothing just because they have the power to get together and compel him to do it. That is the kind of featherbedding we are talking about, Mr. Congressman.

Mr. JACOBS. I am against that kind of featherbedding. Of course, I am against whisky, too, but I would not favor prohibition. I am trying to get the practical side as to whether or not we can regulate it from a practical viewpoint. You do agree that that example of the inferior bolt is in the nature of featherbedding? Are we not going to get into a price-fixing situation before we get through?

Mr. SANDERS. In the case of the bolts, I think competition will solve that easily and, therefore, I do not think it is the same nature as the featherbedding. The featherbedding arises because we protect labor in their bargaining and organizing powers, and with that power goes the responsibility to the general public not to abuse it in antisocial action. We believe that featherbedding is antisocial action.

Mr. JACOBS. Let us examine that point very briefly.

You say we protect labor in its right to organize—is my time up?

Mr. KELLEY. Your time is up.

Mr. Burke, you have 7 minutes.

Mr. BURKE. Mr. Sanders, I would like to say at the beginning that I believe you have arrived at some remarkably fair conclusions from what I believe to be an incorrect premise, to start with, on the purpose and intent of the law. Of course, I believe the purpose and intent of the Taft-Hartley Act was to destroy unions where possible, and to minimize the bargaining powers to the greatest extent possible wherever it was not possible to destroy them.

Mr. SANDERS. May I say in answer to that we would agree if that is the purpose—we do not think it is the purpose, and we do not read it as the purpose—but if that is the purpose we would not support the Taft-Hartley Act.

Mr. BURKE. I would like to address myself to the question of monopoly. As I understand the definition of the word "monopoly"—and I would like to give it in rather common and you might say venacular English—"monopoly," if I understand it right, is absolute control over any given field of activity, is that not correct?

Mr. SANDERS. You can have degrees of monopoly. I mean you can have perfect monopoly, or you can have a partial monopoly. Either one of them would give you power. Absolute monopoly would be what you describe, as I understand it.

Mr. BURKE. The propaganda on the Taft-Hartley Act in all of the newspaper and radio talks, and so on, during the time the Taft-Hartley Act was going through Congress, tended to show that there was a labor monopoly in this country, is that not right?

Mr. SANDERS. Tended to show there was a labor monopoly?

Mr. BURKE. Yes. That is, they wanted to convince the American public that there actually did exist a labor monopoly.

Mr. SANDERS. I would phrase it to say they wanted to show that labor unions had abused the power that they had attained through organization.

Mr. BURKE. But they used the word "monopoly" to a great extent?

Mr. SANDERS. If they did I think probably that certainly the labor unions did not have an absolute monopoly. I do not know of any that does have.

Mr. BURKE. But they used the word, and at the same time the bill that was going through Congress contained a prohibition against jurisdictional disputes?

Mr. SANDERS. That is right.

Mr. BURKE. How could there be jurisdictional disputes in a monopoly? There could not.

Mr. SANDERS. No; I think the only difficulty there is, is that as I say you can have degrees of monopoly, that is, you can have absolute monopoly or you can have a partial monopoly. That is, you can control a sufficient amount of the goods to give you certain powers, but not absolute power, and with that concept of monopoly I think maybe you could describe that certain unions did have powers that approached upon a relative amount of monopoly.

Mr. BURKE. I would like to pursue that a little further, but my time is very limited.

Mr. KELLEY. You still have two minutes.

Mr. BURKE. I would like to go for a moment into this featherbedding. Mr. Jacobs touched on it, and he was developing the point that it might be a rather dangerous provision in law to just say we prohibit featherbedding. It is a rather difficult definition. Take, for instance, in a mass-production industry, the productive capacity is measured down pretty close to a split-second timing; in fact, they use stop watches. To use an example, on a farm which I know nothing about, we will say that the owner of the farm tells his hired hand, "You have been plowing 1 acre in a given length of time, but I have purchased a new tractor that the manufacturer said will do double work of the former tractor and the plow, and therefore from now on you have to plow 2 acres in the same time."

The hired employee says, "That may be, but I do not think I can do more than an acre and a half in the given time because of other factors, safety, and it may be dangerous for me," and all that sort of thing. Is it not possible that a prohibition by law of the so-called practice of featherbedding might preclude the possibility of that employee saying that to his employer, and carrying it out into mass production, and it is also possible, is it not, that any challenge of the employer's production standards might be considered as featherbedding?

Mr. SANDERS. I would not want the law to be so written as to interpret changes that may occur in productivity, in the failure to use, to the full extent, the machines, as featherbedding, but to illustrate——

Mr. KELLEY. Your time has expired.

Mr. SANDERS. May I finish the statement?

Mr. KELLEY. The committee has adopted a rule, and the chairman cannot override it.

Mr. Wier?

Mr. WIER. Mr. Sanders, I want to ask you one or two questions, and I am going to pick up the featherbedding again, because I am a little skeptical on the statement you made to Mr. Jacobs a minute ago.

You made this statement, that you picked up a newspaper the other day and saw a big ad by the railroads of this country, describing featherbedding, and you went on to say you were against that kind of featherbedding.

Mr. SANDERS. The ad said that there was absolutely no reason, from the standpoint of efficiency, safety, and health of the employees, to employ two complete sets of operators for that Diesel, namely, an engineer and a fireman, but that the union was claiming that the railroads must employ two sets of operators for a Diesel engine.

That we are definitely against, if the railroads' advertisement told the truth of the case; we are against that type of featherbedding.

Mr. WIER. Your presentation here—and I do not think you would use it if you did not have some justification for believing it—is your logic, based upon the ad you have seen in the newspapers; is that correct?

Mr. SANDERS. No, upon the general knowledge that we have that there is a certain amount of that type of requirement in unions. If you ask me for specific cases I cannot give them to you, because, as I say, I do not pose as an expert; but if such featherbedding exists, we believe that the law should prohibit it, if unions do not prohibit it themselves.

Mr. WIER. You recognize, Mr. Sanders, without an explanation that you, to some degree at least, are indicting the railroad organizations rather than the railroad companies.

Mr. SANDERS. Mr. Weir, I specifically did not intend to indict the Brotherhood of Railway Workers.

Mr. WIER. Do you know anything about Diesel engines; that is, the dispute that is going on in Chicago today?

Mr. SANDERS. I used it only as an illustration.

Mr. WIER. I think you should not have said that.

Mr. Sanders. I did say "for example."

Mr. Wier. But neither you nor I know the real need of the operation of those big Diesel engines, and I cannot pass judgment without having some knowledge.

Mr. Sanders. I am not passing judgment on that specific case. I am passing judgment on employing two crews when only one could do the job.

Mr. Wier. The Eightieth Congress was under the supposition that because somebody told them something, the general indictment should be thrown on labor.

Mr. Sanders. I do not believe they placed it for that reason. I believe Congressmen and Senators used more facts than that in their work on legislation.

Mr. Kelley. The railway employees come under the Railway Act; they do not come under the Taft-Hartley Act.

Mr. Wier. I did not bring this in.

Mr. Kelley. We will confine ourselves to the bill.

Mr. Wier. Featherbedding is in this bill, and he described what he thought was featherbedding.

We will pass on from featherbedding so long as you feel you do not know the need on the Diesel engine.

Mr. Sanders. If you put it that way, I will accept that. I have no direct knowledge of the Diesel engine.

Mr. Wier. Mr. Sanders, are you very close to your thousands of organizations around the country?

Mr. Sanders. The granges?

Mr. Wier. Yes.

Mr. Sanders. I do not know how to answer that. I know what they think because of hearing them in their deliberations, and the information I get from them every day; if that is being close, I am close.

Mr. Wier. Do you have what you call the Minnehaha Grange up in Minnesota?

Mr. Sanders. If you say so. We have 800 granges.

Mr. Wier. That is one of the oldest granges in the State of Minnesota.

Would you be surprised to know that in the main most of the members of that grange supported me for Congress?

Mr. Sanders. No, I do not have any reason to be surprised at that.

Mr. Wier. I asked you the question because you spoke of the fact that the grange was generally in opposition to the repeal of that Taft-Hartley Act, which you have stated here today.

Mr. Sanders. Yes, I am sure of that. May I answer that?

Mr. Wier. Yes.

Mr. Sanders. The basis for that is that the resolution—which I did not read here—says definitely that we favored in our national convention the retention of the Taft-Hartley Act. Our delegates consisted of, I think, 77 votes, and I think there were only one or two votes against that.

Mr. Wier. That was a delegate body?

Mr. Sanders. Yes, sir; and most of those delegates are actually farmers and their wives.

Mr. Wier. Those are the ones I talked to. I wanted to remind you that they called me to a meeting, at which time they were thoroughly familiar with my position on the Taft-Hartley Act, and then they gave me five or six questions they wanted me to support in this Congress in their behalf, which I intend to do.

You made some reference to the open shop here a minute ago, as being opposed to the closed shop. Who voted for these closed shops that the Taft-Hartley Act outlawed? Who votes for them?

Mr. SANDERS. I take it that the union members do.

Mr. WIER. Who makes up the union members, in the main, around in the United States, California to New York; who makes up the membership?

Mr. SANDERS. They are obtained just like we get our membership, by going out and asking a man to join, and where he is qualified, accepting him when he makes application.

Mr. WIER. Would you be surprised, Mr. Sanders, to know that throughout the length and breadth of this country a big substantial part of the membership of the trade-union movement comes from the very people you are speaking of, from the farms and small rural cities?

Mr. SANDERS. No, I am not surprised. I know it is the case.

Mr. WIER. So it is your people that we are benefiting and are helping to benefit themselves?

Mr. SANDERS. You mean unions are benefiting farmers?

Mr. WIER. Farm boys and girls.

Mr. SANDERS. They have previously been farm boys and girls.

Mr. WIER. That is right.

So they come into our unions in the cities——

Mr. SANDERS. If the question you are trying to ask me is that because they were farm boys and girls, regardless of what they do, we should support them, I would say we would not support them on that basis and, therefore, we cannot concede that we should support unions because their membership came from the farm. That is a very spurious reason for supporting them, it seems to me.

Mr. WIER. The very people that were benefited under the Wagner Act are the people that came into the cities without any means, and without any connections, and got the benefit of unions—your girls and boys from the farmers' union.

Mr. SANDERS. We base our support on fundamental principles. We would take the same attitude if they came from New York City that we would if they came from a farm in Texas. We base our opposition on fundamental principles of what we think is democratically right, and what is right ethically, and that is the basis of our support.

Mr. WIER. If your boys and girls are to enjoy the highest standard of living in this country through the entrance into a trade-union through an honest and legal procedure, you are opposed to that?

Mr. SANDERS. No; I would not say so.

Mr. WIER. That is what you just said.

Mr. SANDERS. No, sir; no. You are misinterpreting my statement entirely.

Mr. WIER. I am trying to point out to you it is the boys and girls from all the little towns and the farms and rural parts of our States, that come in and make up the large part of the trade-unions, and they reach the high standard of conditions, wages, and so forth.

Mr. KELLEY. The gentleman's time has expired.

Mr. Smith?

Mr. SMITH. Mr. Sanders, you were asked over on the other side about your interest in the retention of the Taft-Hartley Act and I believe you stated that your principal reason for the retention of the Taft-Hartley Act was that it meant stability, in your opinion, to the farming industry?

Mr. SANDERS. That is right; yes, sir.

Mr. SMITH. The farmer is a man who is engaged in the manufacturing just the same as the man who has a factory; is he not?

Mr. SANDERS. That is true.

Mr. SMITH. Is it not true on a farm when instability arrives the farmer is the first to suffer, and he is many times forced to sell his capital goods in order to survive; is that not true?

Mr. SANDERS. That is quite true, and add to that, Mr. Smith, he is the only segment that is producing a full and complete amount of goods, or output, but he gets the lowest return for his services, for a complete service.

Mr. SMITH. And when a farmer sells his cows and his brood sows he is in exactly the same position as the manufacturer would be who is selling the machinery?

Mr. SANDERS. That is right.

Mr. SMITH. But in addition he has to compete with two factors that the others do not, and that is weather and insects, which are very hazardous?

Mr. SANDERS. Yes.

Mr. SMITH. Another statement that you made was that you are opposed to monopolies, and one of the basic reasons you think that the Taft-Hartley Act should be retained is that it has something to do with checking labor monopolies; is that true?

Mr. SANDERS. It does, we think, bring about a better atmosphere for free bargaining for both management and labor, and we believe ultimately, when it is refined, if it has serious defects in it, it will stabilize employment rather than create disharmony and will promote settlement. For that reason we are favorable to a law that makes both management and labor equally responsible to bargain in good faith.

Mr. SMITH. In other words, it is the freedom of the practices on the part of both management and labor?

Mr. SANDERS. That is right—against coercive restrictive practices of both management and labor.

Mr. SMITH. Which, in the ultimate, is the benefit of the whole economic life we enjoy in the country?

Mr. SANDERS. The Grange looks upon an industrial plant as a means to produce and distribute goods that society wants, and, then, secondly, to give the owner of the plant and the labor which works in it a decent American payment for their services. We feel that both management and labor forget that that is the prime purpose for the existence of such a plant.

Mr. SMITH. Is it not true that the farmers of the country have been very severely handicapped as to production of goods by reason of strikes?

Mr. SANDERS. We quite often suffer due to stoppage of work on the part of labor, whether that is caused by the manager or the labor unions stopping work. We are trying to argue that some way must be found through law that there will be a very minimum of stoppages of work, because the only way agriculture can become prosperous is for nonagricultural industry to produce a flow of goods similar to that of agricultural industry.

Mr. SMITH. But you must have equipment to do that, so far as the farmer is concerned?

Mr. SANDERS. Yes.

Mr. SMITH. That is all, Mr. Chairman.

Mr. KELLEY. Mr. Werdel?

Mr. WERDEL. Mr. Sanders, I heard you mention the figure 6,000,000 in your examination. Did I understand you correctly, that there are 6,000,000 farmers?

Mr. SANDERS. 6,000,000 farm units, yes; farmers.

Mr. WERDEL. Small farms and large farms?

Mr. SANDERS. Yes, sir.

Mr. WERDEL. And I believe you mentioned that your national meeting was held on November 10 to 19 of last year?

Mr. SANDERS. Those were the dates; yes.

Mr. WERDEL. I have here a brochure that is entitled "A Résumé of Agricultural Policy and Program Recommendations Adopted by The National Grange, Eighty-second Annual Session, Portland, Maine, November 10 to 19, 1948," and I will ask you if that is the brochure that was put out by the National Grange after that meeting?

Mr. SANDERS. That is right; yes, sir.

Mr. WERDEL. The brochure is 20 pages long, and I will ask you if it is the result of studies of committees, having been acted upon by the National Grange at that meeting?

Mr. SANDERS. Yes; we have a rather elaborate set of committees, some 8 or 10 of them, appointed by the National Master to specialize in studying and reporting on certain subjects.

Mr. WERDEL. And those committees report at the national meeting each year; is that correct?

Mr. SANDERS. That is right.

Mr. WERDEL. And then you act upon their reports by resolution?

Mr. SANDERS. That is right. Those committees are similar to this committee here. They hear any and all witnesses who come before them. They are perfectly willing to listen to any witness on any subject.

Mr. WERDEL. Will you tell us just briefly how the Grange is operated? First, does it cover the whole United States?

Mr. SANDERS. We have State organization in 37 States.

Mr. WERDEL. And how many Grange units are there throughout the United States, if you know?

Mr. SANDERS. Something like 700 or 800 local units, and then we have what we call the Pomona, which is a county Grange, or a federation of all the local units in the county. We have a State Grange in each State, and then the National Grange. The voting delegates come from the local units to the Pomona, and the master and his wife in each local unit vote in the Pomona, and vote in the State.

Mr. WERDEL. And those were the delegates who came to the National Grange?

Mr. SANDERS. The delegates to the National are the State masters and their wives. You understand in the Grange ladies can hold all offices in the Grange, any lady above 16 years of age can be a member and hold any and all offices of the Grange.

Mr. WERDEL. And the National sets up a study for the following year as to labor and management problems of the United States?

Mr. SANDERS. Yes, sir.

Mr. WERDEL. Do the State Granges also set up committees to study that problem?

Mr. SANDERS. Most of them do, yes, sir.

Mr. WERDEL. So your report at your national convention was the result of a thorough study in the States and the Nation by your respective committees?

Mr. SANDERS. Yes; that was the basis on which this statement was made.

Mr. WERDEL. As I understand you, there were two votes out of 90 in your National Grange against the policy of the Taft-Hartley Act as expressed by you.

Mr. SANDERS. I think two votes out of some 77. I have forgotten the exact vote we have in our delegate body, but I think it was about 2 votes out of 77, who voted against it.

Mr. WERDEL. Commencing on page 13 and continuing over to page 14 of the brochure I have mentioned, you have set out in that brochure the labor-management and social-security policies of the National Grange following your November 10 meeting of last year; is that correct?

Mr. SANDERS. Yes.

Mr. WERDEL. That, in substance, states concisely part of what you have stated here today?

Mr. SANDERS. That is the basis of my statement here today, and I think all of those provisions are in my testimony here.

Mr. WERDEL. This is rather short, and I will offer it for the record—just the page that I have mentioned—commencing on page 13, under No. 5, Labor-Management and Social Security Policies and Programs, and continuing over on page 14 to the subject Taxation and Fiscal Affairs.

Mr. BAILEY (presiding). If there is no objection the section will be accepted for inclusion into the record.

(The section referred to is as follows:)

V. LABOR-MANAGEMENT AND SOCIAL SECURITY POLICIES AND PROGRAMS

CONFERENCE OF LABOR, MANAGEMENT AND AGRICULTURE ON A BALANCED ECONOMY

We believe that the establishment and preservation of a balanced economy are essential if our free competitive enterprise system is to be preserved. We recommend that the representatives of the great economic groups, business, labor and agriculture, get together for the purpose of trying to develop price, wage and profit policies that will reduce friction to a minimum and stimulate a greater spirit of cooperation and understanding among all of our people.

GRANGE POLICY ON LABOR-MANAGEMENT RELATIONS

We present the following as our statement of basic labor-management relations policy. We believe:

(1) That free enterprise and democracy depend upon an economy of reasonably full production, and freedom from monopolistic practices for labor, industry and agriculture alike; and that there is a sound social, moral and economic basis for these views.

(2) That management of industry should place a policy of high output and reasonably full employment above high prices and profits; and should be prohibited from using coercion and intimidation in its relationship with labor.

(3) That labor unions have a useful place in the Nation in order that the combined economic strength of industrial and professional workers may offset the power of organized or big industry and finance.

(4) That organized labor has most to gain by adopting as its primary objective the maintenance of reasonably full employment and an economy of full production, a principle which applies equally to all economic groups and can be made a basis for cooperation between all groups.

(5) That we uphold the right of labor to strike and to organize on an industry-wide basis, especially in industries dominated by a few large units.

(6) That when a strike, or threatened strike, becomes a serious menace to public health, safety and the general welfare, the use of the injunction and compulsory arbitration is justified.

(7) That the Grange does not condone such restrictive practices as the secondary boycott, sympathetic and jurisdictional strike, slow-downs, any unjustified reduction of the workweek, and featherbedding by labor.

(8) That mass picketing which results in intimidation is unfair, but that all workers of a struck plant should be protected in their right to picket peaceably.

(9) That a majority of the workers in a plant must vote favorably by secret ballot before giving union shop privileges to any labor organization; and that we oppose the closed shop.

(10) That we recommend to organized labor, the adoption of a parity wage automatically adjusted semiannually to the cost of living. By this we do not mean to preclude labor from bargaining collectively through representatives of its own choosing to improve its working and living standards or obtain an increased share of the national income.

TAFT-HARTLEY ACT

We believe the enactment of the Taft-Hartley Act has had a corrective effect on labor and management disputes. We favor such modifications in the act as may be necessary to correct abuses or weaknesses that are shown to exist.

UNEMPLOYMENT COMPENSATION

The Grange opposes any increase in unemployment compensation until means are made effective to minimize existing abuses.

SOCIAL SECURITY

Social security should be extended to include the farmer and farm worker, insofar as it applies to old age and retirement benefits, and other benefits should be extended to farm operators if and when a practical means can be found to make it work.

Mr. WERDEL. Mr. Sanders, was that brochure available to all of your membership?

Mr. SANDERS. No, we do not give that circulation because we have about 800 units and, I would say, 850,000 dues-paying members, and we do not have the money to print that for all of them. We send it to the State masters and to the deputies, who are the organizers, the local organizers, of the Grange, and to any local grange which asks for it.

Mr. WERDEL. As legislative counsel for the National Grange, have you had any criticism about the labor-management policy of the National Grange from the local units?

Mr. SANDERS. We have had one letter from some man in California, but I do not remember his name.

Mr. WERDEL. It was not a man from the Tenth District, was it?

Mr. SANDERS. I do not think so, no, sir. He said he thought the Grange should stick to its knitting, and that it should take care of agriculture and leave labor alone. I wrote him about it, that what unions do vitally determines the income of agriculture, and we thought we had a right to try to do something about the labor question. I have not heard from him.

Mr. WERDEL. Have you had any other letters but that one in opposition to this policy?

Mr. SANDERS. Not at all, and we have had a lot of commendatory statements.

Mr. WERDEL. Today, here in Washington, there is a growing feeling about the promises that have been made by the President during the last campaign, which had the country a little bit stumped. I will ask you this, if he got on the train and went out to stump the country again, do you think he would find the Grange people believing in this policy?

Mr. SANDERS. I think the Grange policy would be unchanged if that occurred; I do not think it would have anything to do with our policy.

Mr. WERDEL. You think that the Grange people generally believe in this policy as set out in your brochure, even today?

Mr. SANDERS. I am sure that if the Grange were called on—individual granges as well as the national—I believe we would again pass the resolution which reads that we believe the enactment of the Taft-Hartley Act has had a corrective effect on labor and management disputes. We favor such modifications in the act as may be necessary to correct abuses or weaknesses that are shown to exist.

Mr. WERDEL. That is all.

Mr. BAILEY. Thank you, Mr. Sanders.

The committee will stand recessed until 1:45, at which time the committee will be pleased to hear Mr. Haley, of the National Coal Association, and Mr. Moody, of the Southern Coal Operators.

(Whereupon at 12:35 p. m. the committee recessed until 1:45 p. m. of the same day.)

AFTERNOON SESSION

(Pursuant to recess, the subcommittee reconvened at 1:45 p. m.)

Mr. KELLEY. The committee will be in order, please.

Mr. HALEY, of the National Coal Association, and Mr. Moody, president of the Southern Coal Producers' Association.

I think we will have you sit together at the table, and then the members can direct their questions to either one.

Mr. Haley, you are first, I think.

Mr. HALEY. Yes, sir.

Mr. MOODY. I am sorry, Mr. Chairman, but I did not quite understand. You want us both here at the same time?

Mr. KELLEY. That is right, and then when the members are questioning, they can direct their questions to either one.

Mr. MOODY. In other words, he will make his presentation and then I will make mine?

Mr. KELLEY. Yes, that is right, because you both represent coal producers. And am I correct when I say that the National Coal Association embraces also members of the Southern Coal Producers' Association?

Mr. HALEY. That is right. The members of the National Coal Association may also well be members of the Southern Coal Producers.

Mr. KELLEY. That is what I mean.

Mr. HALEY. But there may be coal companies which are members of the Southern Coal Producers' Association and not members of the National Coal Association.

Mr. KELLEY. They are not members of your association?

Mr. HALEY. That is correct.

Mr. KELLEY. Well, the reason is that you both represent coal producers.

Mr. MOODY. I have no objection, sir. I was just trying to understand the procedure.

Mr. KELLEY. Yes. That is what we usually do when members of similar organizations are here.

When you are ready, Mr. Haley, you may proceed.

Mr. HALEY. Thank you very much, Mr. Chairman.

TESTIMONY OF JAMES W. HALEY, SECRETARY AND GENERAL COUNSEL, NATIONAL COAL ASSOCIATION

Mr. HALEY. My name is James W. Haley. I am secretary and general counsel of the National Coal Association. The National Coal Association is the trade association of the bituminous coal producing industry, representing the owners and operators of bituminous coal mines in the United States. Its membership includes segments of the coal-producing industry in each of the major coal-producing States in the Nation and comprises approximately 75 percent of the total commercial coal production in this country.

As one of the spokesmen for the important bituminous coal mining industry, I express my appreciation to the committee for permitting our organization to present the views of the industry with respect to any proposed change in the national labor policy.

The uninterrupted and efficient production of coal is a vital factor in the national economy. Any change in the national labor policy which would affect this factor is at once the concern of the industry and the Nation as a whole.

I should like to say, Mr. Chairman, that while I appear here as a representative of the bituminous coal mining industry, it is my feeling that in this particular problem, the best interests of the bituminous coal mining industry are also in the direction of the best interests of the Nation as a whole.

I will not attempt to read in detail my complete statement.

Mr. KELLEY. We will reproduce your statement in the record, anyhow, so if you wish to summarize it, that is fine.

Mr. HALEY. That is exactly what I should like to do.

(The statement referred to is as follows:)

STATEMENT OF JAMES W. HALEY, SECRETARY AND GENERAL COUNSEL, NATIONAL COAL ASSOCIATION, CONCERNING PROPOSED NATIONAL LABOR LEGISLATION

My name is James W. Haley. I am secretary and general counsel of the National Coal Association. The National Coal Association is the trade association of the bituminous coal producing industry, representing the owners and operators of bituminous coal mines in the United States. Its membership includes segments of the coal producing industry in each of the major coal producing States in the Nation and comprises approximately 75 percent of the total commercial coal production in this country.

As spokesman for the important bituminous coal mining industry, I express my appreciation to the committee for permitting our organization to present the views of the industry with respect to any proposed change in the national labor policy.

The uninterrupted and efficient production of coal is a vital factor in the national economy. Any change in the national labor policy which would affect this factor is at once the concern of the industry and the Nation as a whole. Therefore, the views of the bituminous coal mining industry with respect to H. R. 2032 or any proposed change in the present national labor policy, should be of material assistance to the committee in determining the appropriate policies to be established as a result of these proceedings.

It has been the experience of our industry that the Labor-Management Relations Act of 1947 has served to balance the relative economic powers of management and labor, thereby bringing about greater equality around the collective bargaining table. There is no question but that the act has been effective in preserving the public interest in settling national emergency strikes.

It is equally true that some provisions of the present law probably should be revised or eliminated.

My statement, however, deals primarily with three matters of special importance to the coal industry. We feel H. R. 2032 should be amended by (1) adding thereto a revised section 302 (c) (5), title III, of the Labor-Management Relations Act of 1947, so as to remove the subject of welfare funds from the field of required collective bargaining, (2) adding thereto sections 2 (11) and 14 (a), title I, of the Labor-Management Relations Act of 1947 with respect to the union status of supervisory employees, and (3) adding thereto sections 206, 207, 208, 209, and 210, title II, of the Labor-Management Relations Act of 1947, with respect to injunctive powers of the Government in national emergencies.

H. R. 2032 SHOULD BE AMENDED TO REMOVE THE SUBJECT OF WELFARE FUNDS FROM THE FIELD OF REQUIRED COLLECTIVE BARGAINING

It is noted that the bill being considered by the committee would repeal the provisions of the 1947 amending act concerning payments into union welfare funds. We believe this subject is of such magnitude and importance as to warrant further very serious study by your committee with a view to recommending that Congress enact legislation which would be an improvement over the 1947 amendments.

Illustrative of the problem in this field is the experience of the bituminous coal mining industry. Since June 1, 1946, the bituminous coal mine operators have paid into the so-called welfare and retirement fund over $150,000,000. Currently the coal operators are paying into this fund more than one-quarter of a million dollars per day. Expressed another way, the coal industry is paying into the fund approximately $1.30 per man per day worked. It should be kept in mind that this $1.30 per man per day worked which employers in the bituminous coal mining industry are today required to pay into the welfare and retirement fund is in addition to contributions which employers in the bituminous coal mining industry must pay into the Federal social security fund.

We think Congress must seriously consider the effect of union welfare funds in connection with the over-all social security program. It must be remembered that payments made out of such funds are for the exclusive benefit of union members. Unless Congress takes appropriate action in the field, it is a foregone conclusion that the central union welfare fund will extend into many other industries, if not in every industry and every plant which is unionized.

If the $1.30 per union member per day worked levy which now prevails in the bituminous coal-mining industry is carried over and applied to union members throughout the country, the result will be an over-all levy on the American people of many billions of dollars annually for the exclusive benefit of the 15 or 16 million union members.

The question for Congress to resolve is: Should the American citizens be called upon to bestow special benefits upon a privileged group? Expressed another way, the question is: Should the American people be called upon to pay for a special social security system for union members which will be in addition to the social security benefits made available to citizens generally under the Federal social security laws? The issue before Congress is all the more important at this time because of the general feeling that the Federal social security program will or should be extended and liberalized.

What Congress should do about the central union welfare fund is indeed a serious problem. Beyond doubt it is so important that I question whether there will be any more important domestic issue before the Congress in the next several years. Obviously a practicable, sensible, and desirable immediate solution would be to amend the law to remove the central union welfare fund from the field of required bargaining under the law. I strongly urge that your committee give most serious consideration to this whole problem and that you recommend, and work for, amendment of the law to make it clear that discussion of such funds is not within the field of required collective bargaining.

H. R. 2032 SHOULD BE AMENDED BY LIMITING THE OBLIGATION OF EMPLOYERS TO RECOGNIZE SUPERVISORY EMPLOYEES FOR COLLECTIVE BARGAINING PURPOSES

Perhaps the most salutary portion of the Labor-Management Relations Act from the standpoint of business, the coal mining industry and from the standpoint of the Nation and the part of the act for which we today most strongly implore retention, is sections 2 (11) and 14 (a) of title I, dealing with the union status of supervisory employees. The importance of this section of the statute, while indicated in all industry and in many other specific industries, is no doubt nowhere so strongly emphasized as in the bituminous coal mining industry. While the coal industry has been the industry in which this problem has risen to most severe proportions, it could and no doubt would in time assume equally serious importance in other particular industries and in industry in general, unless adequate statutory safeguards are present.

The importance of the provisions dealing with union status of supervisory employees is emphasized by the fact that prior to enactment of the 1947 amendments there had been for a number of years almost continual strife, controversy and strikes with resultant impairment of the national economy as a result of issues growing out of attempts or would-be attempts to organize supervisory employees in the coal industry. On the other hand, as the record will show, upon enactment of the amendments in 1947 it was possible amicably to settle this serious controversy to the benefit of all concerned—the public generally, the bituminous coal mining industry, the supervisory personnel, and the production employees in the mines. The long and costly history of this controversy for the last 10 or 12 years is set forth in exhibit B attached to our statement filed with the Senate Committee on Labor and Public Welfare on February 22, 1949.

An indication of the magnitude of the problem inherent in attempting to resolve the controversy growing out of attempts to unionize supervisory employees is shown by the record of cases involving the issue handled by the National Labor Relations Board. From 1944 through June of 1948 the Board processed 688 petitions for certification of units of supervisors. Of these petitions several hundred were pending before the Board when the 1947 amendments to the Wagner Act were adopted by Congress. These cases were dismissed as a result of the 1947 amendments. It should be borne in mind also that the Supreme Court upheld the certification of units of supervisors for the first time on March 10, 1947 in the Packard case. Unionization of supervisors was given tremendous impetus by that decision, and undoubtedly if the 1947 amendment had not intervened, cases in this field which the Board would have been called upon to process would have run into the thousands. It is certainly obvious that if the 1947 amendments are repealed, this controversy will be put right back where it was in 1947 at the expense of labor peace, which is the real objective of management, labor and the public.

In order fully to appreciate the relative importance of supervisory employees to the bituminous coal mining industry, it is necessary to know something of coal mine operations and the duties and responsibilities of supervisory employees.

Generally speaking, coal mines fall into three classifications. In a strip mine the earth and rock lying on top of a seam of coal are removed by shovels and the coal extracted at the surface. In a shaft mine a vertical hole is driven down into the coal seam, and the coal mined by working outward from the bottom of the shaft. In a drift mine, sometimes also referred to as a slope mine, the mine entrance is in the side of a hill, and the coal is taken from the seam inside of the entrance in relatively the same way that it is extracted from around the base of a shaft. While there is no substantive difference in the nature of the duties and obligations of supervisory employees in the three types of coal-mining operations, the references which follow are generally to supervisory employees in shaft and drift mines.

With the exception of hoisting, the plan of operation in a shaft and drift mine is approximately the same. As coal is extracted from a mine the so-called working face or working place retreats, the direction of retreat being determined by what is deemed to be most economical and effective mining operations.

As the working face retreats, when coal is mined it must be taken to the outside or to the bottom of the shaft to be hoisted. For that transportation every mine requires a complete operating railroad system. It might be explained that there are some mines which use belt coal-conveying systems, but the large majority use rail transportation. The point where the actual mining is being carried on is referred to as a section, and a mine may have from one to a score or more of operating sections with many miles between the individual sections.

Each section can properly be referred to as a mine in itself for at each section there are encountered all of the problems inherent in mining and each must be supervised as a complete installation in itself.

Some indication of the size of a relatively large mine can be gained from the fact that it may have 50 miles of working track, and its equipment may consist of 50 electric locomotives and over 1,200 mine cars. The actual mining and high-speed transportation of coal to the surface is a highly specialized and complex operation, one in which the responsibilities of management are absolute and definite.

When development work goes forward, when the coal is undercut, when it is blasted, when it is loaded, when the timbering is done, when fresh air is supplied, and when the coal is transported to the surface, the responsibility of management follows.

Normally every sizable operating coal mine has many necessary adjuncts. The tipple, which is close to the mine mouth, prepares the coal for market by cleaning and sizing it. There may be a power plant for the generation of electric power; a woodworking plant and sawmill; a large blacksmith shop; and a modern machine shop; and, in special cases, a beehive coke plant.

To carry out the responsibilities inherent in such complex operations, management is represented by supervisory employees holding various titles. But whatever the title held by the employee, his duties in the management field are dictated by conditions and the nature of his responsibilities. In the paragraphs which follow I shall set forth the duties and responsibilities of these employees who exercise supervisory and managerial functions.

It can readily be seen that an operating coal mine is an institution of sizable proportion and is a place where the representatives of management cannot be in immediate and close contact with each other and with top-management levels. This is obviously true because of the isolation of their places of work. The conduct of a going mine absolutely necessitates the maintenance of a considerable number of men in the mine to represent the employer in all operating problems, including the preservation of life and health and the protection of property. Men who have charge of the operating facilities and on whose shoulders fall the burdens of management must, too, necessarily represent the employer, with full authority, in all the employer's relations with his employees.

It is now my purpose to present to you a rather detailed account of the responsibilities of supervisory employees who represent and act for management and ownership in the coal industry. As I have told you, the very nature of their duties is such that their authority must be instant and absolute for the mining of bituminous coal does not lend itself to on-the-spot round-table discussions by supervisory personnel. The supervisory employee in the coal industry, and as contemplated in the 1947 amendments to the labor law, has the managerial duty and responsibility to—

(1) Make sure that all ventilating apparatus, airways, etc., are properly constructed and maintained so as to direct fresh air to all the working faces;

(2) Direct and see that the roof of each working place is properly secured and that no person is permitted to work in unsafe places;

(3) Assume responsibilty for a sufficient supply of props and timber;

(4) See that coal is blasted in accordance with State laws;

(5) See that as the miners advance all dangerous roof is taken down or carefully secured and with authority to discharge anyone neglecting to carry out his instructions;

(6) Examine in his section all of the air courses and roads and all of the openings that give access to old workings or falls and make a record thereof;

(7) Visit each working place during each shift, which visit must be while the employees are at work;

(8) Pass upon the competency of persons he has placed to work in his section and truly see that such persons properly perform their work without endangering the lives of coemployees, and if an employee is not competent to perform the duties assigned to him, he must be assigned to work for which he is qualified, or discharged (here it will be seen that the real power of employment and assignment rests absolutely with the man in charge of the section of the mine);

(9) See that there is no accumulation of gas in his section—and if gas is present see that it is removed;

(10) Provide for proper drainage of the working places;

(11) Carefully supervise the approach of employees and active working places to abandoned sections;

(12) See that the fire bosses employed in his section have truly carried out their duties;

(13) See that all safety blocks, safety switches, and other appliances used to improve the safety of the mine are properly used and protected; and when his orders in this regard are ignored he may suspend or discharge offenders;

(14) Truly report at the end of each shift the general condition as to safety in all working places in his section.

Moreover, in most if not all States, supervisory employees are required to pass an examination, secure a certificate, and carry out the laws of the State and be responsible therefor. Also they now must be familiar with the Federal safety code and its application.

Under the wage agreements in force in the industry, the supervisor exercising managerial functions has duties and responsibilities as follows:

(1) He must check the loading of impurities and has complete charge of face preparation.

(2) He has charge of car distribution and is to see that each employee receives his fair share of cars.

(3) He supervises motormen when gathering loaded cars, their assembly into trips or trains and movement to the outside.

(4) He is authorized to make contracts providing the method and amount of payment for work not specifically covered by wage agreements. Decisions as to these contracts must ordinarily be made on the spot and the supervisor carries full responsibility of management.

(5) He represents the operator in the first step of the settlement of all grievances which an employee in his section may have. This is a contract provision and in such case he has full authority to bind the operator.

(6) He has authority to discharge any employee who absents himself from his work two days without permission.

In conclusion, with regard to the above-named duties, it may well be said that such supervisory personnel have full charge of the working forces in their sections. They direct all activities, enforce all rules, and take disciplinary action where necessary. I want, however, to call the committee's attention to the fact that in addition to the duties required by law and by wage agreements, supervisory personnel have many other duties which are performed as a representative of management. Such other duties vary from mine to mine depending upon local conditions and varying policies, including:

(1) Preparing original time record of hourly employees;

(2) Seeing that supplies are used efficiently;

(3) Recovering supplies and other equipment and material from abandoned or worked-out portions of the mine;

(4) Instructing employees as to their duties and responsibilities;

(5) Making of time studies;

(6) General supervision of all items of production cost;

(7) Supervision of all other matters in the section connected with the production of coal and application of the operator's policy.

From the above recitation it would seem to be apparent that it is impracticable, if not impossible, for the owners and operators of coal mines to carry out the many duties and obligations imposed on them by law, by the contractual obligations they have with the union, and by the financial laws of the States in which they are incorporated, if their direct representatives and the persons to whom they have delegated their obligations become a part of the collective bargaining unit of the employees.

It is emphasized that the magnitude, scope, and area covered and functions performed daily in a coal mine require the delegation of operator's responsibilities, duties, obligations, and powers to a sufficient number of men to carry out all of these immediately, as if the owner or operator himself were present to make each decision; that any restriction upon this right will impair efficiency of operations, break down safety rules and regulations, increase fatal and nonfatal accidents, and increase the cost of production of coal beyond proper obligations.

It is also emphasized that dependent upon the size of the mine, location of its production employees above and below ground, necessary auxiliary operations, the proper number of supervisory personnel to carry out the owner's or operator's policies as if he were present must be maintained in a position solely responsible to the owner or operator; and the judgment of such supervisory personnel must not be attacked and weakened by coercion, intimidation, direction or authoritative influence from any outside source or person, including any union, but their loyalty, duty, and fidelity within the law of the land must be solely to management.

On March 9, 1943, in his opening statement to the wage conference, Mr. John L. Lewis announced that he proposed to bargain for and include in the wage contract provisions dealing with the wages, hours, and working conditions of supervisory forces in the coal mines. He demanded that the contract contain a provision that "the term 'mine worker' as used in this agreement shall include all persons inside or outside the mine, except the superintendent."

This demand of the United Mine Workers of America, while not acceded to in the 1943 negotiations, precipitated an intense organizing struggle within the bituminous coal-mining industry. This intense campaign culminated in a general strike in the late summer and early autumn of 1945. Strikes over the supervisory organization issue in the latter part of 1945 caused the loss of approximately 20,000,000 tons of bituminous coal. Certainly if the 1947 amendments to the labor law had been in effect in 1945 this strike would have been averted.

In spite of the long and involved record pertaining to the issue of organization of supervisory employees, it is, when reduced to fundamentals, a relatively simple problem. As you gentlemen well realize, this matter was considered exhaustively in the preceding Congress, and I believe a most realistic treatment of the issue was determined. Actually, I wonder if this controversial issue could ever be resolved around a more realistic definition than the definition which appears in the present statute. It would seem that the definition in the present Act has worked to the benefit of labor as well as management. Certainly it has clarified the issue.

When two parties, labor and management, meet around or across the bargaining table they at that time represent conflicting interests. This principle was early recognized and effectuated in the Wagner Act and in interpretations thereof in the outlawing of so-called company unions. In the practical course of negotiating a wage agreement, as in the coal industry, the two parties meet and effectuate an understanding concerning wages, hours and working conditions. They do not, and cannot, assume to negotiate or legislate or control the manifold other problems and issues involved in the running of a major business. That duty and responsibility is reposed in the directors of the corporation and, by the policies so detemined, are executed by the officers and supervisors of the corporation who are responsible to the directors, not the wage negotiators. The line of responsibility flows through the directors, the officers, and down through the subordinate supervisory officials of the corporation.

Any person who in a substantial degree represents management of a business, including negotiation of the details of working arrangements within the mine, should and must be free from the activity of union membership; he must be free from union domination and control; and he must be free from obligation of obedience to union direction.

At this point your particular attention is invited to the obligation taken by new members of the United Mine Workers of America, which, of course, includes supervisory employees who join the union. The obligation is:

"I do sincerely promise, of my own free will, to abide by the laws of this union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

"To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America." [1]

An individual cannot serve two masters. In the conventional American business enterprise where everyone on the pay roll of the company is classed as either management or labor, it is absolutely necessary to distinguish between the two where there is an operative bargaining union. An examination of the above oath required of all union members leaves no room for doubt as to where the supervisory employees' first loyalty is pledged irrespective of fact or circumstances—the union.

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[1] Authority: Taken from Constitution of the International Union, United Mine Workers of America, effective November 1, 1948, adopted at Cincinnati, Ohio, October 11, 1948.

In dealings with the employer, supervisory personnel will be either labor or management. Certainly to say that a supervisor could properly function as an agent of management in dealing with subordinate employees and at the same time be a union representative is just as absurd as to say that a lawyer could effectively represent both sides in a lawsuit.

Under the way our management and labor unions have come to operate, the allegiance of the individual must be on one side of the collective-bargaining table or the other. If this is not true, collective bargaining would be a mockery, since the parties could not be adequately represented, particularly in an industry like the bituminous coal-mining industry where the operations and working places are widely separated and involve as a general rule small working crews working independently in places far removed from other units and other management.

. For those reasons it is essential that the independence of supervisors in the coal industry as representatives of management must be maintained all the way down the line. The people who make the contract in the bituminous coal mining industry do not conclude and resolve the bargaining process by any means. The contract itself is merely the guiding standard. Bargaining by and between management in the mines goes on daily and even hourly between the supervisors and the members of the union. It is manifest that the supervisors must at all times maintain complete loyalty to management, and they should not be in any union for collective bargaining purposes—to put them in this position is certainly putting them in a position of bargaining with themselves.

If there is a mining town containing 100 men working in a mine and 93 of them are members of the United Mine Workers of America and the remaining 7 supervisory employees are members of that union or any other union, is it not easy to see that the 7 supervisors would be under the complete domination of the union point of view? This would certainly be true if they were members of the same union as the production employees, and it would probably be true if they were members of a different union. Moreover, if they were members of a different union, the seven supervisory employees could effectively strike the mine, and all of the production workers, whether or not in sympathy with the striking supervisory employees, would be required by law to remain outside of the mine; and the production workers thus prevented from work would probably be termed unemployed for purposes of unemployment compensation acts with resultant serious economic consequences to the company, to themselves, and to the public.

H. R. 2032 SHOULD BE AMENDED TO EMPOWER THE GOVERNMENT TO ENJOIN NATIONAL EMERGENCY STRIKES

It is submitted that the record made before this committee, the record compiled in the executive branch of the Government and in the courts, added to the conflicting statements of authorities on the subject, compel a conclusion by this committee that it should recommend retention of the national-emergencies sections of the present law.

So far as I have noticed, no responsible official of the Government has expressed the opinion that the Federal Government should be without the authority specifically spelled out in sections 206 through 210 of title II of the Labor-Management Relations Act of 1947. The only difference of opinion appears to be whether it is necessary to have the specific language in the statute. I strongly support the view that it is necessary to have the authority spelled out in the statute. I am sure, however, that any reasonable man would concede that whether or not it is necessary, it is highly desirable. The executive branch of the Government should not be put in the position of doubt as to its power to protect the national health and safety.

I am very quick to concede, of course, that the powers of the executive branch to deal with national emergencies are very great, as at least one of our leading law authorities has stated. But any lawyer and any citizen must realize that the power of the executive branch of the Government under our Constitution to deal with any situation is, at least to a certain extent, abridged by intervening action of Congress. The right of the Federal Government, without specific congressional authority, to proceed in the courts in a national-emergency labor strike would not be so clouded if there had not been intervening acts of Congress. Congress, having placed certain limitations on the courts in dealing with labor disputes, must now, in my judgment, in order to protect the national health and safety either (1) withdraw all of the limitations heretofore placed on the courts in this field, or (2) specifically define the various powers and authorities within the statutory framework.

We are not today advocating, and the committee is not considering, a proposal to remove all of the special statutory rights bestowed upon labor by acts of Congress. It therefore follows that the Congress and this committee, if they are to discharge their responsibilities to a great majority of the citizens of this Nation, must protect and spell out the right of the executive branch to act in national emergencies growing out of labor disputes.

The meaning and effect of the national-emergencies section of the Labor-Management Relations Act are nowhere set forth more succinctly or in more meaningful fashion, indicating not only the present purpose of the law but also indicating what the situation would be without the 1947 amendments, than in the following statement taken from the brief filed last year in the United States Court of Appeals for the District of Columbia Circuit in the case brought by the Government against John L. Lewis and the United Mine Workers of America as a result of the 1948 strike in the bituminous coal mines:

"The setting of the national-emergencies provisions of this act is expressly cast in those situations where a strike will 'imperil the national health or safety.' Even in the absence of legislative authorization, courts of equity have the power to issue injunctions under such circumstances. (*In re Debs*, 158 U. S. 564 (1895)). In enacting this statute, Congress has in effect done no more than reinstate the basic principle of the Debs case, *freed from intervening legislative limitations and restrictions*." [Italics supplied.]

Is it not significant that the United States Government would, faced with a serious and realistic application of the 1947 amendment, so clearly indicate the true meaning and impact of the statute? Your particular attention is invited to the part of the quotation which I have italicized, reading "freed from intervening legislative limitations and restrictions." This quotation from the Government's own brief clearly points out what is so obviously true—that Congress was merely removing part of the immunity which it had previously bestowed upon labor unions.

We see much in the press and elsewhere to the effect that the national-emergencies sections of the statute reimpose labor law by injunction. Even slight reflection on the factual situation will indicate that this is not so. Under the national-emergencies sections of the present law, it should be ever kept in mind that the injunctive process is available not to any corporation, employer, or civilian, but only to the Attorney General of the United States, and he may proceed only at the direction of the President of the United States.

If ever there were a section of law enacted with due safeguards to all that would be affected by its application, the national-emergencies section of the Labor-Management Relations Act of 1947 is such a section. The United States Government in filing its brief in the Court of Appeals in the 1948 bituminous-coal strike cases referred to above explains the injunctive section of the law as follows:

"Section 208 of the act provides that the Attorney General shall petition for an injunction only upon being directed to do so by the President. The President in turn may determine to give such direction only after convening a board of inquiry in a situation in which in his opinion a threatened or actual work stoppage affecting at least a substantial part of an entire industry engaged in interstate commerce will, if permitted to occur or to continue, imperil the national health or safety. Section 208 further provides that injunctive relief shall be granted only if the court finds that the threatened or actual strike or lock-out '(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and (ii) if permitted to occur or to continue, will imperil the national health or safety'."

In the next paragraph in its brief the United States Government states with reference to section 208:

"The provisions of law are clearly worded, serve an essential purpose * * * are reasonable in nature."

Certainly I am not one to quarrel with the Attorney General and his able assistants in this observation. Nor do I see how any lawyer, or any citizen, can in good logic and good conscience quarrel with the Government's statement. I am merely agreeing with President Truman and his lawyers that the national-emergencies sections of the present law "serve an essential purpose" and "are reasonable in nature." If that is the opinion of the executive branch of the United States Government under fire in an actual case, I do not see any reason in this world why this committee or any Congressman could ever be convinced that he should recommend repeal of this section of the law.

The fact that it is the Government itself which, after elaborate preliminary and safeguarding steps, seeks the injunction, should be sufficient to allay any feeling that the power will be abused. In this regard it is significant to note that no labor leader and no Government official has come before this committee and said that the Government has abused its power under the statute. The reason that no one has ever expressed any such fear is obviously because no one has or could have any fear that such would be the case.

Attached to this statement as exhibit A is a table showing the major strikes in the bituminous coal mines since 1935. One purpose of exhibit A is to show that since the industry has been so completely unionized, major paralyzing strikes take place frequently. Another purpose in including exhibit A with my statement is to demonstrate that the 1947 amendments to the labor law have not unduly impinged upon the economic weapon of the strike available to labor unions, even in a Nation-wide shut-down, since it will be noted from the exhibit that the Nation-wide strike in the bituminous coal industry in 1948 lasted for 40 days before it was terminated as a result of the injunction which was issued on petition of the Attorney General acting at the direction of the President of the United States.

EXHIBIT A.—*Major bituminous coal strikes, 1935 through 1948*

[Unionization of the mines has been virtually complete since 1933]

Beginning date	Approximate duration	Workers involved	Man-days idle
Sept. 23, 1935	1 week (longer in some areas)	400,000	3,171,000
Apr. 1, 1939	1½ months	330,000	6,920,000
Apr. 1, 1941	1 month (1½ months in some areas).	318,000	5,348,000
Sept. 14, 1941	14 working days	53,000	666,000
Nov. 17, 1941	1 week	115,000	300,000
May 1, 1943	3 days in May; [1] 10 days in June; 6 days in November.[1]	360,000	7,048,000
Apr. 3, 1945	10 days [1]	100,000	645,000
Sept. 21, 1945	26 days	209,000	3,125,000
Apr. 1, 1946	59 days [1]	340,000	14,620,000
Nov. 21, 1946	17 days [2]	335,000	4,000,000
Apr. 2, 1947	17 days	300,000	3,552,000
Mar. 15, 1948	40 days [2]	320,000	8,610,000

[1] Terminated by seizure of coal mines by U. S. Government.
[2] Terminated by Government injunction.

Mr. HALEY. In my statement, I shall deal only with the three matters which are of the most special importance to the bituminous coal mining industry and to the best interests of the Nation.

We feel H. R. 2032 should be amended by (1) adding thereto a revised section 302 (c) (5), title III, of the Labor-Management Relations Act of 1947, so as to remove the subject of welfare funds from the field of required collective bargaining, (2) adding thereto sections 2 (11) and 14 (a), title I, of the Labor-Management Relations Act of 1947 with respect to the union status of supervisory employees, and (3) adding thereto sections 206, 207, 208, 209 and 210, title II, of the Labor-Management Relations Act of 1947, with respect to injunctive powers of the Government in national emergencies.

I shall deal first with my suggestion that the present labor act, the Taft-Hartley Act, be amended by repealing the section dealing with central union welfare funds and substituting in lieu thereof a simple provision to the effect that the central union welfare funds shall not be subject to required collective bargaining under the law. I might say in passing that I believe a somewhat similar position, at least in part, was taken by the United Mine Workers before the Senate committee.

It is noted that the bill being considered by the committee would repeal the provisions of the 1947 amending act concerning payments into union welfare funds. We believe this subject is of such magnitude and importance as to warrant further very serious study by your committee with a view to recommending that Congress enact legislation which would be an improvement over the 1947 amendments.

I should just like to call the attention of the committee and the Congress to the fact that since June 1, 1946, the bituminous coal mine operators have paid into the so-called welfare and retirement fund over $150,000,000. Currently the coal-mine operators are paying into this fund more than one-quarter of a million dollars per day. Expressed another way, the coal industry is paying into the fund approximately $1.30 per man per day worked. It should be kept in mind that this $1.30 per man per day worked which employers in the bituminous coal mining industry are today required to pay into the welfare and retirement fund is in addition to contributions which employers in the bituminous coal mining industry must pay into the Federal social-security fund.

The problem before Congress, of course, is coordinating such matters with the over-all social-security program. There are hearings going on now before the Ways and Means Committee looking to liberalization of social-security payment and also toward extending greatly the coverage of the act.

I strongly urge that your committee give most serious consideration to this whole problem and that you recommend, and work for, amendment of the law to make it clear that discussion of such funds is not within the field of required collective bargaining. Of course, if this matter extends into other industries and all industries are required to pay something approximating $1.30 per employee per day worked, it would be a very serious matter from the standpoint of the national economy, and would tend, of course, to set up a special class of beneficiaries under our broad concept of social security.

It should be remembered that the benefits under this are available only to union members, and certainly if private funds of this nature and magnitude are permitted to thrive, it will, perforce, bear unduly on the Federal social-security program.

Perhaps the most salutary portion of the Labor-Management Relations Act from the standpoint of business, the coal-mining industry and from the standpoint of the Nation and the part of the act for which we today most strongly implore retention, is sections 2 (11) and 14 (a) of title I, dealing with the union status of supervisory employees. The importance of this section of the statute, while indicated in all industry and in many other specific industries, is no doubt nowhere so strongly emphasized as in the bituminous coal mining industry. While the coal industry has been the industry in which this problem has risen to most severe proportions, it could and no doubt would in time assume equally serious importance in other particular industries and in industry in general, unless adequate statutory safeguards are present.

The importance of the provisions dealing with union status of supervisory employees is emphasized by the fact that prior to enactment of the 1947 amendments there had been for a number of years almost continual strife, controversy, and strikes with resultant impairment of the national economy as a result of issues growing out of attempts or would-be attempts to organize supervisory employees in the coal industry. On the other hand, as the record will show, upon enactment of the amendments in 1947 it was possible amicably to settle this serious controversy to the benefit of all concerned—the public generally, the bituminous coal mining industry, the supervisory personnel, and the production employees in the mines.

I would like to skip over now. I have dealt quite extensively in my statement with the problem of union status of supervisory employees, and I hope before the union acts definitely on this important problem, it will give serious thought to the problems which I suggest and which I shall deal with in my statement. I have outlined in my statement at some length the nature of the coal mines themselves and the nature and extent of the duties performed by the supervisory personnel on behalf of management.

It is emphasized that the magnitude, scope, and area covered and functions performed daily in a coal mine require the delegation of operator's responsibilities, duties, obligations, and powers to a sufficient number of men to carry out all of these immediately, as if the owner or operator himself were present to make each decision; that any restriction upon this right will impair efficiency of operations, break down safety rules and regulations, increase fatal and nonfatal accidents, and increase the cost of production of coal beyond proper obligations.

It is also emphasized that dependent upon the size of the mine, location of its production employees above and below ground, necessary auxiliary operations, the proper number of supervisory personnel to carry out the owner's or operator's policies as if he were present must be maintained in a position solely responsible to the owner or operator; and the judgment of such supervisory personnel must not be attacked and weakened by coercion, intimidation, direction or authoritative influence from any outside source or person, including any union, but their loyalty, duty, and fidelity within the law of the land must be solely to management.

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In spite of the long and involved record pertaining to the issue of organization of supervisory employees, it is, when reduced to fundamentals, a relatively simple problem. As you gentlemen well realize, this matter was considered exhaustively in the preceding Congress, and I believe a most realistic treatment of the issue was determined.

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This is the conclusion we reached and the matter which we strongly urge upon the committee.

Any person who in a substantial degree represents management of a business, including negotiation of the details of working arrangements within the mine, should and must be free from the activity of union membership; he must be free from union domination and control; and he must be free from obligation of obedience to union direction.

At this point your particular attention is invited to the obligation taken by new members of the United Mine Workers of America, which, of course, includes supervisory employees who join the union.

I should like to read here the obligation:

> I do sincerely promise, of my own free will, to abide by the laws of this union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.
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> To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.

Certainly an individual cannot serve two masters. In the conventional American business enterprise where everyone on the pay roll of the company is classed as either management or labor, it is absolutely necessary to distinguish between the two where there is an operative bargaining union. An examination of the above oath required of all union members leaves no room for doubt as to where the supervisory employee's first loyalty is pledged irrespective of fact or circumstance—the union.

If there is a mining town containing 100 men working in a mine and 93 of them are members of the United Mine Workers and the remaining seven supervisory employees are members of that union or any other union, is it not easy to see that the seven supervisors would be under the complete domination of the union point of view? This would certainly be true if they were members of the same union as the production employees, and it would probably be true if they were members of a different union. Moreover, if they were members of a different union, the seven supervisory employees could effectively strike the mine, and all of the production workers, whether or not in sympathy with the striking supervisory employees, would be required by law to remain outside of the mine; and the production workers thus prevented from work would probably be termed unemployed for purposes of unemployment compensation acts with resultant serious economic consequences to the company, to themselves, and to the public.

Mr. Chairman and members of the committee, that completes my statement with respect to the union status of supervisory employees. The third subject in which we express keen interest, that of the power of the Government in national emergencies, I have dealt with at some length in my statement, and do not propose to repeat it here orally unless you should like me to do so.

Mr. Kelley. Mr. Moody, you may proceed with your statement.

Mr. Moody. Thank you, sir.

TESTIMONY OF JOSEPH E. MOODY, PRESIDENT, SOUTHERN COAL PRODUCERS' ASSOCIATION

Mr. Moody. I would like to say, gentlemen, that we would concur in what Mr. Haley has said, and you will find in my statement, we do not duplicate the comments and the treatment that Mr. Haley has given in his. The main difference in the two associations is, of course, that the Southern Coal Producers' Association is primarily an association for labor relations work. The National Coal Association, of course, has a great many facets to its activities.

My name is Joseph E. Moody, and I am president of the Southern Coal Producers' Association, a position I have occupied since November 1947.

The association, created in 1941, is incorporated under the laws of West Virginia, and is composed of district associations organized on a regional basis and of individual coal companies which belong to the Southern Coal Producers' Association.

One of the principal functions and purposes of the association is to represent the bituminous-coal operators affiliated with it, either directly or by means of a regional association, for the purposes of collective bargaining. Such operators, engaged in the production of coal in Kentucky, West Virginia, Virginia, and Tennessee—produced approximately 139,975,000 tons of coal in 1948—an amount equaling about 32½ percent of the tonnage represented in the last contract negotiations. That conference resulted in a contract with the United Mine Workers of America for the greatest increase in wages ever received at any one time by the union and 100-percent increase in the contribution to the welfare fund. The successful conclusion of the conference was made possible only through certain safeguards in the Taft-Hartley law.

The coal industry faces the prospect of new negotiations soon with the United Mine Workers of America and its president, because the current agreement will expire next June 30. We feel that unless the safeguards in the Taft-Hartley law are incorporated in the administration bill and again become law, which enabled us to reach a contract in 1948, the country will again face a crisis in coal.

It is gratifying to have this opportunity to present information to the committee concerning actual experience under the Taft-Hartley Act.

I am not a lawyer and I am not qualified to discuss legal technicalities, but I have spent the last 20 years in industrial relations work in the front lines, and 20 years goes back before, well, before almost all of the present legislation concerning that most important field of activity in our great American industrial organization. Our success or failure in this effort to write a fair, equitable Labor-Management Relations Act can mean a prosperous economy for the country or confusion, hardship and strife that may eventually wreck our private-enterprise system, which is responsible for the present standing of our Nation as a leader among nations and the chief support of some of them.

I will now present to the committee not generalities, but a specific case, the conditions creating it and its solution and possible future as it was affected by action under the Taft-Hartley Act. This case bears directly on section 8 (b) and subsections (1) (B) and (3) of the act, which reads:

> (b) It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce * * * (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances; * * * (3) to refuse to bargain collectively with an employer, provided it is the representative of his employees—

and section 10 (j):

> The Board shall have power upon the issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice; to petition any district court of the United States (including the District Court of the United States for the District of Columbia), for such temporary relief or restraining order as it deems just and proper.

We believe such provisions should be incorporated in the labor bill which this committee is considering.

The basic issues involved in the case stemmed from an attempt by the union to compel employers affiliated with the Southern Coal Producers' Association to cease dealing through the association, an effort which continued over a period of time and culminated in a threatened shutdown of the bituminous coal industry in the spring of 1948.

It must be noted that for some years following the creation of the Southern Coal Producers' Association in 1941, the United Mine Workers of America recognized the association as bargaining representative for its members and affiliates and contracted with it in that capacity. Thus, the association participated, with representatives of other groups of the bituminous coal industry, in negotiating the National Bituminous Coal Wage Agreement of 1945.

The association also was party to the bargaining conferences held in 1946 which attempted to write a contract to succeed the 1945 agreement. Those negotiations deadlocked and in May 1946, to avert a work stoppage, the United States Government took possession of the bituminous-coal mines pursuant to the War Labor Disputes Act.

In May 1947, when termination of the Government seizure was approaching, Southern Coal Producers' Association sought a conference with the union for the purpose of negotiating a collective-bargaining contract for its members. The union recognized the association in that capacity and agreed to meet for that purpose. A few meetings were held and the conference was ended without a contract when the representatives of the United Mine Workers of America failed to appear for a scheduled meeting.

From that time until the middle of 1948, when the union was compelled to deal with the association by means of proceedings under the Taft-Hartley Act, the United Mine Workers of America refused to allow the association to act for its members, despite the repeated efforts of the members to secure representation through the association.

The first major union effort to compel them to drop the association as their collective-bargaining representative occurred in connection with the National Bituminous Coal Wage Agreement of 1947.

The terms and conditions of that contract were reached by means of negotiations between the United Mine Workers of America and representatives of a portion of the bitumious coal industry. In July 1947, it was adopted and executed by the remainder of the industry.

At that time Southern Coal Producers' Association was authorized by its affiliates and members to execute the contract on their behalf. In addition, the membership directed the association to attempt to secure from the union a modification of the union-shop provision contained in the contract so far as it would affect mines located in Virginia and Tennessee. This latter action was taken because the laws of those States outlaw union-shop contracts.

A conference was secured with the president of the United Mine Workers of America, at which he refused to deal with the Southern Coal Producers' Association. He insisted that its members and other operators affiliated with it would have to sign the contract individually. He refused to negotiate regarding any change in the contract to make it conform to pertinent State laws and insisted that the operators would have to sign the contract without any change whatsoever. It was made quite clear that the members of the Southern Coal Producers' Association were faced with the alternative of signing the contract individually or having their mines shut down by a work stoppage.

To avoid the threatened interruption of bituminous-coal production in the large southern segment of the industry, it was determined at a meeting of the association to comply with the union's ultimatum and the association members were authorized to sign the 1947 contract individually.

On August 22, 1947, the Taft-Hartley Act became effective, as amended. The act provides, as I outlined in the beginning of this presentation, in section 8 (b) (1) (B), that it shall be an unfair-labor practice for any union to coerce or restrain employers in the selection of their representatives for the purpose of collective bargaining, and in section 8 (b) (3) it is provided that it shall be an unfair labor practice for a qualified union to refuse to bargain with employers' representatives.

In addition, section 8 (d) of the amended statute defines collective bargaining to include the obligation to meet and confer in good faith regarding any questions arising under an existing collective-bargaining contract.

After the Taft-Hartley Act became fully operative the members of the Southern Coal Producers' Association reaffirmed the association as their collective-bargaining representative and notified the United Mine Workers of America that the association would continue to act for them in that capacity.

On March 15, 1948, as a result of a controversy between the trustees of the welfare and retirement fund, established under the National Bituminous Wage Agreement of 1947, a strike took place throughout the industry. As president of the Southern Coal Producers' Association, and chief negotiator for it, I joined with the representatives of other groups of operators and we addressed a letter to the president of the United Mine Workers of America in which we requested a return to work and offered thereupon to negotiate any dispute which might exist regarding the terms and provisions of the contract. No such meeting could be effectuated.

The Director of the Federal Mediation and Conciliation Service attempted to compose the controversy by means of a conference in which I participated as representative of the Southern Coal Producers' Association. Such meetings were equally fruitless.

On March 23, 1948, the President of the United States invoked the National Emergency provisions of the Taft-Hartley Act and established a Board of Inquiry. That Board reported on the last day of that month and on April 3, 1948—the strike still existing—the Attorney General of the United States secured from the Federal district court a temporary restraining order directing a termination of the strike and commanding the union and the operators to proceed immediately to bargain collectively with regard to the dispute existing between them.

Although it is a disgression from the main theme of this statement, it may be noted that the United Mine Workers of America and its president, subsequently were found in contempt of the court's injunction because of failure to terminate the strike, which was ended about April 23, 1948, at the time heavy fines were imposed on the union and its president, as a result of the contempt proceedings.

To resume the main theme, on April 7, 8, and 9, 1948, meetings between representatives of the various groups of bituminous coal operators party to the 1947 contract and the union were held in Washington, D. C., for the purpose of the negotiations directed by the court. Being duly authorized, I attended such meetings on behalf of the Southern Coal Producers' Association, to represent its members and affiliates.

The representatives of the United Mine Workers of America adamantly refused to permit the association to act for its members as their collective-bargaining representative or to participate in any way in the conference. Accordingly, on April 9, we filed a charge with the National Labor Relations Board charging the union and its president with unlawfully refusing to bargain and with unlawfully attempting to coerce and restrain the members of the association in the selection of their bargaining representative.

It is interesting to note that at that time we were under the order from the district court and the same injunction as the miners of southern coal named, and even under this circumstances the miners refused to recognize us.

On April 30, 1948, while that charge was pending before the National Labor Relations Board, the president of the United Mine Workers of America by letter, notified the signatories to the National Bituminius Coal Wage Agreement of 1947 that a conference would convene on May 18, 1948, to negotiate a contract to succeed that one. On the same day, as president of the Southern Coal Producers' Association, I transmitted two letters to the president of the Southern Coal Producers' Association, I transmitted two letters to the president of the union requesting a conference to negotiate a new collective-bargaining contract between the union and the operators represented by the association. Those letters were not answered.

At this point I again want to digress and mention that the letters of April 30, 1948, to which I have referred, were filed in compliance with section 8 (d) of the Labor-Management Relations Act, 1947, which requires that when the parties to a collective-bargaining agreement want to terminate or change it, they shall give the other party 60 days' notice so that a period of negotiation without interruption of production may ensue. I mention this point here because of the important role that the 60-day no strike period played in avoiding a work stoppage in the industry.

On May 18, 1948, the conference called by the union notice was convened and called to order. In accordance with past procedure at such national bituminous coal conferences, a committee on rules and procedure and a committee on credentials were selected. Representatives of the union on the credentials committee refused to accept my credentials authorizing me as president of the Southern Coal Producers' Association to bargain for its members and some nonmember companies which had authorized it, although at no time did the union challenge the authority of such credentials. The union representative maintained a flat position that the union would not deal with the association.

Accordingly, the credentials committee could not agree upon a report designating accredited representatives to participate in the conference. The union members of the committee submitted a partial report moving that all representatives except the Southern Coal Producers' Association be accredited and that the conference proceed on that basis. An operator representative on the committee then moved to amend that motion to accredit and accept the Southern Coal Producers' Association as a participant in the conference.

The day following the submission of those motions they were put to a vote and both were defeated. Thereupon, the president of the union declared that the conference could not proceed and was at an end, and the representatives of the union left.

That afternoon, May 19, 1948, we filed a supplemental charge with the National Labor Relations Board reciting the events which had taken place between April 9, 1948, and that date, and again charging the union and its president with refusal to bargain and an attempt to coerce the members of the Southern Coal Producers' Association in the selection of their bargaining representative.

On May 24, 1948, the Board issued a complaint against the union and its president, alleging such violations of the statute, and the Board's regional director, acting pursuant to section 10 (j) of the law, petitioned the United States District Court for the District of Columbia for a preliminary injunction against the violations pending final disposition of the Board's case.

On June 4, 1948, after hearing had been held on a rule to show cause issued in response to that petition, the court rendered its decision. Mr. Justice Goldsborough found that there was reasonable cause to believe that the violations were occurring and that—

> There is imminent danger and great likelihood, from the past conduct of respondents and from the history of collective-bargaining negotiations in the bituminous-coal industry that as a result of respondents' refusal to bargain collectively as aforesaid a new agreement for the bituminous coal industry or the substantial part thereof represented by association will not be negotiated by June 30, 1948, when the present agreement expires. It is reasonable to anticipate from custom and practice of the employees in the coal industry in the past that the coal miners represented by respondents will engage in a stoppage of work and that operations in the mines in which they are employed will therefore cease, on or after June 30, 1948, if no new agreement is negotiated between their employers and respondents, to succeed the agreement expiring June 30, 1948. Such cessation of production of coal not only will result in substantial and irreparable damage to the coal producers affected but may necessitate the closing or curtailment of transportation, public utilities, and other services essential to the public health and welfare, and seriously impede the free flow of commerce among the several States and with foreign countries, thereby causing immediate, substantial, and irreparable injury to the Nation.

Accordingly, the court ordered the union and its president to bargain collectively with the Southern Coal Producers' Association as the representative of the employers who had authorized it to act for them and to permit the Southern Coal Producers' Association in that capacity to participate at any meeting or conference with other employers or their representatives for the purpose of making a collective-bargaining agreement with the union.

Immediately after the court issued the order, the union offered to meet with the representatives of the bituminous coal operators, including the Southern Coal Producers' Association; negotiations then proceeded and on June 25, 1948, a contract was executed with the union, to which Southern Coal Producers' Association is a party on behalf of its members.

You will note that as a result of the proceedings a contract was consummated within the 60-day period following April 30, 1948, and no working stoppage occurred because of the dispute between the Southern Coal Producers' Association and the union regarding the right of the former to speak for its membership.

To conclude the history, as a result of meetings between the attorneys for the association and the union, the case pending before the National Labor Relations Board was settled without any hearing and Board decision. The Board dismissed the complaint because the attorney for the union and its president, acting as their agent, addressed a letter to the Board stating that the union and its president will continue to deal with Southern Coal Producers' Association as the authorized bargaining agent for its members and affiliated operators with respect to matters arising under the contract signed on June 25, 1948, and including matters relating to any extension, renewal, or modification thereof, and the negotiation of any contract to succeed that one.

As I stated earlier in my presentation, I am not an attorney and I cannot discuss the legal niceties of the situation. However, it seems to me that there are several things which are indisputably clear from the history of this case.

First. Only the statutory requirements, compelling the United Mine Workers of America to bargain collectively and prohibiting the union from coercing employers in the selection of the bargaining representative enabled the membership of Southern Coal Producers' Association to choose their representative without any outside influence.

Second. If it had not been for the availability of injunction under section 10 (j) of the Labor-Management Relations Act, 1947, there would have been no mechanism by which the union and its president could have been compelled, short of a proceeding under the national emergency sections of the above act, to accord Southern Coal Producers' Association bargaining status until final disposition of the case before the Board. It is a matter of record by Mr. Herzog before the Committee on Labor and Public Welfare of the Senate, that such cases rarely are disposed of within 1 year and thus the administrative proceedings alone would have been completely ineffective to avert a work stoppage. I need not remind the members of this committee that the United Mine Workers of America has an almost inflexible policy of "No contract, no work."

Third. It should be noted that the injunction issued by the Federal district court in no way directed the union or its president to accept or refrain from demanding any particular wages, hours or other terms or conditions of employment. The injunction merely compelled the union and its president, to sit across the bargaining table from the representative whom the members of the Southern Coal Producers' Association wanted to speak to them and to deal in good faith with that representative.

It seems fundamental to us that if collective bargaining is to work, and our national labor policy is premised on collective bargaining, the parties sitting on each side of the bargaining table must be free to choose their representative and must be under an obligation to deal in good faith with the representative selected by the fellow on the other side of the table. When either party to a bargaining relationship is free not to bargain or is free to bargain only with a person he designates, the system of collective bargaining cannot successfully operate.

It is noteworthy from the case I have related that in the span of approximately 1 year the provisions of the Taft-Hartley Act were effectively utilized to avoid one and stop another work stoppage in one of the basic industries of the country.

The bill which has been submitted to this committee, would eliminate from the Labor-Management Relations Act the union obligation to bargain collectively, would strike out the prohibition against a union restraining or coercing employers in the selection of their representative and would delete section 10 (j) permitting the National Labor Relations Board prompt recourse to the courts in order to avoid disastrous consequences which might flow from unfair labor practices. In short the bill which has been presented to the committee would eliminate all of the provisions which enabled the membership of Southern Coal Producers' Association to negotiate the contract now in effect between them and the union.

The great union organizations of this country have now reached maturity and to quote Mr. William M. Leiserson in the February 6 edition of the New York Times:

> The Wagner Act became law when labor was generally the weaker party, and its success in increasing labor's bargaining power has been spectacular. Sixteen million workers are now in organizations capable of bargaining on an equality with employers, and collective agreements govern labor relations in all the major industries of the country. This makes many employers feel abused, and in some instances their feeling is justified; some of them are now the weaker party.
>
> The remedy, however, is not to weaken unionism but rather to strengthen the bargaining power of employers in the same way that the Wagner Act did for the employees; namely, by subjecting unions to the same bargaining responsibilities that the law imposes on managements.

It is our firm belief that the Taft-Hartley Act has worked exceptionally well, much better than even its friends had hoped and far better than its enemies had predicted. It has hurt no one—even the labor leaders who cry the loudest and have a hard time pointing to any damage to their operations during its very short span of life. We do not take the position that the Taft-Hartley Act is perfect and we agree that as experience demonstrates the need for changes, they should be adopted, whether this means omission of things now in the law or strengthening of the law by added provisions.

Although our testimony goes largely to the facts involved in the case which I have outlined to you and the need for retaining the sections of the Taft-Hartley Act involved in that case, we would not wish to give the impression that we think other provisions of the act are not of great importance.

We believe experience to date indicates that the requirements for the holding of elections in union shop cases and on the last offer of employers in national emergency cases serves no useful purpose and that it should be eliminated. We also feel that the conciliation and mediation functions might well be continued at all stages of a labor dispute, and our experience indicates strongly that employers will have more confidence in the Conciliation Service, if the provision for its independent status is continued.

We are particularly interested in the preservation of the provisions of the present law with respect to supervisory personnel. We also feel from our own experience that the separation of functions between the general counsel and the Board is an important feature of the Act and should be retained. We further feel that, as already indicated, the provisions under which the General Counsel may, in proper cases, secure injunctive relief, are vital in the effective administration of any law. If these provisions were eliminated it would do employers situated as we were, little good to be told that some time, perhaps many, many months away, the Board might agree with our contentions as to the law. This would be merely closing the barn after the horse was stolen. In our judgment, rights are no good unless the law also provides adequate remedies.

It may not be Southern Coal Producers' Association the next time but the power will be there to use, whoever it may be. In the past, the usual course of events were, a demand, end of the contract, a strike, and then Government seizure. During the period 1939 to 1947 there were 13 major industry-wide strikes in the coal industry, varying in length from a few days to 6 weeks. During most of these times of strife, the supply of coal available for use was so limited that the economy of the country was seriously affected in a very short time. Since the Taft-

Hartley Act has been in effect, there has been but one strike. I will have to amend that. This was written the day before yesterday, and so what happened yesterday is subsequent to the writing of it. Today the country has the best supply of coal on hand in over 10 years, not enough for 100 days, as has been reported, but certainly enough for 40 or 50 days in the basic industries of power, light, and steel, as well as for domestic use.

During the period 1943 to 1947 the Government had to seize the mines four times and some were seized during the strike concerning the controversy over the organization of supervisors for the fifth time. In that period of years, the Government had to operate the mines 865 days, or over half of the time.

It would seem reasonable to conclude that far from having the Taft-Hartley Act precipitate this industry into confusion, it has established, for the first time in many years, an orderly procedure to encourage and develop collective bargaining.

If I can give the committee any further information with respect to any provisions of the act with which we have had experience, I shall be glad to do so.

Mr. Kelley. Mr. Moody, I take it that you have had quite a long experience in the coal business.

Mr. Moody. Not in the coal business, no. I very carefully said that my experience in the coal business dated from November 1947, sir, but I have been in other industries.

Mr. Kelley. You would not remember the conditions that prevailed before the United Mine Workers organized the southern fields, would you?

Mr. Moody. I was not there, sir. I have no first-hand knowledge.

Mr. Kelley. I mean, the condition of the miners or even the condition of any of the companies, financially. Do you think the organization, the United Mine Workers, has aided in and assisted in the improvement of the mine workers in the few years?

Mr. Moody. I do not question that.

Mr. Kelley. You do not know that?

Mr. Moody. No. I agreed with you.

Mr. Kelley. It has done some good, then?

Mr. Moody. Oh, yes. I did not say anything in my report against the United Mine Workers at all.

Mr. Kelley. For years, the Southern Coal Producers' Association was a member of the Appalachian Association, was it not?

Mr. Moody. I think there was an Appalachian Association.

Mr. Kelley. The agreement of the United Mine Workers was made by the Appalachian, of which the southern and northern coal producers and one or two others—I have forgotten which—were signatories to that contract.

Mr. Moody. Over the years, there have been various combinations. The Indiana and Illinois were separate, and then the Illinois and Ohio were separate. And then there was the combination of the Appalachian group which took in part of our association. There were several combinations.

Mr. Kelley. For several years, I know, the Appalachian Coal Association made the contract with the United Mine Workers of America, and the southern coal producers and the northern coal producers were signatories to that contract.

Mr. Moody. Yes.

Mr. Kelley. Now, I would like to know this. Why did the southern coal producers insist upon breaking away from that? Was it due to the fact that they did not like industry-wide bargaining? The northern coal operators did not have the same difficulty that you did.

Mr. Moody. I, of course, cannot answer that specifically. I was not in my present position at that time. I have heard considerable discussion of the circumstances at one time or another.

Mr. Kelley. My recollection is that that——

Mr. Moody. But I think that it may very well be, as Justice Goldsborough put it in his decision, that maybe the southern operators were a little harder bargainers than some other sections of the industry, but even being harder bargainers did not make them improper for bargaining purposes. I am only offering his comment after hearing both sides of the controversy.

Mr. Kelley. I think one of the matters in controversy was a differential.

Mr. Moody. I think that was so; yes.

Mr. Kelley. A differential in wages between the northern operators and the southern operators.

Mr. Moody. And an advantage in freight rates that had been obtained at one time or another by Pennsylvania operators, I think, had something to do with it.

Mr. Kelley. It has been my experience that the advantage in freight rates was an advantage of the southern operators. You could ship to the Lakes right past Pennsylvania at a lower rate than we could.

Mr. Moody. Mr. Chairman, I do not want to get into a technical argument on freight rates. I do not think it has anything to do with this conference.

Mr. Kelley. Only in the sense that we are trying to find a reason for the disagreement.

Mr. Moody. Yes, but it depends a lot on where you are from as to what you think of the freight rates, however.

Mr. Kelley. I am from Pennsylvania, and I am pretty sure of that.

Mr. Moody. Well, Pennsylvania has done all right on that.

Mr. Kelley. I am glad to hear you say that. That is worth something, coming from you.

Were there any other things besides that price differential that caused the break-down in the negotiations with the United Mine Workers? What was it that the southern coal producers requested that the northern operators did not? Do you know?

Mr. Moody. I think one of the points was a separate contract, a contract separate from the northern operators, which was about the same. I do not have the dates clearly in my mind, of course, not having been in it, but the matter concerned an individual contract applying to conditions in the southern area. And there are some differences in conditions and operational methods, and so forth. So there is a difference of interests in some instances. And they felt that the application of a contract to that area alone would be a more satisfactory contract than to the industry, taking in the very wide areas that are represented.

Mr. Kelley. Then it was an effort of the southern coal producers to get a better contract than the northern producers that caused the break-down of the negotiations with the United Workers of America?

Mr. MOODY. I cannot answer that question exactly, because what a better contract is—I think that in our negotiations, one of our purposes is to get the best contract that we can. Now, I am not too proud of the contracts that we have been able to get, because of the strength of the United Mine Workers and the control that they have been able to exert. But I think the purpose of any negotiations is to get the best contract that you can.

Mr. KELLEY. How many tons of coal are above ground?

Mr. MOODY. It is reported, I believe, by the Bureau of Mines, and I think—what is your figure on it, Mr. Haley?

Mr. KELLEY. Seventy million?

Mr. MOODY. If I may defer to Mr. Haley, I think his figure would be better on that.

Mr. JACOBS. How much did they say? I did not hear.

Mr. IRVING. They did not say.

Mr. KELLEY. Wait a minute.

Mr. HALEY. Shall I answer the question?

Mr. KELLEY. Yes.

Mr. HALEY. Sixty-seven million tons, I believe, is the figure; approximately 70 million tons.

Mr. KELLEY. Does that come from your association?

Mr. HALEY. That is an official Bureau of Mines figure.

Mr. KELLEY. The Bureau of Mines.

Mr. Bailey?

Mr. BAILEY. Mr. Chairman, before directing the question to Mr. Moody I would like to make a statement for inclusion in the record.

For the past two or three days it has been my pleasure, in the absence of our very able chairman, to preside over the deliberations of this subcommittee, and at the urgent request of Walter R. Thurman, who represents himself as Secretary of the Southern Coal Producers Association, I suggested to the clerk of the subcommittee that the Southern Coal Producers Association be permitted to testify. At the time I had no knowledge that the National Coal Association had already been scheduled.

Apparently, Mr. Chairman, my thought on this courtesy toward the gentleman has not been appreciated, and I would like at this time to have the privilege of reading into the record an article appearing in the Charleston (W. Va.) Daily Mail on Wednesday last. The article appears under the caption "Producers denied right to testify at the House committee hearing."

> Secretary Walter R. Thurman, of the Southern Coal Producers Association, said yesterday his organization had been denied the right to offer testimony opposing the repeal of the Taft-Hartley law. Thurman said in his statement that it was the first time, to his knowledge, that any party so much affected as the Southern Coal Producers Association, by rightful or wrongful solution of matters, had been denied the right to be heard. Noting that the association represented more than one-fourth of the bituminous coal producers of the Nation, Thurman declared the House Labor Committee's action denying the Southern Coal Producers Association the right to appear was arbitrary, high-handed and despotic. He indicated that maybe the Committee has already made up its mind, and that it only wants to hear witnesses who are in sympathy with its abuse. Such action is entirely at variance with our way of life because, for a little while, yet, at least, this country is still operated under a democratic form of Government.

I would like to make the observation, Mr. Chairman, at this point, that this kind of propaganda does not make for wholesome labor relations. It does not aid this committee one iota in arriving at legislation that would be fair to both labor and management.

Now, a question to you, Mr. Moody: I believe you have already answered, under questioning of the Chairman of the committee, that you have been somewhat of a synthetic coal operator since you have been connected with the business since 1947?

Mr. Moody. That is correct.

Mr. Bailey. Do you think that the arbitrary practices that the mandatory injunction which is now in the more or less arbitrary injunctive processes of the Taft-Hartley Act, is fair?

Mr. Moody. I am not trying to ask you questions, Congressman, but you used the words "mandatory operation"——

Mr. Bailey. It is mandatory.

Mr. Moody. I assume you mean it is mandatory on the counsel for the Board to take such action?

Mr. Bailey. Yes.

Mr. Moody. I think the mandatory provision probably could be eliminated and make it discretionary on the part of the counsel.

Mr. Bailey. It is discretionary insofar as the employee is concerned, is it not?

Mr. Moody. No, sir. I think the application of the injunction——

Mr. Bailey. Are you sure of that?

Mr. Moody. In the use of the injunction, as I indicated in my testimony, it ran against the operators as well as the union. In the arbitrary injunction—and in our case, of course, we were the persons asking for relief, and the injunction had no purpose in running against us. However, I believe that in the General Motors case that was against the employer only. I do not believe that ran against the union, so that, not being a lawyer, I do not want to get into the technicalities of the thing. Maybe Mr. Haley could do a better job in answering you.

Mr. Bailey. I am asking you the question.

Mr. Moody. But to follow further, you said the arbitrary use of it, and, I think, I pointed out very carefully that in the injunction of last year there was nothing arbitrary about them from the standpoint of being ex parte because there was a full hearing, and the union had all the time in the world to offer any evidence they wanted to, to complete their story in every manner they wanted to, just as we had an opportunity to present our side of the case before any decision was made at all, and I think that is true. I do not know what injunctions you refer to as the arbitrary which, I assume, you are using a synonym to ex parte injunctions.

Mr. Bailey. That is what I had reference to. Will you agree with me that that particular provision of the Taft-Hartley law has turned the thought on labor relations back more than 25 years?

Mr. Moody. Mr. Congressman, if I could conceive, or think of—and I have tried—what instrument could be used in labor relations when collective bargaining is gone, and after all, the use of the instrument of injunctive process is pretty rough; it is a rough part of the jurisdictional process, but I do not know of any other instrument that is available, and I know that in the administration bill it provides for a cooling-off period, or status quo period, and it is my opinion the injunction preserves that status quo where there is no other method of obtaining it.

Mr. BAILEY. I would like to remind you that I lived through the situation in West Virginia back in the early twenties, a situation made possible by the use of arbitrary methods of injunction growing out of injunctions issued by Judge J. B. Jackson, and enlarged on by some other judges in southern West Virginia, which caused the coal miners to go out on strike, and eventually led to the armed march of miners, and made it necessary to call out the United States Army at that time. The coal operators were engaged in a campaign at the colse of the war to destroy every local of the United Mine Workers in the State of West Virginia. And you will recall they had been given the right to organize under the wartime powers of President Wilson. And as a result of the armed march, the Army came in and arrested the leaders, but did not give them a trial, as the Constitution guarantees they be given a trial in the territory in which the crime was committed, but they were brought over to Charlestown, W. Va., in the extreme eastern part of West Virginia, and tried in the same court where John Brown was tried for treason. Now, you are setting up under the Taft-Hartley Act a situation that would make possible a recurrence of that kind of incident in the State of West Virginia, and I will tell you the State of West Virginia does not want those days ever to return.

Mr. MOODY. Could I point out there is to my mind a fundamental difference between the obtaining of an injunction by application of an employer and that obtained by application of the United States Government? I think that there is a considerable difference there, and one that I would like to preserve. I think that the use of the injunction by a Government agency at the top of our organization of government certainly takes out a lot of the fears that you have outlined as to a recurrence of the incidents that you claim were caused by, to my mind, maybe a free use of injunctions that should not have been used. I do not know that because I was not there at the time, but you are speaking of a condition that does not exist under the Taft-Hartley Act and coud not exist under the Taft-Hartley Act, and has not existed for some years.

Mr. BAILEY. Just one more question at this point.

Mr. WIER. I will yield my 10 minutes, Mr. Chairman.

Mr. KELLEY. You have 10 more minutes.

Mr. BAILEY. The question I had in mind, Mr. Moody, is this: Do you believe that the provision in the so-called union shop as set up in the Taft-Hartley Act is fair to organized labor or union labor?

Mr. MOODY. Congressman, of course, I cannot answer your question from experience in the coal industry, because we just do not have that situation.

Mr. BAILEY. It could possibly apply to the coal industry in the event that the miners were not working, or did not care to work, and the coal operators would decide—assuming the coal miners had the right of collective bargaining, and had been certified, of course, for bargaining purposes—and the coal operators could bring in replacements, and that under the Taft-Hartley Act they would be recognized as the bargaining agent for the miners.

Do you not think that is carrying it to a point where it becomes a strikebreaking proposition?

Mr. MOODY. I do not quite follow you there, sir. You asked me a question, I believe, as to what I thought of the closed shop section?

Mr. Bailey. Union shop, I said.

Mr. Moody. I thought you said "closed."

Mr. Bailey. The Taft-Hartley Act outlaws the closed shop, and sets up a so-called union shop.

Mr. Moody. I thought you meant——

Mr. Bailey. What I said to you was this: That under a recent ruling of the Board in case workmen in the operation of a factory or a mine, go on a strike, they lose their right of bargaining, or they lose their right to bargain through the National Labor Relations Board, and it is possible for the company to bring in replacements, and the Board will then accept the replacements, and they will be in the nature of strikebreakers as to the unit for bargaining; does not that have the possibilities of breaking all unions?

Mr. Moody. Congressman, if I may ask, to what do you refer, the Cardinal Spellman situation in the cemetery workers——

Mr. Bailey. No, sir.

Mr. Moody. I do not know just what you are hinting at, sir.

Mr. Bailey. I am saying that that could just as well happen in the coal operations as has happened in factories in other sections of the country.

Mr. Moody. If I may paraphrase to get my proper understanding—I am not trying to avoid it, but I just do not quite get your point—that is, in case of a strike that was declared an illegal strike, that is, a strike for unfair labor practices, and the men stayed out on strike, that they could be replaced after a period of time on certification of the National Labor Relations Board?

Mr. Bailey. They could be replaced before being certified.

Mr. Moody. Say they are replaced, then you are asking me under what circumstances I would consider that as a proper procedure?

Mr. Bailey. I am asking you the question: Do you not think that could be taken advantage of by an unscrupulous employer to break the strike, by bringing strikebreakers in and having them certified, and setting up a new union?

Mr. Moody. I cannot conceive there of the specific conditions under which that could happen, although, the way you state it, I think technically it would be possible; but I do not think from a practical standpoint you could work it out. At least from my experience you could not.

Mr. Bailey. That is all.

Mr. Kelley. Referring to Mr. Bailey's statement which he read from the newspaper article, that here it is assumed that the committee only wishes to hear witnesses who are in sympathy with their views, and indicating the committee had already made up its mind, while I have the opportunity, I want to say this:

As the chairman of this subcommittee, I have instructed the staff of this subcommittee to see that those who are in favor of the bill and those who are against it should have equal opportunity before this committee, and that they should be equally divided so that there would be no criticism; but, on the other hand, if you wish to take everyone who asks to come before a committee, you would never get through with your work. So we have assumed the National Coal Association would speak for the coal industry. There is no intention whatsoever to be unjust or unfair to any group of people.

Mr. Moody. Thank you.

Mr. PERKINS. For the time being, I will address my remarks to Mr. Haley.

I note you state that the Taft-Hartley Act, dealing with the union status of supervisory employees and the provision dealing with the national emergency situation as to strikes, and the section that you desire to outlaw, that you desire to make it unlawful to permit the welfare fund the subject of collective bargaining, if I have quoted you correctly?

Mr. HALEY. Mr. Congressman, I believe you were two-thirds correct. My position on the welfare funds is that I believe the law should be clarified to make it clear that the bargaining for central union welfare funds shall not be the subject of required collective bargaining, but I did not suggest that they be outlawed.

Mr. PERKINS. I notice you stated—and I quote—

> Should the American citizens be called upon to bestow special benefits upon a privileged group?

And you also state—

> Should the American people be called upon to pay for a special social security system for union members which will be in addition to the social security benefits made available to citizens generally under the Federal social security law?

I come from a coal mining district, and up until the time the United Mine Workers welfare fund went into operation, when an employee was injured the only benefit that he received was under workmen's compensation laws and those benefits were very meager. In my State, I think they now range up to $9,000 for total disability, and perhaps $800 for medical expenses on top of that, regardless of how severe the injury may be.

We know that this welfare fund is taking care of men regardless of the time they were injured, even though they were injured before the welfare fund was established in March 1946, and men who have had their dorsal or lumbar vertebrae broken, and their spinal cord affected, which required the services of neurosurgeons and orthopedic surgeons, that money is being expended from this fund in unlimited amounts trying to rehabilitate those men in order that they may have a few more useful moments in this world. It seems to me that in your proposal here you are wanting the Government of the United States to destroy the economic balance between the operators and the United Mine Workers, in favor of the operators, because if your suggestion were adopted by this Congress, that would be the effect of the law.

Now, I want to go into this welfare fund insofar as my time will permit, and discuss it with you, and see if we can agree with the benefits that this welfare fund has given the public—I mean, has given the miners, all over this country. Do you know whether or not injured employees are allowed to participate in the benefits of the United Mine Workers welfare and retirement fund even though they were injured prior to 1946, and to what extent they are eligible to participate?

Mr. HALEY. I can answer that partially. I can say the only information I have is what the Congressman just stated, when he said that prior to 1946—those injured prior to 1946 may participate in it, and I will take his word for it, because I have made no study of the actual working of the United Mine Workers welfare and retirement fund.

Mr. PERKINS. There happens to be a man by the name of H. D.

Bentley, who was one of my clients down in the Seventh District of Kentucky, who I think—and I am very confident of this date—was injured in 1944. He received an injury to his spine, as I recall, both to the dorsal and lumbar regions, and his nerves had been affected. He drew, after a lawsuit with the Alcorn Coal Corp., the sume of $7,500, and hospital bills amounting to $400. He was only about 50 years of age. He soon expended his compensation, and he was still in this physically handicapped position, and he went around the community, as I understand, and the locals contributed to his support until he got relief from the United Mine Workers welfare fund. This man is not eligible for social security because of his age and, as I understand it, this fund is established to take care of men, regardless of their age, because they are working in an extra-hazardous field. Do you agree with me that the purposes of this welfare fund are sound?

Mr. Haley. I do not know. I certainly did not mean to imply in my statement that I am opposed to the welfare fund. My statement only ran to the required bargaining aspects of it, and I do not agree with the Congressman, of course, that to adopt my suggestion would make an economic unbalance in favor of the coal operators. My sole position on the——

Mr. Perkins. Let us pursue the value of this welfare fund a little further.

Assuming that coal miners are injured many years ago and suffered complete paralysis; is there any existing law on the books from which they could obtain medical relief other than from the United Mine Workers welfare and retirement fund?

Mr. Haley. No present Federal law. There may or may not be in the several States. But I should like to point out this: My opposition to the principle of the central union welfare fund runs to the matter that it sets up a preferred class of citizens and thereby impinges on a field which has appropriately been assumed by the Federal Government.

Mr. Perkins. Under the State laws, do you not know the only assistance they get is from the workmen compensation benefits?

Mr. Haley. I know that generally to be true.

Mr. Perkins. Do you know how many miners now are receiving beenfits from the fund who were injured before the passage of the act in 1946?

Mr. Haley. No, I do not.

Mr. Perkins. Do you not think the social security benefits and the workmen's compensation benefits are wholly inadequate to take care of these injured employees in this extra-hazardous field in which they are engaged, and especially in view of the high cost of living?

Mr. Haley. They probably are, and they will be more so for all citizens unless the theory of the central union welfare fund is curbed in some way.

Mr. Perkins. At what age does the social security benefit accrue?

Mr. Haley. At the present time, 65 for retirement, but before that age—in fact, at any given age for survivor benefits.

Mr. Perkins. What provisions are there in the law—I will touch on this briefly—to take care of injured men, men 20 years of age who go into the mines and receive broken bones, or falls that happen suddenly from a horseback or kittlehead from the roof of the mines, other than the welfare fund?

Mr. Haley. The welfare fund is not a provision of law. I believe the Congressman asked me what provision of law.

Mr. Perkins. To what other source can they go for aid—I will modify the question and say "for aid"—after their workmen's compensation benefits are gone?

Mr. Haley. I do not know to what other source they could go. I will say the bill that is being considered by the Ways and Means Committee now says that such workers will be eligible for such benefits.

Mr. Perkins. That law has never been put into effect, has it?

Mr. Haley. No, sir; and I fear it will not be put into effect if the central union welfare fund theory is adopted for the benefit of the union members. For our citizens generally, I do not think it will be, unless something is done about the central union welfare fund.

Mr. Perkins. Let us pursue this policy of the United Mine Workers welfare fund a little further, and see it has well established its value.

Do you realize that we have about 1,000 men who lose their lives through mining accidents every year, and some 50,000 or 55,000 who receive and suffer severe injuries, some of which injuries incapacitate these miners for their entire lives; do you realize that?

Mr. Haley. I realize the fact without several of the adjectives; you say "receive and suffer severe injuries." Some of the injuries included in that figure, as the Congressman well knows, are not severe, and by removing some of the adjectives I would agree with you.

Mr. Perkins. Will you admit that they are engaged in a field of work that is extra-hazardous?

Mr. Haley. Yes.

Mr. Perkins. And do you not believe that on account of that one fact that they deserve this special treatment that you say they are getting from the United Mine Workers welfare and retirement fund?

Mr. Haley. No; I do not think they deserve it any more than employees working in equally hazardous occupations, nor do I think they deserve it any more than, in a manner of degree, those employees working in less hazardous jobs.

Mr. Perkins. The retirement and pension funds have been established for other hazardous occupations; am I correct in that statement?

Mr. Haley. You may be correct in the statement, but certainly not to the extent of a cost on the American people of $1.30 per man per day worked.

Mr. Perkins. Mr. Haley, I remember the time in my section—and I will refer you to the organization of the Harlan Coal Mines—when there was 10 cents a ton added on to each ton of coal that was produced, and a portion of this money was disbursed to sheriffs and their deputies for the purpose of working against the organizations of the coal field, and at that time men were drawing about $20 or $21 a week, working in the mines, and when pay day came they did not receive any pay, as a general rule, because that money had been taken up by the commissaries for food. But now the operators are on a much higher plane after the organization of the mines, and after the adoption of the Wagner Act, which gave the right of collective bargaining.

And now you come in here and want to destroy one of the greatest benefits that the miners have today, by legislation.

Mr. Haley. Mr. Congressman, if a mere recitation of the facts means anything, you will see they have continued to make progress since the enactment of the Taft-Hartley Act.

Mr. PERKINS. I disagree with you on that, but we will pursue this welfare question further.

Mr. HALEY. They doubled the welfare fund.

Mr. PERKINS. Do you know how much higher the insurance rates on accident policies are in these mining fields, in comparison with the same policy on the employee under the Automobile Workers Union?

Mr. HALEY. No, I do not, but I know they are high.

Mr. PERKINS. I will ask you if they do not range from 100 to 200 percent higher?

Mr. HALEY. I do not know.

Mr. PERKINS. And that if it is not impossible for these employees to carry accident policies with their income, on account of the high premiums?

Mr. HALEY. I would answer that "No."

Mr. PERKINS. You know that they do not do it, do you not, many of them?

Mr. HALEY. I do not know, but I think some of them do have such accident insurance, and certainly with the last report from the Bureau of Labor Statistics showing average earnings in excess of $1.95 per hour, I do not think——

Mr. PERKINS. But you do not know the variation of the rates, do you?

Mr. HALEY. No, I do not.

Mr. PERKINS. And do you not think, assuming there is a variation in the rate I mentioned, that that signifies this is an extra-hazardous occupation, and that they deserve some special attention from somewhere?

Mr. HALEY. There is no doubt but that coal mining is a hazardous occupation, and certainly if the workers and the employers want to set up a welfare and retirement fund, and agree on it, I am not one to argue with it.

Mr. PERKINS. Let us go a little further: Do you not think that in view of the high accident and disease rate, and especially in view of the extra-hazardous work involved in mining, that all injuries and deaths should be treated as an economic cost to the mining industry and, therefore, should be borne by the industry in exactly the same way that machinery, repairs, and replacements are considered part of the cost of operation, and that such costs should not be borne by the miners and their dependents; do you agree with me on that statement?

Mr. HALEY. You asked a number of questions. If you would leave off the last part of it——

Mr. PERKINS. We will leave off the last part.

Mr. HALEY. My answer to the first one is "No." And the answer to the second part, which asked if it should be borne by the mine workers and their families, my answer to that is "No," also.

Mr. PERKINS. You agree, though, that this is a extra-hazardous occupation?

Mr. HALEY. I agree it is a hazardous occupation, but I do not know the meaning of the word "extra." I believe there are some equally as hazardous.

Mr. KELLEY. Will you yield?

Mr. PERKINS. Yes.

Mr. KELLEY. What is more hazardous, what occupation?

Mr. HALEY. I had in mind logging, I believe. I think the logging industry is about as hazardous as coal mining.

Mr. KELLEY. Any others? I do not know of any.

Mr. HALEY. The structural steel industry is, probably.

Mr. KELLEY. It is probably about the same as the logging industry. They are all hazardous, and maybe coal is the extra-hazardous one; but on the basis of degree, there are a number of them that are fairly close to coal.

That is all.

Mr. PERKINS. I want to suggest to the gentleman that I disagree with him on the logging industry. I have done a little logging myself, and that occupation does not compare with the hazards that are contained in mining.

Getting back to the point: Inasmuch as you answered my question in the negative, I presume that you believe that these young men, middle-aged men, who go into the mines and suddenly receive total and permanent injuries, and soon thereafter consume what money they get in the way of workmen's compensation benefits, should be turned out on the world, instead of charging that cost to the industry which brings about these accidents? That is your answer, is it not? That is the effect of your answer? Am I correct in that?

Mr. HALEY. You are incorrect.

Mr. PERKINS. Why am I incorrect?

Mr. HALEY. You are incorrect because I distinguish, in the first place, between an industry as an industry, and the individual employers within the industry, and, in the second place, I will state that the Federal Government more than 10 years ago embarked upon a national pool system of social security, and the President of the United States is now urging an extension of that to include just such things so that those people who are in extra-hazardous occupations, or those who meet misfortune in any occupation, will have an avenue of relief and, I think, the promotion of the central union welfare fund is a move contrary to modern social theory and contrary to the policies of the Federal Government.

Mr. PERKINS. You still have not answered the question. Who is going to support these men and care for them when they use up what money they have received from workmen's compensation, when they are not entitled to social security?

Mr. HALEY. That is, of course, indeed, a problem in every industry. That is a problem, I presume, with lawyers.

Mr. PERKINS. In other words, you are wanting to put them in the class with other employees who are engaged in occupations that are nonhazardous, are you not?

Mr. HALEY. I want to put them——

Mr. PERKINS That is the substance of your answer you have given me?

Mr. HALEY. Yes, I guess that is the substance of it, because they should withdraw benefits, the ones who need the benefits should withdraw the benefits too, without regard to their greater numerical indication, just the same as those in less hazardous occupations. I do not think that union members should be treated any differently from nonunion members, and that the industry or the American public should be called upon to set up a special pool, social security, for union members over and above the general theory——

Mr. PERKINS. Let us go a little further.

In the little town where I was reared we do not have any mines, but my county is underlaid with coal of a high quality, and I have mines all around me, and that is the only industry that we have. We can refer to these communities as small, one-industry communities, and many of these communities are isolated. There are perhaps only the freight cars that haul away the coal, and that is the only transportation we have other than automobiles.

Are you acquainted with these isolated conditions in the mining communities which have resulted in miners and their families being deprived of many of the advantages of the modern communities?

Mr. HALEY. I am acquainted, in a general way, with isolated towns in the coal industry, and outside the coal industry.

Mr. PERKINS. Do you know that the majority of these mining towns do not have modern community life?

Mr. HALEY. I do not know, but I would not go so far as to say that.

Mr. PERKINS. They do not have running water or lavoratories in their homes; am I correct in that?

Mr. HALEY. I do not think you are correct.

Mr. PERKINS. I want to inform the gentleman I am correct in my statement to that effect as it applies in the Seventh District in Kentucky.

Mr. HALEY. I have not confined my report to one district, but I do understand that approximately 65 percent of the miners in the United States furnish their own housing.

Mr. PERKINS. We have only a few modern mining towns in my district, and I will say the majority of the other mining towns fall within the isolated communities, and do not have these modern conveniences which I have referred to.

Mr. HALEY. That situation may not obtain in another district; for instance, the district represented by the chairman of the subcommittee.

Mr. PERKINS. Do you not think these small, one-industry communities, where they do not have other industries, and the duration of the mining industry is uncertain, that for those reasons, do you not think that that necessitates the need for the health, welfare, and retirement benefits?

Mr. HALEY. No; I would say that indicates just the contrary. That puts an added burden on a community which derives its livelihood from one source, and such community should be, if they are pooled at all, in the general Federal pool so that by virtue of the very theory of pooling, the cost on that community would be reduced, and that is the theory of the Federal social security program.

Mr. PERKINS. I think if the research was made by the witness you would change your views on that.

Do you not think we need some inducement, inasmuch as this is a hazardous occupation, for the younger fellow to take up mining as an occupation, and do you not think this health, welfare, and retirement plan is some inducement for this hazardous occupation?

Mr. HALEY. No.

Mr. PERKINS. Why not.

Mr. HALEY. Because there certainly is not any manpower shortage in the coal industry today and, in the second place, your attention is directed to the fact it is my conclusion that the young people certainly would have very little interest in the health, welfare and retirement fund, and the money does not go to the account of any individual; the money goes into the central fund, and he has no vested right in it whatsoever.

Mr. Perkins. Then you disagree with the principle that one of the chief incentives for younger workers to enter this industry, the hazardous mining industry, is adequate health and accident insurance and retirement plan?

Mr. Haley. That may be one of the inducements, but as I have stated, I do not believe there is any manpower shortage in the coal industry today.

Mr. Perkins. But you say that may be one of the inducements; am I correct in that?

Mr. Haley. That may be one of the inducements, but it certainly is not a principal one.

Mr. Perkins. Do you not think such benefits would weigh heavily in such a hazardous industry, in which all of the other unfavorable factors are well known, realizing that if you go into mines today that you may not come back out after you enter? Do you not think that that is more than just one of the incentives or inducements that you have mentioned? Do you not think that is a great drawing card?

Mr. Haley. I will answer that this way: It certainly would be if the $1.30 per day went to the man instead of to the central union fund.

Mr. Perkins. How has this money been expended in the past 20 months—if you want to be evasive—how has the $1.30 per man been expended during the first 20 months of the operation of this fund?

Mr. Haley. For health and welfare and, I believe, some retirement.

Mr. Perkins. How many have benefited from it?

Mr. Haley. I do not know, but a great number, I should presume.

Mr. Perkins. I will ask you whether or not during the first 20 months of the administration of the United Mine Workers welfare and retirement fund, or up until January 1, 1949, the UMWA welfare and retirement fund reported a total of 260,123 beenficiaries receiving approximately $68,000,000?

Mr. Haley. I saw some figures but I cannot recall that those are the exact ones, but I would assume the Congressman is reading the correct figures. I saw a public statement on it some time ago. I could get it. I believe I have it here, but I will assume the Congressman had made a correct statement.

Mr. Perkins. And I will ask you if that sum of $60,000,000 was not distributed in the form of disability grants, pensions, death benefits, hospital and medical care for miners all over this country, or to miners all over this country?

Mr. Haley. To union miners—members of the United Mine Workers of America. Under the same assumptions, I would give the same answer.

Mr. Perkins. If this fund has benefited 260,123 men who were injured while they were engaged in this extra-hazardous employment, and a great number or a majority of that number are ineligible to draw social security benefits, why is there anything wrong with the principle of letting this industry, which is extra-hazardous, bear the burden of giving those disabled men the kind of welfare treatment that they deserve?

Mr. Haley. The only answer I would make to that is that the responsibility is spread industry-wide, and it impinges on the national social-security theory.

The Congressman must realize that payments into this welfare fund are as an indirect result of a man's labor, and that the benefits to which he is entitled are in no way related to his labor, and that a mine with an output per man per day of 20 tons at 20 cents per ton, $4 will be paid into the fund as a result of his labors, indirectly, and that, at a mine where the output per man is 30 tons, $6 will be paid into the fund.

Mr. Perkins. You will admit this is a uniform rate; it is just not localized, and for that reason it does not interfere with the coal associations in the sale of the coal, does it?

Mr. Haley. I would say it reacts to the benefit of the nonunion mines as against the union mines.

Mr. Perkins. The whole theory that is involved here, which you have clearly stated to this committee, is that you would like to destroy the economic balance between the coal operators and the United Mine Workers in the field of collective bargaining, over this welfare fund, by asking this Congress to favor the operators as against the United Mine Workers, by legislating on this subject, thereby removing this fund from the field of collective bargaining?

Am I correct in that statement?

Mr. Haley. No, sir; you are not correct.

Mr. Kelley. Mr. Perkins, you have 1 minute left.

Mr. Haley. No, sir; I fear you are not correct.

Mr. Perkins. I would like to go into this subject——

Mr. Kelley. I am sorry, but we are operating under a rule, Mr. Perkins.

Mr. Perkins. Do you realize that the establishment of this fund has brought about a new industry in the study of diseases in the mining industry, and has already focused public attention upon the need for expanding research in this extra-hazardous field of coal mining?

Mr. Haley. I do not know it, but I do not doubt it.

Mr. Perkins. And do you also realize that the centralized administration of the fund makes possible the application of improved medical techniques for the various isolated mining areas all over the country?

Mr. Haley. Certainly there must be substantial benefits flowing from a fund of $150,000,000. I do not know specifically——

Mr. Perkins. You do not contend the fund has been expended unwisely to any extent, do you, Mr. Haley?

Mr. Haley. I do not know, and I do not like to say to any extent. It may have been spent unwisely.

Mr. Kelley. Your time has expired.

Mr. Lesinski, the chairman of the committee, has some questions.

Mr. Lesinski. I would like to make a statement.

Mr. Kelley. Go ahead. You have 10 minutes.

Mr. Lesinski. Mr. Chairman, although I am a member of this committee, I have never at any time interfered at any of these discussions, but I must support the chairman of the subcommittee on the statement made after questions propounded by Mr. Bailey.

Apparently industry is not at all satisfied to get a 50–50 hearing. In some ways they have lost their field day because they cannot have 95 percent of the time to present their views, as has happened before, and I again must state that the chairman has taken the proper course.

I have one question to ask here of Mr. Moody.

Mr. Moody stated that their association was not organized until 1941, and that is some years after the Wagner Act was effective, when they found themselves where they could not evade the law. They have organized for one purpose, for their own protection. If the goose can organize for protection, so can the gander, and that is why the Wagner Act was passed, to protect labor.

I also want to say that Mr. Moody has made the statement that they have had no trouble under the Taft-Hartley Act. I must remind Mr. Moody that you made your contract with John L. Lewis prior to the effectiveness of the act, which was in October.

I also want to recall to the gentleman that Mr. Lewis has made a statement that the fine levied upon him could well be used for the 112 miners killed in Centralia, Ill. I think that is a thing the gentleman must think of, and that is why I am directing that question directly to you, Mr. Moody.

Do you not think it is fair that that industry protect the miner and his family, after the man spends all of his life working in that industry?

Mr Moody. You are directing that question to me?

Mr. Lesinski. Yes, sir.

Mr. Moody. The reason I asked was because all of the questions have been to Mr. Haley on that subject.

Mr. Lesinski. I made a statement prior to that.

Mr. Moody. Mr. Chairman, as far as the welfare fund is concerned, I did not discuss that in my presentation. My personal feeling is that there are certain weaknesses in the present set-up, and I think you will remember—and if you do not I will just mention it—that in the negotiations last year which, of course, is a year after the Taft-Hartley Act went into effect, or approximately that, we went to a great deal of trouble to try to have some limitation on the use of the moneys in the fund, and we used the words "for distress or need derived directly from service in the industry." I think that that is a fair basis on which that fund should apply, but at the present time there is no limitation. The moneys can be spent at the individual discretion of the administrators, and can be spent for any purpose, and for anything under the shining sun that has nothing to do with the industry itself, and I do not believe you agree that the coal industry or any other industry can accept the full responsibility for all of the ills of man, regardless of their derivation.

I think this discussion that was on here before got a little bit at sea. The arguments last year, and the court case that was finally resolved by Justice Goldsborough, was all on a matter of determining a limitation, and a proper use and was not a matter of elimination. I would like to point that out to you very carefully, because I think it is important.

And so, we get to the point of how much money can the coal industry afford and still stay competitive in our field economy. I think that is the basic problem in any industry.

Would you agree with me, sir? I am not trying to ask you a question. Would you not agree the use of such funds should be limited to the need and distress derived from service in the industry, rather than the payment—and I am now using a hypothetical case, but suppose we take a woman who may very well need the money, but whose husband was killed by an automobile accident in 1932. That is the sort of thing that gets us distorted, and the Lord knows, as some of the members know, the attitude in the coal industry is complicated enough all by itself.

And then we get to the question of pensions. It is hard for me to determine in my own mind, after being in other industries and coming into the coal industry as I have, and having knocked my head on the contracts for the last 20 years, to understand why a coal miner in perfectly good health, 65 years old, or 62 years old, should receive $100 a month in addition to the social-security benefits he would normally receive. Why is it there should be a union membership group—and the money comes out of our economy; it cannot come from anywhere else—be approved and apply under those circumstances? I think if we take those facts into consideration in our approach to this, it becomes a little more clarified and a little more easy to approach. I am trying to be helpful.

Mr. Lesinski. Is it not a fact where the northern operators have signed a contract, the southern operators have always balked at signing a contract?

Mr. Moody. That is not so.

Mr. Lesinski. That is not the way the newspapers have carried the story. Of course, we get all of our stories from the newspapers.

Mr. Moody. I think I outlined a condition in 1947 or 1948 paralleling it by dates, and giving the attitudes in the ultimate arrival at the contract.

Mr. Lesinski. Is it not a fact that your previous strikes all started over certain conditions in the mines? Most of the mine owners who are not unionized did not abide by either Government laws or State laws as far as safety devices are concerned, standards, and so on, which are necessary to operate a modern mine, and that was one of your troubles, and this is why that disaster resulted?

Mr. Moody. I do not represent Illinois or Indiana, and I do not have anything to do with the Centralia area or the Oldenburg area, but down in our neck of the woods I think we do adhere to the safety code and safety practices as properly as we can. But if you have in mines——

Mr. Lesinski. I only have one more question to ask.

Mr. Kelley. You have only 1 minute.

Mr. Lesinski. Does the gentleman agree to the matter read here by Mr. Bailey—Mr. Thurman's statement—that this committee has not been fair to the operators?

Mr. Moody. I am not just sure how you are applying this. You are referring to a telegram that was sent to Mr. Bailey by our secretary?

Mr. Lesinski. Yes, sir.

Mr. Moody. I think he said there that he thought the refusal to have us appear was unfair and, of course, that has all gone, and is all washed out, as far as we are concerned, because we are here, and certainly the appearance before the committee and the courtesy that has been shown us has been anything but unfair; it certainly has my compliments.

Mr. KELLEY. The gentleman's time has expired.

Mr. Smith?

Mr. SMITH. In connection with the very much discussed newspaper article there is some question there which has not been commented on, and that is that the committee had already made up its mind to repeal the Taft-Hartley Act. I think I can assure you they have made up their minds to repeal it.

You stated that an individual did not have any vested interest in this welfare fund; is that correct?

Mr. HALEY. That is correct.

Mr. SMITH. As to whether any study has been made, based upon the turn-over in the coal-mining industry, as to how much funds will develop in the turn-over, where a man will work, maybe, 2 years and then quit and go to some other occupation. I wonder if any study has been made in that field as to how much the turn-over will be in this fund by reason of that?

Mr. HALEY. If such studies have been made I have no knowledge of them. They may have been made by the trustees.

Mr. SMITH. What would be your idea about that? Would that grow into a very large fund just from that one factor alone?

Mr. HALEY. From what little I know about the cost of private pension plans and elementary acturial problems, I would say it would require quite a substantial fund; but as I say, I have very little knowledge or information on the subject.

Mr. SMITH. Now, I want to know this. Does the miner who is entitled to the benefits of this welfare plan also receive the benefits of workmen's compensation in addition thereto?

Mr. HALEY. Of course.

Mr. SMITH. Then in other words, this miner who gets into a mine and works in a mine will have the benefit of not only the State compensation laws, he will have the benefits of this old-age pension and social security, and in addition to that, he will have the wefare fund. In other words, here is a special class of citizens that are entitled to three benefits; is that correct?

Mr. HALEY. That is correct. This sets up union members in a special type of preferred class, from the standpoint of social security.

Mr. SMITH. What sort of arrangements do they have to determine the justice of these benefits?

Mr. HALEY. I do not know.

Mr. SMITH. Who is going to determine whether a man is rightly entitled to, we will say, full and complete disability by reason of his having been a miner and entitled to these welfare funds?

Mr. HALEY. The union, as a practical matter, determines that.

Mr. SMITH. Do you think that a union can determine those matters in view of the broad experience of workmen's compensation laws in one factor alone, that of malingering?

Mr. HALEY. I do not think so. I think the central union welfare fund is a very unwholesome thing from the standpoint of the Nation and the standpoint of the individual.

Mr. SMITH. Just from the standpoint of the malingering factor, that is one of the big problems in the administration of all the workmen's compensation funds, is it not?

Mr. Haley. It is.

Mr. Smith. Do you think that will come to be one of the big problems here in this fund?

Mr. Haley. It no doubt will be, if it is not already.

Mr. Smith. I have no further questions.

Mr. Kelley. Mr. Werdel?

Mr. Werdel. Mr. Haley, how many men are engaged in the mining of coal, in round numbers?

Mr. Haley. Three hundred and fifty thousand to four hundred thousand.

Mr. Werdel. And does that cover the whole industry or just that part that you are acquainted with?

Mr. Haley. That covers the national coal industry, the whole industry.

Mr. Werdel. And are all those men represented by the same bargaining agent in the coal industry?

Mr. Haley. Not all of the men in the coal industry are represented by the same bargaining agent, but the very great majority of them are. There are some nonunion operations in the United States, and a number of mines in the State of Illinois, principally, are organized by the Progressive Miners of America, an A. F. of L. affiliate. But approximately 90 percent, I assume, are members of the United Mine Workers of America.

Mr. Werdel. Suppose your country-wide bargaining agent represents the employees of your employers. Are they all dealt with on a Nation-wide basis? That is, do they bargain on an industry-wide scale?

Mr. Haley. On behalf of the employees; yes.

Mr. Werdel. And the wage rate is rather uniform, then, for all of those: is that correct?

Mr. Haley. It is uniform according to a standard. That is, there is a certain standard rate, and all other rates are related to that, up or down. Of course, there are many different wage rates in the coal industry, but they all bear a direct relationship to each other in all of the mines operated by employers of employees who are members of the United Mine Workers of America.

Mr. Werdel. Can you give us a rough idea of that wage scale in dollars and cents now?

Mr. Haley. For the full contract day, today, I believe the rate is $14.05 per day for an 8-hour day, including travel time.

Mr. Werdel. And that is the minimum wage or the average wage, or what?

Mr. Haley. That is the minimum inside day rate, I believe it is called. There are many who make more than that, of course.

Mr. Werdel. And do you have the welfare fund on top of that?

Mr. Haley. That is correct.

Mr. Werdel. Do you have any idea, if you leave out the value of coal in place in the ground, what percentage of the total cost of producing a ton of coal is the labor cost?

Mr. Haley. Approximately two-thirds.

Mr. Werdel. Approximately 66⅔ percent?

Mr. Haley. That is correct.

Mr. Werdel. What is the cost of a ton of coal today?

Mr. Haley. I do not know.

Mr. Werdel. The people you represent, I take it, are all covered in their contracts on an industry-wide basis, so far as the employees are concerned?

Mr. Haley. No. I am general counsel of the National Coal Association, which has in its membership a few nonunion mines and some Progressive Mine Workers, but most of the mines owned by the employers I represent are operated by the United Mine Workers.

Mr. Werdel. May I ask you, Mr. Moody, are all companies dealt with on an industry-wide basis when they enter into a contract?

Mr. Moody. You see, we represent the southern section of the industry, which covers West Virginia, Virginia, Kentucky, and Tennessee.

Mr. Werdel. I see.

Mr. Moody. So that our group is covered by one contract.

Mr. Werdel. I see.

Mr. Moody. And that is 115,000 men. All of our members are under the contract and are union mines. Now, in the territory there are nonunion mines. Last year I think the Ohio Coal Association estimated that at one time 27 percent of the Ohio coal was nonunion, but that is not true in the southern area.

Mr. Werdel. Do you have any knowledge as to whether or not industry-wide bargaining in the coal industry has a deterring effect on new men opening up coal mines and becoming competitive?

Mr. Moody. It would be hard for me to answer your question the way you put it, because I do not happen to know of specific instances. But quite obviously, because of the character of the coal industry, there are major differences in different sections of the industry. So industry-wide bargaining does not take into consideration those differences, and it would be far better if the contracts could apply to these major sections. They would do a better job by applying to the conditions in those sections rather than on a Nation-wide basis, where you have to cover everything from a seam that is 40 feet thick in Wyoming to 32 inches in southern Kentucky, and there is just an entirely different geological nature, such as in your big strip mines, in some instances, against your underground mines, and all.

So there are differences within certain districts. The western Pennsylvania and Ohio district is fairly cohesive in itself. Then the southern group is another group. It is determined, too, by your markets, freight rates, and other things that tend to complicate that picture, and that is why I could not answer you directly on your question.

Mr. Werdel. You do favor industry-wide bargaining?

Mr. Moody. No. I favor the negotiation of contracts in accordance with regions, the regions that have some cohesiveness, and an interest within the group caused by various methods of mining, by freight rates, and markets and type of coal, and so forth.

Mr. Werdel. Do you agree that in the event that we have industry-wide bargaining in the coal industry where you are producing from raw materials, it would tend, at least, to destroy competition and leave that field only to those men who are big enough to be in and stay in it?

Mr. Moody. It tends to do that anywhere where you run into industry-wide bargaining, whether it be in the coal industry, automobile industry, steel industry, or anywhere else.

Mr. Werdel. Were you gentlemen the ones who appeared before one of our House committees a while back to get some of the Marshall plan money earmarked for 100,000,000 tons of coal?

Mr. Moody. No; I was not. I know that.

Mr. Haley. I did not appear, but someone from our organization did appear, or someone representing the coal industry did appear, before one of the subcommittees of the House on that general subject, but certainly not in the way in which the Congressman indicated.

Mr. Werdel. I did not want to indicate either way, because I was not there. I am wondering did you take the position that we should decide to help the coal industry with tax money because of the condition the industry is in at the present time. Is that the position that the industry took, do you know?

Mr. Haley. No, sir. The industry does not take that position, and did not.

Mr. Werdel. My time is running short.

Mr. Kelley. You have 2 minutes, Mr. Werdel.

Mr. Werdel. On page 12 of Mr. Moody's report, you make the statement:

> We do not take the position that the Taft-Hartley Act is perfect and we agree that as experience demonstrates the need for changes, they should be adopted.

You have been entering into more or less of a debate with the committee today, and you have not expressed what you believe are the desired changes, if you have made up your mind on the subject.

Mr. Moody. I do not believe I can answer that in two minutes. I do not believe I can answer it in the order of one, two, three and four. I mentioned in there that there are minor changes that just have not worked out the way they were intended. As was indicated by another witness earlier, the matter of elections on the union shop turned out to be a help to the unions in organizing and establishing union shop provisions within a contract, rather than to do what it was supposed to do, to give an expression of will on the part of individuals, because the Taft-Hartley Act is primarily for the protection of the individual, and I think we forget that sometimes. We, as employers, tend to think we are given this and given that, and the unions the same thing. Well, actually, the thing was written to protect the individual union worker, and so far he has not had very much to say on that.

Mr. Werdel. Mr. Moody, my time is practically exhausted. We are interested in having your statement, though, if you desire to make one, as to what changes ought to be made in the Taft-Hartley Act. I would appreciate it if you would supply them for the record or for members of the committee.

Mr. Moody. I would be very glad to.

Mr. Werdel. Thank you.

Mr. Moody. May I say just one thing?

Mr. Kelley. Do you wish to do that?

Mr. Moody. Why, certainly, if the gentleman asks me to.

Mr. Kelley. Without objection, it is so ordered.

Mr. Haley. Mr. Chairman, in my statement I took no position on changing the law except with respect to treatment of central union welfare funds. I think that should be repealed.

Mr. Kelley. All time has expired.

Thank you very much.

Mr. MOODY. Mr. Chairman, pardon me, sir. May I say just one sentence?

In the testimony which the southern coal producers gave before the Senate committee, a request was made through Senator Morse to John Gall, our counsel, to write up in detail the treatise on the use of injunctions in labor situations. I do not know whether it is of specific interest to you. Quite a few people think that it is. If the chairman would like, I would be glad to give a copy to you, and you may determine whether you want to put it in the record or not.

Mr. KELLEY. Yes. Without objection, you may.

Mr. MOODY. I can supply additional copies if you wish.

Mr. KELLEY. Without objection, we will accept it.

(The brief referred to was filed with the committee for reference.)

Mr. KELLEY. Thank you very much gentlemen.

Mr. HALEY. Thank you.

Mr. KELLEY. I have a request from the New Jersey State Board of Mediation to have a brief put in the record and, without objection, it will be so ordered.

(The brief referred to is as follows:)

BRIEF ON BEHALF OF STATES HAVING MEDIATION AND CONCILIATION SERVICES

It is not my intention to comment pro or con on the merits of the administration labor-relations bill introduced in the House by Congressman Lesinski except insofar as that bill affects the efficiency of this board and other States that have conciliation and mediation services. On January 21, 1949, those States having mediation and conciliation services met in Newark, N. J. under the auspices of the State of New Jersey. At this meeting, it was unanimously agreed that the efforts of the representatives of the States in urging Members of Congress to enact in the Labor-Management Relations Act of 1947, section 8 (d) (3) and section 203 (b) had contributed substantially to the effectiveness of the State services to labor, management, and the public.

Section 8 (d) (3) provides that a party desiring to terminate or modify a contract notify "* * * the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith *notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred*, provided no agreement has been reached by that time; * * *" [italics supplied.]

Section 203 (b) provides that "The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement."

Undoubtedly, the philosophy underlying the foregoing sections was the recognition that, so far as labor disputes are concerned, they are more likely to be amicably adjusted by local people than persons representing the Federal Government. The bill pending before your committee would reverse completely the wholesome trend expressed in these sections of the Labor-Management Relations Act of 1947 providing for a duplicate notice to the State services and of reserving to the States the problems arising in all labor disputes except those having a major effect on commerce.

May I urge you that it is absolutely essential to State services, if they are to continue to give effective service at the State level, that the sections 8 (d) (3) and 203 (b) of the current law be preserved.

Respectfully submitted on behalf of the States having mediation and conciliation services.

WALTER P. MARGETTS, Jr.,
Chairman, New Jersey State Board of Mediation.

Mr. Kelley. Mr. Reilly, you have two statements. Are you going to read both of them?

Mr. Reilly. No; I thought I would summarize them, sir. What has happened is this: The printing industry applied for time and the committee granted it. Subsequently the Inland Daily Press Association did so, and the schedule of witnesses have been pretty much made up by your office, sir, and Mr. Jarosz very kindly arranged for it.

Mr. Kelley. Let me get this straight, Mr. Reilly. Then you are going to summarize a a statement? We have allotted time to the Inland Daily Press. That is the time that has been allotted to you, the Inland Daily Press.

Now, we could not very well accept the other one. The other one was the Printing Industry of America.

Mr. Reilly. Yes, the Printing Industry of America had applied for time and Mr. Henry, their president, had applied for time, and then the Inland Daily Press Association was not on the list because Mr. Jarosz said their application came too late.

Mr. Kelley. Which one are you going to read, or which one are you going to summarize?

Mr. Reilly. I was going to read the statement on behalf of the Printing Industry of America, sir, because Mr. Henry could not come. He asked me if I would read his statement. I appeared as counsel in the printing industry litigation last year and also in the newspaper litigation.

Mr. Kelley. Let us do this. You refer, then, to the Printing Industry of America and submit the statement from the Inland Daily Press for the record.

Mr. Reilly. Whatever is more agreeable to you, sir.

Here is the statement from the Inland Daily-Press Association.

(The statement referred to is as follows:)

Statement of Gerard D. Reilly on Behalf of the Inland Daily Press Association

Mr. Chairman, my name is Gerard D. Reilly, and I am appearing before your committee on behalf of the Inland Daily Press Association, for which I am counsel. This association is composed of 422 daily newspapers published in 19 cities. Although 21 of the member papers have a daily circulation in excess of 100,000, the Inland is predominantly composed of small newspapers, 300 of its member papers having a daily circulation of 15,000 or less. At the conclusion of my remarks, I shall offer for the record a list of the American newspaper members of this association.

I am appearing before your committee pursuant to an authorizing resolution of the general membership of the Inland assembled in convention on February 15, 1949, which took note of the fact that "the action of many members of the Inland Daily Press Association has been assailed improperly and their position grossly misrepresented in testimony before the United States Senate committee considering" certain proposed legislation defining the legal rights and obligations of management and labor in their relationship with each other and with the public.

This reference is to the testimony of Mr. Woodruff Randolph, president of the International Typographical Union (referred to herein as the ITU) before the Senate Committee on Labor and Public Welfare on February 10, 1949.

Although the Inland has no disposition to transfer to this committee the extensive litigation before the National Labor Relations Board and the courts which has resulted from the so-called "collective-bargaining policies" adopted by the ITU at its annual convention in 1947, we believe that the record should not be permitted to stand uncorrected concerning the essential characteristics of the labor-management problems which exist in the newspaper-publishing business—and indeed all phases of the printing industry—as a result of the

ITU's insistence upon the maintenance of practices which it deems vital to its continued existence.

These practices present classic illustrations of problems vital not merely to employers and employees, but to the whole public. We think this committee should have some understanding of the realities of these practices and their effects, if it is to attempt to legislate in the interests of all the public and not merely a special-interest group.

Despite the continued repetition of ancient cliches concerning the overwhelming economic power of employers, the hundreds of small newspaper publisher members of the Inland have first-hand knowledge of the inescapable fact that under its present leadership and policies, the ITU has established a virtual stranglehold on newspaper composing rooms in many cities, that it exercises uncontrolled power over the number of persons who may pursue the trade, and that employers and the public to a large extent are at the mercy of the ITU in its demands for the maintenance of the practices by which this excessive power was achieved and maintained.

Mr. Randolph has testified before the Senate committee of the "agonizing experience of the ITU under the Taft-Hartley Act." He has told that committee that the Taft-Hartley Act "makes impossible the attainment of [certain] objectives and thereby makes free trade-unionism impossible". The ITU objectives to which he refers are these:

(1) "An insistence upon respect for the rules laid down by our members concerning the conditions upon which they will sell their services, in order that each union member may democratically and directly participate in determining those conditions."

By this he means an insistence that all employers recognize and acquiesce in the ITU laws which govern a wide area of subjects relating to hours of work and working conditions which are the kind of subjects upon which the Wagner Act required employers to bargain in good faith with unions and upon which the Taft-Hartley Act requires both employers and unions to bargain instead of asserting demands on a take it or leave it basis.

(2) "The refusal to work with competing nonunion men whose willingness to work at lower wages and under substandard conditions threatens each member of our union."

This is a longer way of saying that the ITU insists on maintaining the closed shop. We are not opposing compulsory membership contracts as such, but as we will make clear later, our experience with the ITU demonstrates the need for some safeguards.

(3) "An insistence upon respect for our jurisdiction in order that craft standards may not be undermined by the assignment of work to lower-paid and inferior craftsmen."

This objective refers to the ITU's insistence on its own unilateral right to define its own jurisdiction, that is, its unrestricted right to dictate what work shall be performed only by ITU members on a closed shop basis. One of the ITU's recent exercises of this right was an action taken at its 1947 convention asserting jurisdiction over all operators of typewriters.

(4) "The refusal to work on struck or substandard goods produced under sweatshop conditions."

This refers to the ITU insistence upon its right to boycott the product of any employer who does not maintain an ITU closed shop.

According to Mr. Randolph, the Taft-Hartley law, by making impossible the attainment of these objectives, in effect "denies the right to strike whenever an object of a strike is to preserve the union." Of course, he does not attempt to indicate how it is that the four other printing-trades unions, one of which, the International Printing Pressmen, is actually larger than the ITU, have been able to comply with the statute without suffering any diminution in membership or prestige. Members of these unions emerged from the operations of the act thus far without strikes and with higher wage standards than they ever enjoyed before, unimpaired by defense assessments.

Mr. Randolph has also asserted that as a result of the Taft-Hartley law and its prohibition against the major cornerstones of ITU policy, thus arming employers with "various alternatives than an employer might use [to] destroy the craft" (Tr. 2983), the peace which reigned before and during the Wagner Act, has given way to a war in which the ITU has been compelled to spend over "$11,000,000 of members' hard-earned dues in support of strikes and other defense activities to preserve the union against the Taft-Hartley Act."

This dire picture of strife produced by this act after an uninterrupted period of peace has no basis in actual fact. It is Mr. Randolph's thesis that industrial peace prevailed among the mechanical trades in the printing and publishing industries until the enactment of the Taft-Hartley Act. The truth of the matter is that the 20-year period preceding the enactment of the Taft-Hartley Act was indeed one unmarred by any appreciable number of strikes or lockouts so far as most of the mechanical trades were concerned. This situation continued after the act but there was always one exception both before and after the act was passed. This was the ITU. With the ascendency of new leadership in 1944 the ITU precipitated warfare by insisting that important working conditions be established in accordance with its own laws and not by collective bargaining. The resistance of the publishing industry to a program so hostile to the spirit of the Wagner Act resulted in 40 ITU strikes between 1944 and 1947. After the passage of the Taft-Hartley Act ITU strikes continued. The issues were essentially the same, however. The only difference was that the new act for the first time gave employers some legal recourse.

In this connection, this committee should take note of the facts concerning the outstanding strike against all the principal daily newspapers published in Chicago. At one point in his testimony before the Senate committee Mr. Randolph frankly stated that the strike on the Chicago newspapers is "a strike against this law [the Taft-Hartley Act]." However, he quickly revised his testimony to state that "the strike in Chicago was for a wage rate only, and every day since that strike has been in effect the publishers have known that the members of that union would return to work if they paid a fair rate of wages, and no other conditions attached to that vote of wages."

Actually, of course, Mr. Randolph was right the first time. The trial examiner of the National Labor Relations Board who heard all the evidence concerning these strikes had this to say about the Chicago strike (intermediate report of Trial Examiner Arthur Leff, NLRB Case No. 13–CB–6, p. 8):

"In this case, the union's good faith can be tested quite independently of the position taken by the publishers in the negotiations. The record is clear that [the ITU and its Chicago locals] refusal prior to October 21 to enter into any contract at all, and its alternate position thereafter for a contract terminable within the minimum period allowed by law, was neither provoked by nor related to the refusal of the publishers to discuss wages or to submit a complete counterproposal. It was traceable directly to the bargaining policy adopted at the 1947 ITU convention, as that policy was interpreted, construed and applied by the ITU executive council."

It is of great importance, we believe, to understand clearly what these 4 basic so-called rights are that the ITU claims to be absolutely necessary if it is to maintain its life. They are in effect (1) the right to exclude any nonmember of the ITU from the opportunity of pursuing the printing trade in the majority of printing and publishing establishments, (2) the right to exact submission to a wide range of working conditions without any collective bargaining at all, (3) the right by its own fiat to determine its jurisdiction, i. e., to determine when and where whole classes of workers (frequently represented by other unions of their choice) shall be dismissed to make room for ITU members, and (4) the right to force employers of ITU men to boycott the products of other employers who do not operate ITU closed shops.

This description of a completely uncontrolled monopoly is not the biased characterization of reactionary employers. It is the ITU president's own conception of the four principles upon which voluntary trade-unionism is necessarily based.

During the course of his testimony before the Senate committee Mr. Randolph undertook to explain at some length the background of the close-shop tradition in his union, the way it operates; and its salutary effects. He pointed out that the closed shop is a matter of almost religious principle, a matter of faith. He assured that committee, as he presumably will assure your committee, that the ITU version of the closed shop is necessary to maintain high standards of skill in the trade and that it has operated to keep available a supply of competent people available for hiring by employers. As for any problems concerning the restriction of opportunities available for men seeking to practice the trade who will not or cannot become a member of the ITU, Mr. Randolph brushed these aside, asserting that nonmembers of the ITU can always work in nonunion shops and that employers who feel they cannot submit to all the limitations imposed by the ITU law are entirely free to operate a nonunion shop.

We think this picture of conditions in the publishing and printing industries requires some examination.

The fact is, of course, that the great majority of the newspaper composing rooms of the country are operated by union men—ITU men—and that they could not be operated except by hiring ITU men. And it is no part of our purpose that they should not be manned by union men. But the ITU system, bulwarked by the four principles described by Mr. Randolph, is designed to operate and has operated to create an artificial and tightly controlled scarcity of compositors who are available to do the composing-room work required by the newspaper and commercial printing industries.

It is simply not the fact that, except for the war years, there is an ample supply of compositors available. Mr. Randolph's testimony before the Senate committee and before other bodies makes this abundantly clear. At a hearing before a trial examiner of the National Labor Relations Board in Baltimore last year, Randolph testified that the union consisted of 4,000 apprentices and 73,000 journeymen. More than 2,000 journeymen quit the trade each year because of death, retirment, or other causes. Under the ITU rules the period of apprenticeship has been extended from 4 to 6 years, which means that if the ITU were to be kept even at its present inadequate membership the number of apprentices should be tripled.

The insufficiency of the present membership of the ITU is shown by Randolph's testimony before the Senate committee to the effect that the ITU has not assumed to supply enough journeymen "to give a man adequate supply of printers that would prevent the working of overtime." Indeed, Mr. Randolph testified that it would be unreasonable to permit a sufficient supply of journeymen printers to perform the normal printing requirements of the country without regularly performing overtime work at overtime rates.

A moment's reflection on the official ITU position will reveal that the reason why its four basically monopolistic foundations are deemed so vital to its existence is that the artificial maintenance of a scarcity of printers is its basic objective. Mr. Randolph refers to the almost religious aversion of union men to working alongside nonunion men. Yet he spurns the use of the union-shop provisions of the present Taft-Hartley Act which in almost every case would make it unnecessary for an ITU man to work alongside a non-ITU man. But the union-shop provision of the present act would not make it possible for the ITU to perpetuate its essentially "closed union" which is the weapon by which artificial scarcity is maintained.

We believe that the maintenance of such artificial scarcity by the closed shop and boycott are unhealthy monopoly practices when practiced by aggregations of union power. They are just as harmful to the public interest as artificial shortages created by monopolistic aggregations of corporate power. It is for this reason that we urge this committee not to take a step backward by abandoning all control of the closed shop and the closed union.

The methods by which artificial scarcity is maintained by the ITU system is further illuminated by reference to Mr. Randolph's assurance to the Senate committee that it need have no fear of abuse of the great economic powers concentrated in ITU hands. To employees seeking to practice the printing trade who cannot or may not wish to become members of the ITU, and to employers who cannot or do not wish to submit to the requirements of ITU laws which prescribe the number of printers, overtime rates, hours of work, and the like which he must maintain if he is to get printing done, Mr. Randolph says, in effect, these people are free to get employment in and to operate nonunion shops. He offers, of course, a Hobson's choice, because by the ITU's basic principle of wielding the secondary boycott and strike, the lot of non-ITU employees and employers is economic warfare. The ITU insists on maintaining its right to put such employers out of business and such employees out of work by forcing ITU employers to refuse to do business with non-ITU shops or even ITU shops which do not submit to ITU demands.

The ITU insistence upon the right to refuse to work on unfair goods in practice is nothing more than the insistence on the right, by secondary boycott, to maintain its own monopoly control of the supply of available printers.

The economic power which the ITU is able to wield as a result of the artificial scarcity created by the weapons of the closed shop, closed union, secondary boycott and definition of its own jurisdiction, displays all the characteristics of monopoly power wherever exercised and by whomever exercised.

The power thus achieved is used, for example, to require regular payments of wages at overtime rates to employees already enjoying the highest basic wage rates. It is used to exact submission to the utmost uneconomic and foolish of featherbedding practices. The institution of bogus in the printing field, and particularly at a time when it is impossible to obtain sufficient printers to turn out production work, is so obviously a product of monopoly control in its worst form that we need do no more than mention it.

Much of the advertising matter used in newspapers is not set up in the composing room of the newspaper. Instead it is frequently set in the composing rooms of commercial printing shops after which mats are made and these mats may be furnished to several newspapers for use. For many years the ITU has required that advertising material carried in a newspaper, even though set elsewhere and printed from a mat, must be reset in the composing room of the newspapers. This requirement is equally applicable whether the original composition from which the mat was made was set by ITU printers or not. The resetting in the newspaper composing room almost always occurs long after the advertisement has appeared in the newspaper and been forgotten. Nevertheless, the ITU requires that this material be reset by newspaper compositors, not infrequently at overtime rates. Proofs of the composition are drawn, proofread, corrected, and consigned to the wastebasket. The type is consigned to the hellbox. This wasteful, useless, and foolish process is appropriately known to printers and employers alike as bogus.

Our purpose in commenting on Mr. Randolph's testimony and seeking to correct and give some suggestions of the realities of life in the newspaper-publishing field are prompted by no desire to wreck the ITU or any other union. But the structure of the ITU is one which, we believe, testifies eloquently to grave abuses harmful to the public and to basic national policies relating to labor-management relations and to the fundamental conditions within which our economic life is to be carried on.

We do not believe that the life or even the health of free, voluntary trade-unionism depends in any measure upon the right to exercise the weapons which the ITU deems vital. These are the weapons of monopoly, not the weapons of free trade-unionism. In our judgment the present draft of H. R. 2032, by abandoning all effective curbs on monopoly practices of this character would, if enacted, be a disservice to free trade-unionism, to individual workers, to employers, and to the whole public. We therefore urge that any bill reported by this committee should contain the following points:

(1) A duty to bargain both on the part of management and labor unions so that powerful unions can no longer by threatening to withhold the services of their members compel employers to abide by union rules on working conditions which have been unilaterally promulgated.

(2) Access to the courts either by the Government or by the parties aggrieved for expeditious relief against threatened economic damage by reason of such union practices as the secondary boycott, the jurisdictional strike, or work stoppages to impose illegal conditions.

(3) A prohibition against insistence upon such wasteful make-work practices as the reproduction of unnecessary type.

(4) A prohibition against union coercion of employees in the freedom of choice and organizational matters guaranteed by the act and coercion of management in the selection of its supervisory and bargaining representatives.

(5) Protection against the abuse of the closed shop to create artificial scarcities of labor by denying qualified workers an opportunity to work at their trade.

(6) A definition of the term "employee" which would make it clear that newspapers do not have to deal collectively with retailers and distributors who are in fact independent contractors and not subject to the normal incidents of control which are characteristic of a true employer-employee relationship.

Mr. Reilly. May I also submit, Mr. Chairman, a list of the newspapers which belong to the Inland Daily Press Association?

Mr. Kelley. The list will be received and filed for reference.

Are you going to read the statement for the printing industry or summarize it?

Mr. Reilly. I shall summarize parts of it.

TESTIMONY OF GERARD D. REILLY, SPECIAL COUNSEL, PRINTING INDUSTRY OF AMERICA, INC.

Mr. Reilly. Mr. Chairman, my name is Gerard D. Reilly, and I appear before the committee on behalf of the Printing Industry of America, Inc., the national trade association of the commercial printing industry. This association is to the best of our knowledge the largest group of small manufacturers in the country. Among our 3,600 members are companies producing a substantial percentage of the more than $2,000,000,000 annual volume of commercial printing and employing about 300,000 workers. Commercial printing includes books, magazines, pamphlets, letterheads, and literally hundred of thousands of advertising and utility items. The commercial printing industry deals with some of the oldest and most thoroughly entrenched trade-unions in the United States and a good portion of the industry has engaged in collective bargaining for 50 years or more.

When most persons, and I include Members of Congress in that group, think of collective bargaining, they think in terms of the labor relations of the very largest corporations employing thousands of workers. They, therefore, may tend to lose sight of the position of the smaller businesses or of the industries made up of smaller units. The average commercial printing plant in the United States employes fewer than 25 workers and has an annual volume of between 150 to 250 thousand dollars. It has limited assets and cannot withstand excessive pressure from the unions. On the other hand, the unions with which it deals are international unions, having many thousands of members and substantial treasuries. The problem of the small-businessman in printing, therefore, is how to maintain some semblance of equality unless the law imposes corresponding duties and obligations upon both employers and labor organizations alike.

Printing has often been pointed to as an example of an industry, which before the Taft-Hartley law, got along ideally with its unions. This impression is entitled to some correction. Actually, if the printing industry seemed to get along ideally with its unions in many instances it was because it did not have the bargaining strength to resist exorbitant demands and the imposition of uneconomic practices. It is worth noting that following the war, when there was a severe shortage of manpower, the unions forced upon the industry the acceptance of the 37½, the 36¼ and in some cases even the 35-hour week. Since it was impossible to expand the working force, all that this meant was that the same men who had been working 40 hours at straight time, worked 36¼ hours at straight time and were paid for the balance of the 40 hours at overtime wages. This, in the face of the fact that our employees have traditionally received among the highest annual earnings of workers in any industry.

Frankly, gentlemen, it is impossible for small business faced by big unions to effectively resist uneconomic demands. Bargaining in the printing industry is not conducted on an industry-wide basis but rather on a single plant or local area basis. Normally, all union plants in a city negotiate through a local employer association. And when we join with other employers into collective bargaining groups we are frequently faced with the union strategy of "divide and conquer." If the negotiation committee does not yield to some demand, the union affected may put pressure on individual plants to repudiate their bargaining agent.

Moreover, the growing trend toward centralization in the printing unions indicates that the main provisions of many contracts are not arrived at by collective bargaining but by rules imposed on the local by the international. Consequently, this trend, together with the fact that the Wagner Act imposed a duty to bargain only upon one side, placed the employers in our industry at a serious disadvantage.

Of course, prior to the Wagner Act it might have been contended that since Federal law placed no employer under an obligation to bargain, the unions were also justified in their policy. Even after that Act became law, however, some of these unions still reserved the right to impose working conditions unilaterally. For example, the general laws of the International Typographical Union fix the ratio of apprentices to journeymen, set overtime rates, lay down rigid rules for hiring and discharging, provide for a closed shop, define standards with respect to seniority and establish rules of conduct for the foreman, who must be a member of the union. Although all of these matters are of vital importance to us, none of them are bargainable or even subject to arbitration. Section 2, article III, of these ITU general laws reads:

> No local union shall sign a contract guaranteeing its members to work for any proprietor, firm, or corporation, unless such contract is in accordance with international law and approved by the international president.

In other words, such union laws have been constantly narrowing the area of bargaining by preventing employers and locals in their negotiations from arriving at any agreement unless the employer is willing to agree to all the "must" rules of the international.

True collective bargaining can exist only when there is relative equality at the bargaining table. We do not ask that any special preference be given to the employers. We do ask that in any labor legislation that is written, the obligations, responsibilities and rights of the parties be the same.

Our industry proposes that any Federal labor relations act which the Congress may adopt should incorporate five basic requirements which are vital to the protection of our industry. These protections would be equally helpful in other industries where the same conditions may exist. None of these protections would be afforded by the bill, H. R. 2032, introduced by the chairman.

The basic protective features which we believe should be incorporated in legislation are:

(1) A mutual obligation of employer and union to bargain collectively in good faith;

(2) The right of employers and unions to the exercise of free speech in labor relations matters should be expressly recognized by law;

(3) Effective prohibition against jurisdictional dispute strikes;

(4) A requirement that unions permit qualified workers to be employed; and

(5) Effective prohibition against secondary boycott.

I shall comment briefly on each of these essential features.

With respect to the mutual obligation of the unions and employers to bargain collectively, in our judgment, the pending bill is strongly defective in omitting from the list of unfair practices by unions a refusal on the part of the employee representative to bargain collectively in good faith with an employer. Bargaining requires the participation of both parties to the agreement. The employer alone cannot bargain nor can he alone prevent labor strife. We have seen in our industry the disastrous consequences of the employer trying to bargain with a union which refused. We ask that you place in this bill specific language to insure that both parties have a legal duty to bargain collectively.

So far as we know no responsible person has offered any reason why good faith collective bargaining should not be an obligation enjoined upon employers and unions alike. Indeed since our national labor relations policy for 14 years has been to rely upon the process of collective bargaining to achieve industrial peace and the uninterrupted flow of goods and services, it is unthinkable that anyone could seriously resist the idea that the obligation to bargain in good faith should be imposed on both sides of the bargaining table. The only defense of the provisions of the present bill and of the Wagner Act, which impose an obligation to bargain collectively only on employers, is the argument advanced by the Chairman of the National Labor Relations Board before the Senate Committee on Labor and Public Welfare in support of the provisions of S. 249 which correspond to the provisions of the bill now before this committee. During the course of his testimony, Mr. Herzog was asked whether he saw any reason why a union should not be compelled to bargain collectively just like an employer. He replied:

> No very basic fundamental reason, Senator. We have had rather few cases involving that. * * * It was thought by him that a provision of that kind was partly surplusage because of the fact that labor organizations, unlike employers, are created for the very purpose of bargaining, so that in most cases they would.

Unfortunately, the melancholy labor relations history of our industry in recent years demonstrates that no matter for what purposes unions were originally organized, some unions today are perfectly willing to repudiate the collective bargaining process when they feel that they can more easily accomplish their objectives by economic force. We do not believe that Mr. Herzog would have said this were he familiar with the details of the ITU cases which are now pending before the Board. It should not be forgotten that there has been pending before this Board since the summer of 1948 five cases involving the refusal of the International Typographical Union to bargain collectively, including one in which that union among other things is charged and found guilty by the Board's trial examiner, of refusing to bargain collectively with the members of the printing industry in the six major printing centers of the country.

At its 1947 annual convention this union formally adopted a policy, binding upon all its local unions, of refusing to enter into contracts with employers in the printing industry and as a consequence collective bargaining in this industry completely disappeared for many, many months. As President Randolph of the ITU pointed out on many occasions both during and after the 1947 ITU convention, he felt that since the union could not preserve by legal collective-bargaining contracts the restrictive practices by which it has retained a monopolistic control over the supply of compositors in the United States, it was necessary to repudiate the process of collective bargaining and, instead, by economic force impose upon employers conditions of employment under which ITU members shall work. And if employers resisted this unilateral imposition of conditions of employment they were confronted with the alternative of crippling strikes. In our judgment the only solution to this problem is a mutual obligation on all parties to bargain in good faith.

With respect to free speech, we also ask that you write into the law a specific provision permitting employers the full exercise of free speech and the right to present to their employees, who may or may not be members of a union, economic facts, arguments, and opinions to counter such economic data or arguments as the union may be advancing. While there is no specific prohibition against such free speech in the bill before this committee, the fact that such a right is guaranteed by existing law its omission in a new law might lead the Board to conclude that this bill intends to limit it.

Now, I notice in some of the hearings that Congressman Jacobs has asked some very penetrating questions on the free-speech issue. I do not think his assumptions are altogether correct on this matter. It is true, as he pointed out. that the Wagner Act did not expressly deny to employers the right to express their views, but for many years the Board itself treated the expression of any arguments used by an employer as an unfair labor practice.

The theory was apparently explained in one of the early cases. the Ford case, which was this, that an employer's position that he held was so dominant, as the Board said, the power of economic life or death over his employees, that it gave a great deal of force to his statement. This view was generally upheld by the circuit courts of appeals for many years, but it was not until the American Tube Bending Co. case in 1941, which followed the Supreme Court in the Virginia Electric & Power Co. case, that the Board held that any speech of the employer was not coercion per se.

As a result of that decision, the Board did change its practices, but it ended to hold that any other practice which an employer committed that was unlawful, no matter how remote it was, or how severable, was always an unfair labor practice and therefore made the speech an unfair labor practice. Then the speech was also used in reverse, even though the speech itself was all right, to prove that some action standing alone, which was not an unfair labor practice or would not appear to have been a discriminatory act, that it must have indicated an illegal intent, and therefore amounted to an unfair labor practice.

So I do feel that the retention of a provision somewhat similar, at least, to that in the present act is most desirable if there is to be this freedom of expression in employer-employee relations.

I have spoken of the industry's feeling that there should be some effective decision against jurisdictional disputes and jurisdictional strikes. In the printing trades, where there are six craft unions, the jurisdiction of these unions technically overlaps. Some unions, like the ITU, for example, have a provision in their laws that the union has a right to claim its jurisdiction, that is, to define it unilaterally, and then jurisdictional disputes arise in the development of new processes, particularly in the pressrooms, where both the pressmen and the Amalgamated Photographers claim jurisdiction over offset presses.

Now, I am aware, as Congressman Bailey pointed out, that there is a provision in the pending bill with respect to jurisdictional strikes. To my mind, it is a very ineffective one, for this reason. The jurisdictional strike itself is not prohibited by the pending bill. When such a strike occurs, arbitration can be invoked.

It is not until one of the parties defies the arbitrator's award that it becomes an unfair labor practice. The arbitrator's award also does not become enforcible by injunction, or a right to file for damages. The employer is then entitled to file an unfair-labor-practice charge, have a complaint issued, and then have it processed by the Board.

And then, of course, if one union remain defiant, it is not until the circuit court of appeals enforces the Board's order that there is any effective relief.

Consequently, a jurisdictional dispute under the provisions of this proposed bill might go on for a year and a half.

Under this present act, a jurisdictional strike itself is an unfair labor practice. It is discretionary with the general counsel as to whether he will apply for an injunction or not. It also gives a right to an action for damages. In any event, there are two fairly effective methods of obtaining relief against jurisdictional strikes.

The first jurisdictional-strike section of the present act has been assailed by unions as being unfair. But I think that the argument it used will show that the fear that it is unfair is not justified. For example, the counsel and Mr. Randolph himself have contended before various committees of the House and Senate this section 8 (b) (4) (D) permits an employer, if he is so minded, to dilute the craft by assigning the work either to nonunion, or assigning the less skilled part to persons outside the craft.

What they overlook when they advance that argument are two things. One is that section 8 (a) (3) of the present law, which was taken over from the Wagner Act, makes it an unfair labor practice to discriminate. But even more, section 8 (b) (4) (D) itself has one exception. It makes the jurisdictional strike lawful if the employer assigns the disputed work in violation of a forged certification or order, so that all that any union needs to do to protect itself from the possibility of either assignment of work to nonunion men, or to dilution of the craft through assignment to some semiskilled or unskilled group, is to file a petition for certification and election in advance of there being any trouble. And since the act tends to encourage the Board to find craft units appropriate, a craft should not have any difficulty in obtaining such certification.

With respect to the issue of compulsory union membership, our not inconsiderable experience has sharply emphasized the evils of permitting strongly entrenched unions to determine who may and who may not obtain jobs in an entire industry. By the closed shop plus the closed union, supported by the weapon of the secondary boycott and the assertion of power to determine by its own fiat what work shall be performed exclusively by its own members, the International Typographical Union has been able to achieve virtual monopoly control over the pursuit of the typesetting trade in this country. And true to the pattern of monopolies everywhere, its monopoly power has been used to create artificial shortages in the supply of compositors and accompanying artificially high costs, wasteful featherbedding practices, and the like.

An example of the kind of featherbedding practice which goes on within the industry, for example, is one of the rules which is in the ITU contract, and has to be accepted by every employer who has a contract with an ITU local, and that is the right of the employees in the composing room to reset any mat which comes in, even though the type has been set in another shop, and even in another union shop.

The pending bill proposes to remove all compulsory membership restrictions now contained in the Taft-Hartley law. We do not oppose the elimination from the present law of the union-shop referendum. The experience of our industry has been, since we deal with six of the printing trades unions, that if five unions comply with the law, it is largely a formality, since all of our members, generally speaking, or a substantial majority of them, are union men.

For more than a year our industry has been working under the union-shop provision of the act. To our knowledge no harm has come to any of the unions with which we deal who have entered into this type of union security. It has largely eliminated the closed union without lessening the unions' strength in the plants. Based upon our experience, our industry recommends, with the exception of the section 9 (e) election, that the provisions in the present law relating to union membership as a condition of continued employment remain unchanged.

In passing, I should like to take note of an untenable argument which has been advanced by the opponents of the present provisions of law which prohibit the maintenance of the unrestricted closed shop and closed union.

We have been told by counsel for the ITU, in the course of extensive litigation in the past year, and also in his capacity as a private citizen testifying before the Senate Committee on Labor and Public Welfare, that labor's objection to the provisions of the present law is that it makes it possible for an employer to fire union men and replace them with nonunion men. The Taft-Hartley Act, of course, authorizes no such conduct. Any employer who undertakes, under the Taft-Hartley Act, to discriminate in matters of hiring or firing against union members, is guilty of an unfair labor practice. What the Taft-Hartley Act does do is to make it illegal for an employer to discriminate in any way, for or against union members, except under union shop contracts, and to make it equally an unfair labor practice for a union to force an employer to discriminate illegally. As I have already pointed out, the union-shop provisions of the act give full freedom to the maintenance of the strength of genuinely open unions. Furthermore, in our industry, the seniority clause contained in all of our contracts effectively prevents any such alleged substitution of employees.

With regard to the secondary boycott, here again there must be some protection for small business against the economic power of a large union. The secondary boycott is used primarily as a substitute for legitimate organization effort by trade unions. If the unions are engaged in a traditional form of trade-unionism, they can organize the unorganized workers and apply for certification as their bargaining agent, under the present act.

Instead, the union says to a union employer, "You may not send or take work from a nonunion shop under threat of a strike or disruption of your plant." This means that the unions penalize those companies with which they have contractual relations as a means of enforcing their will on those companies with which they have no contractual relations. The secondary boycott must be outlawed as most unfair to those very companies which have legitimately engaged in collective bargaining and reached agreements with trade-unions. But, more important, in order to avoid irreparable damage, here again the injured party must have the right to immediate relief.

The secondary boycott provisions of the bill before your committee do not in our view approach a solution of the problems involved. Under the pending bill, for example, employers have a duty to recognize and deal with any union selected by a majority of the employees. Employers, moreover, are forbidden from interfering with or coercing their employees in the exercise of this free choice. Yet the proposed secondary boycott section is so drawn that it could force employers who are faced with a boycott to coerce their employees into joining a union.

What I mean is this. The only kind of secondary boycott which the pending bill forbids is the secondary boycott which it attempted for the purpose of making the other employer refuse to recognize the certified union or refuse to recognize the union with which that employer is under contract. It contains no protection with respect to the boycott against an employer whose employees are unorganized and presumably do not wish to belong to a union. In our industry the secondary boycott is a powerful weapon which could thus be employed as it was before the passage of the Taft-Hartley Act to coerce small employers into signing up with unions which do not represent their employees. Accordingly, we recommend that the more inclusive language in section 8 (b) (4) (A) of the present statute be incorporated into the committee bill.

In conclusion, the Printing Industry of America, Inc., representing one of the 10 largest industries in the country, made up of thousands of individual printing plants, urges upon this committee the consideration of these fundamental, fair, and equitable provisions that are so vital to the very existence of the industry itself.

Thank you very much, Mr. Chairman.

Mr. BAILEY (presiding). Mr. Reilly, you were at one time the solicitor for the Labor Department, I believe.

Mr. REILLY. That is correct, Congressman Bailey.

Mr. BAILEY. Will you please state for what period of time?

Mr. REILLY. Yes. From 1937 to 1941.

Mr. BAILEY. Where were you next employed?

Mr. REILLY. I was then a member of the National Labor Relations Board, from 1941 to 1946.

Mr. BAILEY. And after that what was your employment?

Mr. REILLY. I was in private practice for a few months, and then I was retained by the Senate Committee on Labor and Public Welfare as special counsel to assist in the drafting of the labor legislation in the Eightieth Congress. Then I resumed private practice and about 6 or 7 months ago I went into partnership with some contemporaries, Mr. Rhetts and Mr. Ruckelshaus.

Mr. BAILEY. Did you, while you were employed by the majority members of the Senate Committee on Labor and Public Welfare, assist and advise the members in the preparation of the Taft-Hartley bill?

Mr. REILLY. Yes, I did, sir. That was why I was primarily retained.

Mr. BAILEY. And you also assisted in the preparation of amendments that were offered to the bill on the floor?

Mr. REILLY. Yes, sir.

Mr. BAILEY. And later on, the compromise that was reached between the Senate conferees and the House conferees?

Mr. REILLY. Yes. In the conference, Mr. Shroyer and I were with the Senate conferees—he was a member, too,—and Mr. Morgan was counsel for the House conferees.

Mr. Bailey. During the time you were consultant to the Senate Labor and Public Welfare Committee, were you retained by any employees covered by the Wagner Act or the proposed Taft-Hartley bill?

Mr. Reilly. No, I was not, sir. As soon as I was employed, I did not take any cases or any retainers that were concerned with any labor matters.

Mr. Bailey. You were not receiving any retainers?

Mr. Reilly. Not from any clients that were interested in labor matters, sir.

Mr. Bailey. At what time were you retained by employers such as the Printing Industry?

Mr. Reilly. After the passage of the act, sir, and after I left my employment with the Senate Labor Committee. In fact, I was not even acquainted with any members of the trade association until——

Mr. Bailey. I believe, Mr. Reilly, that you are registered as a lobbyist for the General Motors Corp., are you not?

Mr. Reilly. That is correct, Congressman.

Mr. Bailey. About how much salary do you receive in that connection?

Mr. Reilly. $3,000 a month.

Mr. Bailey. If you do not care to state it——

Mr. Reilly. No; I stated it, sir. My retainer is $3,000 a month.

Mr. Bailey. And expenses?

Mr. Reilly. No.

Mr. Bailey. No expenses. What other corporations are you registered as a lobbyist for?

Mr. Reilly. I am registered for General Electric. I am registered for a coal company, Pond Creek Pocahontas, and I am registered for the Printing Industry of America. Now, not all those retainers are purely for legislative work. I do quite a bit of trial work for the printing industry, and I do some consultative work with the trade and these other companies.

Mr. Bailey. And I believe you get retainers from those corporations; is that true?

Mr. Reilly. That is correct, sir, yes.

Mr. Bailey. I would like to call your attention, Mr. Reilly, to the question of the Legislative Reorganization Act of 1946, section 202 (a):

> Professional staff members to such committees shall not engage in any work other than committee business and no other duties may be assigned to them while serving on the staff.

Were you engaged in representing any other corporation at the time you served as consultant with that committee?

Mr. Reilly. No, I was not, sir. I did keep my office open, but I did not——

Mr. Bailey. Or you did not withdraw your registration as a lobbyist at that period? Or did you leave your registration in force?

Mr. Reilly. I had not been doing any legislative work at that period, sir.

Mr. Bailey. You had not registered as a lobbyist at that time?

Mr. Reilly. There was no occasion for me to do so, sir. I was not representing any clients at that time, sir.

Mr. Bailey. I believe that is all.

Mr. Perkins?

Mr. PERKINS. I yield my time to the gentleman from Indiana.

Mr. IRVING. I have just one question, and then I want to yield the balance of my time to Congressman Jacobs.

Mr. JACOBS. Do you want to ask your question first?

Mr. IRVING. Yes.

Mr. BAILEY. Go ahead.

Mr. IRVING. I cannot recall how you stated just how a jurisdictional dispute could be handled by the members of the union. Do you remember that?

Mr. REILLY. You mean, under the present act, sir?

Mr. IRVING. Under the Taft-Hartley Act. I believe there is a certain procedure.

Mr. REILLY. This is the issue which has come up under it. Let us say, for example, an industry like the printing industry, where there are a number of craft unions having separate contracts which sometimes overlap, as an illustration I gave on the offset presses.

Mr. IRVING. I mean, when it came to an impasse and the one union would not give in on something, and they said that they could ask for a vote or an election.

Mr. REILLY. Yes. Well, let us assume that this is one of those contract cases.

Mr. IRVING. Let me finish, because I want to yield my time.

Mr. REILLY. Yes.

Mr. IRVING. You said that was possible?

Mr. REILLY. Yes.

Mr. IRVING. Do you think that is practicable in the building and construction trades? You know, if you are familiar with those trades, jurisdictional disputes come up in a matter of minutes or seconds. Do you think that is practicable?

Mr. REILLY. I always felt——

Mr. IRVING. Just answer yes or no, because I want to yield my time.

Mr. REILLY. I would say it is very difficult to have the Labor Board machinery, which is rather lengthy, apply to casual employment like the building trades.

Mr. IRVING. And I understand that Senator Taft made the statement that the law in his opinion was not written to apply to building trades, and that since the "affecting commerce" language is in there, the general counsel, Mr. Denham, stretched it all over the country, so that it did apply to the building trades. Under his reasoning I suppose it would apply to my wife if she was using in Missouri an eggbeater that was made in Ohio.

Mr. REILLY. Of course, Mr. Denham and the courts under the Wage-Hour Act have gone much farther under the notion of what was commerce than in the case 10 years ago. When I was on the Labor Board, we did not take any building trades cases. We disclaimed jurisdiction, not on grounds that it was necessarily beyond the scope of commerce, but on policy grounds. However, even though that was the view of Mr. Taft—and I was inclined to hold that view, too, as counsel—there was some debate and some references in the history of the bill to jurisditional disputes in the building trades, so that a great many Congressmen and Senators, I think, did assume that the bill did apply to jurisdictional issues in the building trades.

Mr. IRVING. I think generally we realize that the Eightieth Congress had a general philosophy, and a different policy, and no doubt it may be possible to stretch that.

I understand, though, from my work on another committee dealing with the Fair Labor Standards Act, that this "affecting commerce" language was very definitely not wanted by employers and their lawyers. However, they did not object, I guess, to it being in the previous laws.

That is all, thank you. I will yield the balance of my time to Congressman Jacobs.

Mr. BAILEY. There as 5 minutes of your time remaining. Are you yielding that to Mr. Jacobs?

Mr. IRVING. That is right.

Mr. JACOBS. Mr. Reilly, the last time you and I met officially, I believe you were sitting up here like this and I was down at the table.

Mr. REILLY. Yes. You made a very able argument, too, as I remember it, sir.

Mr. JACOBS. And I believe there was a question involved in the last case I argued before your Board concerning which you mentioned in your testimony, and that is the question of free speech, or do you recall the case?

Mr. REILLY. I regret to say, I do not recall that particular one.

Mr. JACOBS. Well, let us take it up in this way. Do you recall that it was the case in which there had been some conversation between a supervisor of the Union City School Bus Co. and a man who had been fired a day or two later as the result of something? And the question was whether he was fired because of union activities. Do you remember it now?

Mr. REILLY. Yes; that kind of comes back now, Congressman.

Mr. JACOBS. To refresh your recollection further, I will say that you remember I cited a decision of the Supreme Court of North Carolina in the case of Senator Luke Lea, of Tennessee.

Mr. REILLY. Oh, yes; that was the Securities case.

Mr. JACOBS. That was where the court, in deciding Senator Lea's guilt, made the statement that if four men should come together from four different points of the compass and meet upon a desert and each of them had a board that was so sawed and mortised that they would fit together in a perfect square, it would be almost conclusive evidence that they had been together before; is that right?

Mr. REILLY. Yes, sir.

Mr. JACOBS. I believe you agreed with me in that case, as I recall.

Mr. REILLY. Yes, I think I did, Congressman.

Mr. JACOBS. I do not know how far I will be able to reciprocate.

Now, let us take this free-speech clause. That is 8 (c). I think as a matter of evidence we can all agree that the statement of an employer which contains no threat or promise would not, standing alone, constitute an unfair labor practice. I think you and I, as lawyers, can agree on that, can we not?

Mr. REILLY. Yes.

Mr. JACOBS. But can we agree, not as advocates but as lawyers, that the words in section 8 (c) which say that anything an employer may say shall not be evidence of an unfair labor practice?

Mr. REILLY. I do not think the section says that, Congressman.

Mr. JACOBS. Well, let us read it and see.

Mr. Reilly. Yes.

Mr. Jacobs. Here it is:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

Mr. Reilly. Yes.

Mr. Jacobs. Now, you agree, do you, that the word "or" is, of course, a disjunctive word, is it not?

Mr. Reilly. Yes.

Mr. Jacobs. All right. Then when you say "shall not constitute or be evidence of," it means that it not only will not constitute an unfair labor practice, but it is not under the law evidence of an unfair labor practice. Do you agree with me on that?

Mr. Reilly. Yes, I agree with you, Congressman. I think where we possibly differ is here. I would construe the words "views, argument, or opinion" as meaning a kind of argumentative utterance. I would apply the rule of ejusdem generis to it. And so in the union case, as I recall it, that was a private conversation that occurred in the bus. As far as I think, that view in the setting, against the light of committee reports and against cases which disapproved of that, this language would necessarily mean an argument that an employer makes to his employees, or an argument that a union organizer makes to employees, for joining or not joining—well, it might not be unions; it might be on anything.

Mr. Jacobs. We would agree, of course, that it would have to be germane to the subject, would we not? Whatever is said has to be germane to the subject or it would be immaterial as evidence.

Mr. Reilly. I will agree with you on one point which you made, and that is that it is an exclusionary rule of——

Mr. Jacobs. Evidence.

Mr. Reilly. Of evidence: yes.

Mr. Jacobs. All right. Thank you very much. That is what I wanted.

And do you not know, as a matter of fact, that it has been applied to exclude evidence of statements made by the employer immediately before men have been fired when unfair labor practice charges were being presented? Do you know that or not?

Mr. Reilly. I know that has been applied to exclude arguments on the evidence of an election, or something of that nature.

Mr. Jacobs. Now, wait a minute. You informed me last night that you had read the letter I wrote to Mr. Wilson of General Motors, did you not?

Mr. Reilly. Yes.

Mr. Jacobs. You remember the case I cited in that?

Mr. Reilly. You cited the Greensboro case.

Mr. Jacobs. The Coca-Cola case.

Mr. Reilly. The Coca-Cola case. I regret to say I could not find the full text of that intermediate report. I just saw the excerpt there. And that, of course, is not a Board decision. It is a trial examiner's view.

Mr. Jacobs. I understand. But it was so applied in that intermediate report, was it not?

Mr. REILLY. Yes, it was.

Mr. JACOBS. And you know of no upset by the Board of that application of the rule?

Mr. REILLY. It seems to me that the Board has found——

Mr. JACOBS. Well, do you or do you not?

Mr. REILLY. Take these cases where employees have asked employees whether they belong to unions or have joined unions; the Board has not held those interrogations, even though not accompanied by any threats or promise of benefit, the Board has admitted that evidence and considered it.

Mr. JACOBS. As a matter of fact, they admitted it and considered it as to whether or not it is evidence of the employer's not having committed an unfair labor practice?

Mr. REILLY. No. In either case, they threw it out, because the employer was interrogating these people on the union membership.

Mr. JACOBS. And that was under the Taft-Hartley Act?

Mr. REILLY. That was under the Taft-Hartley Act.

Mr. JACOBS. Have they done that in the Greensboro case?

Mr. REILLY. I do not think the Greensboro case has ever been decided by the Board.

Mr. JACOBS. Now, let me ask you this: You are employed by the General Electric Co. And you, I take it, are an adviser on labor legislation to General Electric.

Mr. REILLY. Yes, Congressman.

Mr. JACOBS. Did you help to frame the 18 questions in this document?

Mr. REILLY. No. That was prepared before I had any connection with the company, sir.

Mr. JACOBS. I rather thought so, because I have a mighty high regard for your ability as a lawyer.

You have read that, though?

Mr. REILLY. I have read them, yes, sir; and your comments are interesting.

Mr. JACOBS. Section No. 7 deals with the subject that you and I have been talking about here, does it not?

Mr. REILLY. The free speech one?

Mr. JACOBS. Yes.

Mr. REILLY. Yes.

Mr. JACOBS. And you have had good legal training and you are a good lawyer.

Mr. REILLY. Thank you, sir.

Mr. JACOBS. You will agree, will you not, that the question involved in section 8 (c) is a highly technical, legal question, will you not?

Mr. REILLY. Yes, I will.

Mr. JACOBS. It is a matter involving a technical interpretation of the law of evidence; is that not right?

Mr. REILLY. Yes.

Mr. JACOBS. And concerning which you can find many, many pages, probably, written that would have a bearing upon the subject in our legal textbooks?

Mr. REILLY. Yes, indeed.

Mr. JACOBS. And probably it would not be hard to get a wagon bed full of books or full of material which has been printed in the reported decisions in our Supreme Court bearing upon this question, No. 7 here; is that not right?

Mr. REILLY. Yes.

Mr. JACOBS. Then let me ask you this as a lawyer and one who has formerly occupied judicial positions. Do you think that it is fair to send question No. 7 out to the average layman and ask him to cross that question off with a straight "Yes" or "No" answer, without being advised of what is involved in it?

Mr. REILLY. Well, I talked——

Mr. JACOBS. Now, wait a minute. Your client wants a "Yes" or "No" answer. Would you give me a "Yes" or "No" answer to that question?

Mr. REILLY. I think I could answer the question on the questionnaire "Yes" or "No." And let me say this. I think that your assumption is that the questions on that questionnaire meant that the company was describing in popular words a provision which is necessarily in the Taft-Hartley Act.

Mr. JACOBS. A provision, sir? I did not hear that.

Mr. REILLY. A provision which was necessarily in the Taft-Hartley Act. I understand from the people that drew it that what they were describing were issues which they thought should be in a labor law, and it was not necessarily an attempt to depict what was in the Taft-Hartley Act. For example, take that question there to the Communist affidavits. You notice that that suggests that a law ought to have that requirement made on both management and unions. So you can conclude that that was not any attempt to describe it in the present law.

Mr. JACOBS. What do you think your clients meant when they said, "How would you revise our labor laws?"

Now, I want you to answer that not as a partisan, and not as an advocate.

Mr. REILLY. Yes, sir.

Mr. JACOBS. But cast yourself back to the position you once occupied of a judicial character. Do you not honestly think that anyone would interpret that they were trying to uphold the law as it now exists, in view of the publicity and the newspaper stories and the commentators' reports on the law? Would you not agree with me that the average person would accept it as that?

Mr. REILLY. I think that many people would——

Mr. JACOBS. Most people would.

Mr. REILLY. But I think that you and I as lawyers looking at it, especially if you looked at the statute which spoke of Communist affidavits, realized that the company was not describing the present law, but was describing what would be a desirable labor law.

Mr. JACOBS. I think that is well enough publicized so that the average person would realize that that is a concession away from the present law. I think you are right about that. I agree with you. But as to question No. 7, there is nothing there so to disclose, is there?

Mr. REILLY. No. But there is nothing in the other questions so to disclose, either.

Mr. JACOBS. Yes.

Mr. REILLY. But to go back, if I might, to the point I was making, you, I think, in placing such a broad interpretation upon section 8 (c)——

Mr. Jacobs. Now, wait just a moment.

Mr. Reilly. Yes.

Mr. Jacobs. Pardon me. I do not like to interrupt you. But I want to direct your remarks and attention to this. In what way did you say it was a broad interpretation? The word "shall" is a common word. I knew what it was before I got out of grade school. "Not"; I know what that word means; "be"; I know what that word means. And "evidence." You and I both know what that means. Does not that just simply mean that whatever the man says shall not be evidence, and therefore, it shall not be used to characterize anything that he did or to throw light upon his motive? Could it mean anything else?

Mr. Reilly. Well——

Mr. Jacobs. Just tell me whether you think it does mean anything else.

Mr. Reilly. Yes, I do, Congressman, because that point was raised in the debate in the conference report by Senator Pepper.

Mr. Jacobs. Senator Morse talked about it, too, did he not?

Mr. Reilly. He may have. The more pointed exchange, though, was between Senator Taft and Senator Pepper on the point. And Senator Taft inserted in the records of the legislative history, before the veto was acted upon, this, that—substantially what I said—it was supposed to be an argumentative speech which was privileged, and not an instruction or a remark. And he put this situation. He said that the critics of this section are saying that everything a defendant says in a criminal case is admissible and he gave his illustration to show that that was not so. He said, supposing a man was being tried for selling liquor illegally; it would not be deemed competent evidence to show that he had made a speech opposing the Volstead Act. And then he spoke of a murder case, and said it would not be competent evidence to show that the victim belonged to a different political party from the murderer.

Mr. Bailey. The gentleman has 2½ minutes of total time.

Mr. Burke. I yield my time, Mr. Chairman.

Mr. Jacobs. Thank you.

All right. At any rate, I think you and I have put on a pretty graphic illustration here that question 7 is not a very fair question to ask the average layman to check off "Yes" or "No" on.

Mr. Reilly. I would say that the inference is that that is so if that was an exact description of what is in the Taft-Hartley Act.

Mr. Jacobs. And you have already said that you think the average person would construe most questions to be such. I think we have agreed on that already.

Mr. Reilly. I think with many of the questions that would be true. I do not think they would construe them all to be such.

Mr. Jacobs. Now, may I ask you just one more question on that point?

Would you, as legislative counsel for General Motors and General Electric and these other people, be willing to agree that the words "or be evidence of" be stricken from that section, or do you want to think about that?

Mr. Reilly. Well, I have thought about it before quite a bit. It was a very bothersome section to draft in conference.

Mr. Jacobs. Just whether you would or would not agree as a representative of these people you have named to strike out those four words, "or be evidence of"?

Mr. Reilly. I would be inclined to think that it is a bit too broad as it is written now, in view of that Labor Board decision that came down the other day in which the members were divided in their opinion. I think that the section should be redrafted, sir; yes.

Mr. Jacobs. I do not want to be discourteous with you, Mr. Reilly. I think you know I have always tried to be courteous.

Mr. Reilly. I know you have.

Mr. Jacobs. I had to, of course, when I was down there.

But specifically, the question is in reference to four words. Would you be willing to agree as the legislative counsel of those people that you represent, that those four words "or be evidence of," be stricken out?

Mr. Reilly. I would, Congressman, provided there was some substitute language added.

Mr. Jacobs. Do you have the substitute language in mind at this time?

Mr. Reilly. Not at this time, Congressman. I would be glad to submit it to you, though.

Mr. Jacobs. You will submit it later?

Mr. Reilly. Yes, sir.

Mr. Jacobs. All right. Thank you.

Now, let us pass on to another point. I was rather impressed with one of the statements you made, because, you see, it would naturally have to disclose someone who had a keen and rather analytical mind.

I read from page 2 of your statement that you made as special counsel for the Printing Industry of America, Inc.:

> Normally, all union plants in a city negotiate through a local employer association. And when we join with other employers into collective bargaining groups, we are frequently faced with the union strategy of "divide and conquer."

As a matter of fact, that strategy is pretty generally practiced at the bargaining table, is it not?

Mr. Reilly. Of course, it is unfair labor practice for an employer to practice it since the Wagner Act has been in effect. For example, if he goes over the union's head and goes with some minority faction to the bargaining unit, and makes a deal with them.

Mr. Jacobs. It is not necessarily, now, if I can sort of do it under the table. Take, for instance, under section 9 (a); you are familiar with that, are you not?

Mr. Reilly. Certainly the Labor Board nowadays could detect the under-the-table deals.

Mr. Jacobs. I mean the employer can sort of generate another little group who wants to come up and talk the thing over, under 9 (a)?

Mr. Reilly. That is on grievances, but not on collective bargaining.

Mr. Jacobs. At any rate, it starts the breaking-down process; is that not right?

Mr. Reilly. I do not see that it changes the original act as written, today, because if you will remember the original act allowed individual handling of grievances, too, and the new act, in fact, went a little bit further in protecting the union, in providing the union had to be present.

Mr. Jacobs. At any rate, you and I will agree if you can divide the other fellow you are going to do it?

Mr. Reilly. That is correct.

Mr. Jacobs. So, what you lay down on page 2 is normal attack that is made in competition, is it not?

Mr. Reilly. Yes.

Mr. Jacobs. But your folks are organized on a city-wide basis, and I take it from the heading on your paper that you are organized on a Nation-wide basis, even though you may not bargain that way; is that not correct?

Mr. Reilly. Yes, sir. The national association.

Mr. Jacobs. But I suppose you do exchange trade information, and probably have a trade magazine?

Mr. Reilly. Yes; the present marketing information.

Mr. Jacobs. I want to now get down to this next point on the closed shop, where you speak of the closed shop. If you represent a corporation——

Mr. Bailey. The gentleman has just exactly 5 minutes remaining in his total time.

Mr. Jacobs. Thank you.

If you represent a corporation and the stockholders elect the directors—that is correct—and the directors elect the executive officers, and the executive officers proceed to the bargaining table to negotiate a contract with labor—up to that point we are agreed, are we not?

The stockholder does not have any right whatever to come in and try to make any kind of a different deal with any part of the labor force, or to veto what the directors and executive officers might do; is that not correct?

Mr. Reilly. That is right; yes.

Mr. Jacobs. They have no right whatever. In other words, in the management of their investment they surrender that management absolutely to the directing officers of the corporation; is that right?

Mr. Reilly. Yes; but of course there are certain legal remedies for mismanagement.

Mr. Jacobs. Yes; and I believe labor unions have that, too, under the common law.

Mr. Reilly. It would depend a good deal upon the constitution, and also upon whether there was a breach of trust.

Mr. Jacobs. Yes; but as long as you cannot show mismanagement—and by that is meant malpractice in mismanagement, and not just merely poor judgment—it must rise almost to the dignity of malpractice, must it not?

Mr. Reilly. It depends a good deal upon how the debenture of trust is drafted.

Mr. Jacobs. That is true, usually, though, is it not?

Mr. Reilly. Yes.

Mr. Jacobs. Then, that means this: I think we can agree that management comes to the bargaining table with a unified front, does it not?

Mr. Reilly. That is correct.

Mr. Jacobs. And labor, of course, naturally strives to come to the bargaining table with a like unified front; is that not right?

Mr. Reilly. Yes.

Mr. Jacobs. We have already agreed it is a technique of competitors to try to divide——

Mr. Reilly. Yes.

Mr. Jacobs. So, if there may be any technique by which the employer can divide the employees he is fairly well on his road to conquer, is he not?

Mr. Reilly. Yes, but he is forbidden by law to do so.

Mr. Jacobs. We will get to that.

The workers are denied by law the right to have a closed shop; that is right, is it not, under the Taft-Hartley Law?

Mr. Reilly. Yes; although they can have a shop which compels everybody to join within a certain period.

Mr. Jacobs. We will get to that. I do not aim to leave any straggling threads here.

But the one form of absolute unity that the worker may have to meet the absolute unity the employer has, is denied the worker under the Taft-Hartley law?

Mr. Reilly. I disagree with you.

Mr. Jacobs. I say, this one form of closed shop.

Mr. Reilly. One form; yes. Let me point out, though, that I think the most important form is the one which was in the Railway Act where there was no compulsory law at all, and in the Wagner Act, which makes the majority representative the exclusive representative, that is what gives the workers real unity, but not, to my mind, the closed shop.

Mr. Bailey. You have one minute.

Mr. Jacobs. Then, if you go to the union shop, then we find, do we not, that when you hold the election every man who does vote has his vote cast against the union shop; is that correct?

Mr. Reilly. That is right.

Mr. Jacobs. That is the effect of it, is it not?

Mr. Reilly. Yes.

Mr. Jacobs. So that we finally get down, then, to section 9 (a) and we have still got the employer sitting over here with his absolute unity and we finally get down to section 9 (a) on the grievances, and we find there is still a provision there where the employer is required to deal with smaller groups of the working force; is that right?

Mr. Reilly. On the grievances, yes; but that is not in the printing industry that the grievances are handled with the individual proprietors; it is only with the contractors and is handled by the city-wide bargaining association.

Mr. Jacobs. The law requires the employer deal in some manner with segments of the working force if they ask for it; is that correct?

Mr. Reilly. Yes; but just on grievances.

Mr. Kelley. Your time is up.

Mr. Wier. I will yield my time.

Mr. Jacobs. Mr. Reilly, the only remedy that an investor has, if he does not like the way management of a corporation goes, is to sell his stock; is that not right?

Mr. Reilly. Yes; theoretically; but of course he should attend the stockholders' meetings—

Mr. Jacobs. And try to elect somebody else?

Mr. Reilly. Yes.

Mr. Jacobs. And of course the heads of some of your clients would say "Just try to do it," do you not imagine?

Mr. Reilly. It would be just the same as a group going into a large union and trying elections of someone else.

Mr. Jacobs. You are right on that.

Let us go to this question of economic strength: First, I would like to ask you about the jurisdictional strike. I believe that in response to Mr. Irving you say that you do not believe the rule forbidding the jurisdictional strike would be very applicable; that is, on a just basis, in the building construction industry?

Mr. Reilly. The trouble there is they are casual employees, and they are generally not employed until the work is to be performed.

Mr. Jacobs. Where it comes up, unless there is some way to decide it by competent authority, it is not fair for the Government to go and hold Jones and Smith by the hand, and say "Boys, you cannot strike," and let the employer make the decision, and make them bid against each other; do you agree to that?

Mr. Reilly. Yes.

Mr. Jacobs. What the administration bill we are considering actually does is forbid the jurisdictional strike where there are permanent employees, and where there is an election to determine the appropriate unit for bargaining, and electing the representative.

Mr. Reilly. No; I think the administration bill is very badly drawn in that respect.

Mr. Jacobs. It does not do that?

Mr. Reilly. With respect to permanent employees?

Mr. Jacobs. Yes.

Mr. Reilly. It simply, in a jurisdictional strike, permits somebody to invoke the arbitration machinery and get an award, which, as I have indicated, is a very slow process.

Mr. Jacobs. It would amount to about the same thing, would it not, if you award a bargaining unit by decision, and assert it by a bargaining agent in that unit——

Mr. Reilly. You are introducing a notion that is foreign to the whole history of the Wagner Act.

Mr. Jacobs. I am talking about the administration bill here, in regard to jurisdictional strikes; not the Wagner Act.

Mr. Reilly. Your administration bill might conceivably permit an award to go to a union which represented no employees. With respect to the building trades, that may be all right; but as far as dealing with permanent employees, which is about 90 percent of the jurisdiction that will come up——

Mr. Jacobs. Permanent employees?

Mr. Reilly. Yes, and you will agree about 90 percent of the industry is covered by permanent employees.

Mr. Jacobs. Maybe you and I are not in disagreement. You think where there are permanent employees and a unit can be described and a bargaining agent certified, that is where the jurisdictional strike should be forbidden?

Mr. Reilly. Yes.

Mr. Jacobs. But you also agree that with intermittent workers such a thing would not be practicable?

Mr. Reilly. Yes; I agree with you on that.

Mr. Jacobs. On the question of secondary boycott, I want to ask you about that, because I think it definitely affects the industry you represent.

Is it your purpose to try to have the law so written that struck work is protected?

Mr. Reilly. Yes, I do not see any reason why struck work should not be protected. I may have put myself in reverse. I see no reason why a struck-work clause in the contract should not be deemed void, in view of the fact that the whole philosophy of the Wagner Act is to encourage direct dealings between employer and employees, and not between the employees of another employer and the principal employer.

Mr. Jacobs. Let us take this sort of case, Mr. Reilly:

Here you have one of the members of your association that you represent who has a labor dispute, and the employees are out on strike for higher wages, so he says, "All right, go out and pound the sidewalk." And then he takes a mat and sends it over to another printer, and tells the printer to mold a plate, or whatever they do on that thing, and do this printing. There is a combination there between this first employer and this second employer, where this second employer is taking over the work to produce it while the men are out on strike. That is right; is it not? Do you agree with that?

Mr. Reilly. If the only combination is the purchase and sale of that mat——

Mr. Jacobs. Let us take the case I am stating to you.

Mr. Reilly. Yes.

Mr. Jacobs. I just want to set up this case. There is a combination between those two employers, is there not, in that case?

Mr. Reilly. No; I would not say so. I would say there was a combination in a case that has come up that was very close to yours, and that was the T. E. Basco Service case in New York, where the company which farmed out the work had ascertained in advance of the strike that the company could do that, so there was a kind of pre-existing arrangement; but in the case you report, where he could not get the work out, I would not say there was any combination.

Mr. Jacobs. At any rate, there is an agreement; is there not?

Mr. Reilly. A contract to have the mat set; yes.

Mr. Jacobs. Do you think the law should tell the printers over here who are working for this employer they cannot contract for the struck work of other printers who are out on strike over here?

Mr. Reilly. It would seem to me as long as the wages and working conditions in their shop were satisfactory that that should not be their concern.

Mr. Jacobs. But maybe they are not satisfied; at least, maybe they do not think the wages are high enough to justify their new struck work, and to undercut the other fellow. Do you think they should not have the right to contract to refuse to do that work?

Mr. Reilly. It is contrary to the whole theory of having separate bargaining units in the whole act.

Mr. Jacobs. Do you not think actually that the employer in the provisions that he is trying to sustain in this law, he is trying to get the Government to come and sit down at the bargaining table with him?

Mr. Reilly. No.

Mr. Jacobs. Well, let us see. You have a law saying that the worker cannot enter into a closed-shop contract. You are familiar, of course, with the Biblical expression that no man shall serve two masters. Do you not think the employers should organize their side and let the employees organize their side?

Mr. Reilly. As I pointed out, if you have a statutory right to represent everybody, you do not need the closed shop then.

Mr. Jacobs. You realize, do you not, that the argument is—and if you will take your client's questionnaire, General Electric's questionnaire—the question is asked time after time whether or not the employee or the union should be allowed to force the employer to do thus and so; is that right?

Mr. Reilly. Yes.

Mr. Jacobs. What do you think about the employer forcing the printer to do the work that some of the other printers over here in the other shop would be doing except for the fact they are out on strike, and forcing them to do it by law, and not by his economic power, but by the law itself; what do you think about that?

Mr. Reilly. For example, suppose an employer refused to take work from another company just because it was a union company. That would be coercive, too; would it not?

Mr. Jacobs. I suppose there is a certain amount of coercion in every bargaining and negotiating session that ever occurred.

Mr. Reilly. Yes; even though they are friendly enough at the table, there are economic factors on both sides.

Mr. Jacobs. Incidentally, speaking of economic power, let us take your client, General Electric. Do you know how much the assets of General Electric are?

Mr. Reilly. I really do not.

Mr. Jacobs. According to my record, $1,026,864,963.

Do you know what the assets of General Motors are?

Mr. Reilly. I imagine it would be as much as that, and possibly more.

Mr. Jacobs. $2,472,969,238.

Mr. Bailey. The gentleman's time is up.

Mr. Smith?

Mr. Smith. Mr. Reilly, getting away from trying to define the niceties of what words mean, do you think the General Electric questionnaire is a fair presentation for the reading public of the main terms of the Taft-Hartley Act?

Mr. Reilly. So far as putting it into language that a layman can understand, I would say so, although the questionnaire does not precisely try, as has been assumed, to sustain every feature of the act, or to depict exactly what is in the act, but certainly if any lawyer or a layman had it described in a few words, as to what is in the act, I think the questionnaire would be a fairly lucid summary of what is in the act.

Mr. Smith. In other words, they were trying to form a general picture of what the provisions of the act contained?

Mr. Reilly. Yes.

Mr. Smith. And you and I might have different ideas as to whether we should use this word or that word, but its purpose is to show the public the main provisions of the Taft-Hartley Act; is that right, sir?

Mr. Reilly. That is correct, sir.

Mr. Smith. I have no further questions.

Mr. Bailey. Mr. Werdel?

Mr. WERDEL. When you went to work for General Electric, did you know they were worth $1,000,000,000?

Mr. REILLY. I did not, sir.

Mr. WERDEL. Maybe you should get a raise.

As to the voting public generally, do you have an opinion from your experience, based upon your experience in the last 2 years in handling this subject, do you know whether or not the American public has a feeling that is changing, or is presently stationary in regard to the labor problem?

Mr. REILLY. I did not quite get that, Congressman; I am sorry.

Mr. WERDEL. Do you believe that the American public has a feeling they desire to express, about labor laws?

Mr. REILLY. Yes; my feeling is that the public would like to have a balanced labor act; and, I think, that to the extent there seems to be a feeling among the workers that the Taft-Hartley Act was unjust is because the act was misrepresented so much by union literature and by union newspapers.

Mr. WERDEL. I think we are all agreed that the public is conscious of a problem in regulating labor and the organization of labor?

Mr. REILLY. Yes.

Mr. WERDEL. I believe that the public generally believe that organized labor is necessary; do you agree with that?

Mr. REILLY. Yes, I do, Congressman.

Mr. WERDEL. If that is all true, then do you believe that the administration bill in its present form will satisfy the public, or do you think it will stimulate more prejudices in the immediate future, if we pass it in its present form?

Mr. REILLY. I think it would be very unfortunate if it were passed in its present form, and that the public would feel they had been let down and had been returned to a one-sided condition.

Mr. WERDEL. And those reasons are stated in your statement?

Mr. REILLY. That is correct.

Mr. WERDEL. I have no further questions.

Mr. BAILEY. Mr. Kelley?

Mr. KELLEY. I was a member of the Eightieth Congress, and also a member of the joint committee——

Mr. REILLY. Yes; I remember, Congressman.

Mr. KELLEY. And I heard it rumored—and I am not going to ask you to name any names—that someone, or some members, had said that the enforcement of the Taft-Hartley Act or the Hartley Act of 1947 would not be carried out explicitly until after the election; did you ever hear that rumor?

Mr. REILLY. No; I did not, Congressman; but it seems to me that they kept going ahead, so far as the general counsel's office was concerned.

Mr. KELLEY. You did not hear anything of that sort?

Mr. REILLY. No; I did not, Congressman.

Mr. KELLEY. That is all, Mr. Chairman.

Mr. BAILEY. Thank you, Mr. Reilly.

Mr. REILLY. Thank you, Mr. Chairman and members of the committee.

Mr. BAILEY. At this time the committee will be glad to hear Mr. James O. Monroe, publisher of the Collinsville Herald.

Mr. JACOBS. I should like to ask permission at this time to place in the record an article from the June 1943 issue of Reader's Digest, in regard to the operations of the typographical union, and I have copies for all the members.

Mr. BAILEY. I hear no objection, and the material will be inserted in the record.

(The article referred to is as follows:)

THE TYPOGRAPHICAL UNION—MODEL FOR ALL

(By William Hard, staff writer for Reader's Digest)

[Reprinted from the Reader's Digest of June 1943]

In previous articles I have urged that all unions be required by law to hold regular elections, to make regular financial reports, to get a majority vote of rank-and-file members before striking or picketing, and—in short—to operate democratically.

It has been alleged that such laws would cripple the unions. So now I write about the Typographical Union—the printers' union.

The Typographical Union is the oldest union in America. Its local branch in Washington, D. C., was founded in 1815. Its local in New York City was founded in 1850 by Horace Greeley. In 1852 these and other locals merged to make the national union, which now has its headquarters in Indianapolis. Today this union has almost 900 locals and more than 80,000 members. In towns of 7,000 people and above, it sets the type for over 85 percent of all newspaper and printing establishments.

Clearly it has been successful for itself. It has also been successful for its members.

Print shops used to be dark and dirty; the air in them was foul; the workday was 12 hours; tuberculosis was an accepted printer's ailment; the average age of printers at death was 28.

The union made up its mind to lift that age. All locals of the union formed "Committees of Sanitation" which pleaded with employers and health authorities, and pushed print shops into the forefront of early industrial sanitary progress. Then, in 1892, the union established the Union Printers' Home at Colorado Springs—a sanatorium for tuberculous members and a place of retirement for aged ones. The union has spent more than $9,000,000 on it.

Above all, the union has reduced the workday. Work in a modern composing room is fast, intense, exhausting. The union has gradually brought the worktime of its members down from 12 hours a day to a maximum of 40 hours a week—except for war needs and other emergencies.

The consequence to the lives of its members cannot be a mere coincidence. Their average age at death has been lifted from 28 to the following levels:

By 1900, to 41; by 1910, to 46; by 1920, to 53; by 1930, to 59; by 1942, to 64.

This union has served life. Its success is unquestionable. So, next: Has it won this success by dictatorship over its members and class war against its employers

It has not. Among its 900 locals there have been plenty of instances of hotheadedness and unreasonableness. The main point nevertheless remains that the Typographical Union, so old, so successful, is utterly antidictatorship and utterly anti-class war. Let us look at its methods from the bottom up.

You start toward being a member of the Typographical Union by becoming an apprentice. You can become an apprentice at 16. Then for six years you study your trade by practice in the shop and by taking 149 printed lessons sent to you by the union's Bureau of Education. These lessons are so complete that they have been adopted by many school systems as official textbooks.

A special set of lessons tells you about unionism. You are taught to remember the 19 London Times printers who in the early nineteenth century were sent to jail for trying to have a union. You are taught that union men must sacrifice for each other in order to continue to have a union. You are taught that it will be your duty to attend union meetings and to vote on all union problems.

But you are also taught about employers. You are taught that "labor should not be unfriendly to capital"; that "capital and labor both are essential to efficient and economical production"; that the union should "insure high-class workmanship"; that it should strive to "reduce unit costs"; that the employers of the Typographical Union have virtually never broken a contract with the union, and that no local should ever break a contract with any employer; that every local should regard itself as a "partner" with the employer in the production process; that every preacher of class war, every Communist, every Fascist, every Nazi, is an enemy to the union and should be eliminated from the whole American labor movement.

On all these lessons the apprentice must pass examinations. Then he is a journeyman and a full member of the union and starts voting. He spends lots of his time voting.

The Typographical Union insists that its locals shall manage their own local affairs. Some unions get themselves centralized into their national headquarters. Their national officers become national despots. They found dynasties. The Typographical Union nourishes democracy's taproot:-local self-government.

Every Typographical Union local must hold a regular monthly meeting on a regular stated day. It must elect an auditing committee or employ a certified public accountant to examine the books of its officers every three months. It must vote on every contract with an employer; and the contract binds every member. It must conduct a referendum of all its members and get a majority before it can raise its dues. It must vote on any proposed strike and get a three-quarters majority before striking.

In these circumstances no "one-man rule" is possible. And if this union can prevent the birth of "labor bosses," all unions can.

Unions normally choose their national officers in a convention of elected delegates. That's democratic enough for most of us. But the members of the Typographical Union nominate and elect their national officers themselves in a nation-wide referendum. It happens every two years. It is one of the most instructive events under the American democratic sky.

Members who aspire to be candidates must announce themselves in four lines of six-point type, one column wide, in the December and January issues of the Typographical Journal, the union's paper mailed to every member. The Journal has to print the announcements of all aspirants to national offices whether the existing officers like them or not. They often do not.

The union, being American and democratic, just naturally has the two-party system. One party is called the "Independents," the other the "Progressives." Each gets its issues by watching the other and pouncing upon it for the general welfare, just like "Republicans" and "Democrats." And, just as there are men known as national Democratic or Republican leaders, so there are union-wide Progressive and Independent leaders.

In February the locals nominate. Each may name one man for each national office. A local with a majority of Independents will vote for a nationally known Independent. Another local will vote for a Progressive leader. In the case of each national office, the five men nominated by the largest number of locals become the nation-wide candidates. Often, however, it turns out that all the Progressive locals have voted for one man, and all the Independent locals for another, so that only two men run in the final election.

The names of the nominees are printed in the Journal in April. Each nominee may state his qualifications in the Journal—up to 200 words' worth of them.

On the third Wednesday in May the locals vote by secret ballot. The sealed ballots are forwarded to Indianapolis, where, on May 31, while watchers from both parties watch, they are opened and totaled; and the victors are proclaimed. The process has taken six months; but it is absolutely stealproof.

And if this union can operate stealproof elections, all unions can. The coercion and fraud that so often occur in union elections are not necessary to a strong and energetic labor movement.

Now let us look at some more referendum democracy in the Typographical Union. In 1937 Mr. William Green, President of the American Federation of Labor, sent the union a letter. It said that an AFL convention had ordered the union to pay to the AFL a new assessment of one cent per member per month. The Typographical Union was shocked to its foundations.

The union has an annual convention of its own. This convention does a lot of important enacting of "general laws" and "bylaws" for the whole union. But there are two things it cannot do. It cannot by itself amend the union's constitution. And it cannot by itself levy a new tax upon the members. Both those things have to go to a referendum vote of the entire membership.

When the members of the Typographical Union thought of an AFL convention trying to do to them in taxation what not even their own convention could do, they went white hot. They yelled, "Dictatorship" and they rushed to a referendum. They voted four to one to decline to pay the new AFL assessment.

The Typographical Union in the early 1880's was the main force in the founding of the AFL. Now it is "independent," belonging neither to the AFL nor to the CIO. At its 1942 convention it adopted a resolution saying that it would like to unite itself with a reunited American labor movement—but only on one condition, namely: "The establishment of democratic procedures in all affiliated unions."

And it came near adding another condition, namely: "The elimination of gangsterism and the barring from office of all associates of underworld characters in all affiliated unions."

I ask: Is the Typographical Union antiunion because it charges that undemocratic procedures exist in unions?

I suggest that this country is equally tired of business leaders who cry "antibusiness" to stop business reforms and of union leaders who cry "antiunion" to stop union reforms.

Now let us look at the Typographical Union's funds. On this point our unions are often unfairly attacked. People say:

"Look at all their money, taken off poor working people."

It is a foolish remark till we know what the money was spent for.

The national organization of the Typographical Union, in its last fiscal year, collected more than $4,000,000 from its members, which is about $1 a week per member. It's a lot. But the union spent more than $400,000 on the Union Printers' Home, and almost $3,000,000 on pensions for old members. It spent $500,000 on funeral benefits and continued to be able to say, "No union printer ever filled a pauper's grave." It spent $100,000 on the Typographical Journal. Its expenses for all its elected officers and employed organizers, for all their traveling expenses and for all other services, and they were many, amounted to less than $200,000. It works out to less than five cents per member per week. No corporation does a tighter job of economy.

Claude Baker, president, and Woodruff Randolph, secretary-treasurer, get $7,500 a year. How many businesses with an annual turn-over of more than $4,000,000 pay less to their top men?

But how do I know that the union accounts are straight? Because they are checked twice a year by a committee of three auditors elected by the total membership of the union; and because they are additionally checked twice a year by certified public accountants; and because they are printed every month in page after page of the Typographical Journal.

Many other unions come equally clean. *Therefore all can and should and must.*

A democratic union has two advantages for the country. The first is that it tends toward relations with employers that are more human and intelligent and stable. But the second is even more important.

The whole democratic world, in order to meet the competition of the totalitarian world, has to perfect its own democratic institutions. It has to democratize its daily business life and its daily labor life. You cannot live an undemocratic life 364 days in the year and then achieve democracy by going to a political polling place on the 365th.

If you visit a union composing room, you may see the compositors, in a lull of work, gathered into a quick huddle. They are holding a meeting of their "chapel"—a subdivision of their local. They are rapidly settling, among themselves, some point of shop technique or shop discipline.

These little cells represent daily, hourly practice in democratic living. They represent participation in economic government. They represent economic government by consent. They train men to detest autocracy and to desire democracy in all things.

Freedom needs such men. Free democratic business must learn that in order to survive against the totalitarian state it has to have such men. The final merit of the Typographical Union is that its institutions are organized to produce such men.

Mr. Bailey. Mr. Monroe.

TESTIMONY OF JAMES O. MONROE, PUBLISHER, THE COLLINSVILLE HERALD, COLLINSVILLE, ILL.

Mr. Monroe. I first want to say in response to the apropos questions that were asked here, that I received one of the questionnaires, and in my judgment it was not so misrepresentative of the Taft-Hartley law, but it was extremely unfair in that it presumed to go on the idea that laymen, such as I am, small-business men, could categorically answer questions which were involved in there, implications, as they were, and I wrote about four essays on the things before I sent it back.

It is not fair to expect laymen to answer questions concerning matters as involved as that, which required interpretation and the expenditure of a million dollars of attorneys fees.

I would also like to say, outside my formal statement, that I am in a business which is akin to that which was represented by the last gentleman who testified.

I am James O. Monroe, of Collinsville, Ill. I am a member of the Typographical Union, and also a member of the Graphic Arts Association of Illinois, an organization of employing printers, which association is made up mainly of the big printers, and my observation over 39 years in business has been that the unions did not need the Wagner Act; at least, the Typographical Union and the Employing Printers Association did not need the Taft-Hartley Law, and I do not think either one of them has done a great deal of benefit. You probably are aware, as readers of newspapers, that the president of the Typographical Union entered upon and induced his union to follow what I thought was an extremely idiotic notion, that he could evade and avoid the provisions of the Taft-Hartley Law, by simply saying, "We will not sign a contract." I do not know how you can avoid a law by that simple device. It evoked a lot of trouble, although I and all the other commercial printers said, "It does not make any difference whether we sign a contract, so long as we agree on wages and working conditions," which brings up the fact which has been strong in my mind, that most of the labor difficulties come from the hard-headedness which was manifest in Chicago by the publishers, and not by the commercial printers in Chicago, because they have been under verbal agreement, but they were not hard-headed enough to involve themselves and their employees in a prolonged strike such as the publishers have done, lasting about 17 months, now, and they are no closer to a settlement than they were then, and it demonstrates to me that amity and decent relationship is worth more than law, and I wish we could get away from the whole business, but we have to talk about it.

I am here to say a few things about it more in a philosophical vein.

I am sole owner of a printing plant in which I publish a weekly newspaper and do commercial printing, employing about 20 persons, most of them members of unions. I myself have carried a card in the International Typographical Union for 39 years, and when I feel like it I work with the men in my shop. Our grievances have been trifling, and we always have been able to make contract agreements without a strike. I also am a member of the Graphic Arts Association of Illinois, an organization of employing printers, and of the Collinsville Chamber of Commerce, whose interests are indicated by the name. I have served 10 years in the Illinois General Assembly, an arena in which labor questions are as abundant and as difficult as they are here, and while I am not now a member of that body, I may, if my good health continues, run for the senate again next year.

The area where I live and the district which I represented in the legislature is peopled predominantly by men and women who are employed workers, mostly unionized, so that it might be thought that

I may be inclined for political purposes to favor labor. I acknowledge the fact that I am a friend of organized labor and the further fact that I am recognized as such by the labor groups. But I have spoken out vigorously against labor abuses, particularly the jurisdictional strike, and I have championed the rights of capital and of business management on many occasions. I hold firmly to the proposition that capital is equally essential with labor in our economy, and that management, as well as enterprise and inventive genius, are best provided by the profit motive.

I mention all this to show that I do not appear here as one aggrieved by labor disputes nor as a special pleader for either one of the two opposed groups—labor and management—which have mostly appeared, and that my status and connections may make me capable of viewing both sides of the current questions, not only with better understanding, but also with less of personal interest, with less emotion, and consequently with less bias than some others.

I think it is fundamental that psychologists are the foundation of economic and political philosophies. And I am convinced that men and women join and adhere to labor unions because they consider the union a means to economic betterment. I joined the typographical union when I was 21 years of age, in my fifth year of scraping my way through college by working in a printshop so small that it employed no other man, in a village where there never has been another union man. I did this because at that time I had no visions of ever owning a printing plant, but rather of pursuing a journeyman's vocation, and hence could foresee, without any urging much less coercion, that my future interests would be fostered and protected by affiliation with other men like situated. I had no understanding of such strong complex questions as the closed shop, union security, and jurisdictional strikes; but, looking back, I imagine that if those questions had been presented to me then I would have formed about the same judgments upon them as I hold now.

To conclude the preliminary observations, let me say that I think the greatest error on the part of those who framed the Taft-Hartley law was that they acted as if they regarded the union and its officers as being the controlling agents over the union members, a doctrine specifically stated by Judge Goldsborough, saying "as long as a union is functioning as a union, it must be held responsible for the mass action of its members."

With all respect for the learned justice, I cannot accept his doctrine. While the members are in a large sense responsible for the union, I cannot see wherein it is responsible for them, at least in matters where they determine its action, as in strikes which they have voted.

Relation of union and its officers to members: Union officials are regarded by the members as leaders and not as dictators nor as being empowered to determine policies and to bind the men to them. In the typographical union to which I belong, no action can be taken, including the election of officers, without a referendum of the membership, both in the locals and in the international and strikes are entered upon only by a vote of the membership affected. I understand that this is true in the mine workers, who are the largest industrial group in my city, and in most other unions. Labor unions are not corporations which elect directors and officers who manage the business for a year or some other stated period and who during that period can commit the stockholders to policies and obligations. "Labor czars" are no more potent than "political bosses."

This fallacious thinking, which Judge Goldsborough first baldly expressed, is at the bottom, so it seems to me, of the provisions in the present law which seek to prevent strikes by court injunctions against only the union and its officials, and which seek to direct union activity by requiring officials to take a non-Communist oath. And this thinking, and the legislation which it fostered, leads inevitably to the practical difficulties of establishing industrial peace by them, which I shall discuss more fully later. For men who recognize their officials as leaders, and not as dictators, cannot be expected to respect and accept and follow a law first, which affronts their instincts, second, which thwarts established practices in the settling of disputes with management, and third and most important, which lays its impact solely on the union and its officials and which suggests no coercion and imposes no penalties upon the men themselves, either as individual citizens in the Commonwealth nor as members of the union.

With that said, let me comment on certain provisions of the present law and of the pending bill.

Penalize jurisdictional strikers: Before going into the provisions which I disapprove, let me say that I approve heartily of the effort to curb jurisdictional strikes, though I do not approve the injunction method set-up. I shall state my objections to injunctions more fully later.

Without going into the nature of jurisdictional strikes, which is generally known, I maintain that they are the most unconscionable, not to say the most stupid, feature of union activity. I can understand why two groups of men would undertake to preserve their right to a piece of work by engaging in a rough-and-tumble bout, but I cannot imagine anything more foolish than for both to walk off the job. And I feel so strongly on the subject that I would favor imposing a fine on any and all of the men who do desert a job without a grievance against the employer. And, loathing the injunctive process, I would suggest to the Congress the fixing of an amount of the fine rather than leaving it to some judge of a court, and I'd make the fine heavy enough to be altogether discouraging. Many times I have urged, unavailingly, that labor organizations establish a formula and a mechanism for disposing of these disputes between unions without a strike, and they have been too slothful to do it. I think the imposition of some fines upon the men would shortly spur them to effective action in this direction, action more appropriate in every way than having the Labor Relations Board arbitrate the disputes or dispose of them otherwise.

On the kindred question of boycotts I have nothing to say, simply because I have not been able to think the question through to an answer satisfactory to myself, much less anyone else.

Most of the other principal provisions of the Taft-Hartley law I oppose, and I shall tell you why.

First the provisions against the closed shop.

Apropos of the question raised by the Congressman with regard to struck work, I agree that when an employer is forced to suspend operations because of a strike, and he undertakes to continue operations in part or in whole by sending some of his work out, that that should be considered unfair practice and the other man should not be required to do that work.

I think as an economic condition, that is sound.

The closed shop is, in the thinking of union men, the basis of their union. Unions never have been strong except where the closed shop is the rule. And, however strong they become, they never have been able to win in a battle to the death with stubborn management, because hunger, their hunger, always is on the side of the employer, and the odds are 10 to 1 that he can "outstarve" them.

It is abhorrent to any union man that he should be required to work and pay out of his earnings to maintain the union while alongside him works another man who refuses to work and pay for the upkeep of the union. If the nonunion man gets the same wage as he gets, he chafes at the inequity. It the nonunion man works for less, that stands as a constant threat of a lowering of the union wage, and weakens the security which he expects the union to afford him.

The closed shop, moreover, is not merely a symbol, but a practicality, and union men and unions are usually ready to admit nonunion men to membership whenever there is room in the employment for their services. Mr. Frank Beatty, secretary of the Graphic Arts Association of Illinois, to which I belong, told me recently that approximately half of the typo members in Chicago had learned their trade in nonunion shops, I suppose mainly in smaller cities. My own local grants cards to qualified union men acceptable to the employer, not only in my shop but in others in the jurisdiction. That is true of other unions in my area, making them, in one sense, what is called union shops rather than closed shops. The resistance to this policy, when it appears, usually has been where employment is sparse and employed men are subject to possible lay-offs. And the animus of most union men against the so-called union shop is that it allows the employment of nonunion men against the wish of the union, and they fear that this privilege will be overused to the detriment of the present members, by overcrowding the union rolls, requiring a division of time and lessening their security.

On the other side of the question, much is made of the right of nonunion men to work—and you have heard that phrase a lot of times, that every man has a right to work whether he has a card or not—which is quickly distorted into the proposition that they have a right to work alongside union men. This is based on a premise which I do not accept. While I agree that every man has a right to work at whatever he can find to do, I do not agree that it is the duty of any other man to employ him, or that he has any right to demand employment, much less to coerce the conditions of his employment as against the interests of others who may be employed; particularly would I resist the idea that a nonunion man has the right to force himself into the bettered conditions which I think it may be assumed the union has provided without any effort of his. Employment is essentially a matter of agreement. Any man has a right to hire union men or to hire nonunion men, as he prefers. And men have a right to seek employment as union men or as nonunion men. And any employer and any group of workers have, or should have, the right to fix by agreement the conditions of the employment. Any departure from that proposition, it seems to me, leads to endless confusion.

Moreover, it is wrong to assume that unions and union men have exclusive control of employment in America. Nonunion men are free to seek employment under nonunion conditions wherever they may find them. Of course, in some areas such conditions are limited, not because of a dearth of men who would be willing to start and operate nonunion establishments, but because community sentiment is so strong against them that entrepreneurs will not brook it, and hence only union plants exist.

But that condition is far from universal. Lately it has been brought dramatically to public attention by some Supreme Court cases that there are a considerable number of States which have laws forbidding the closed shop. And even in States where such laws do not exist the open shop is common. In my country there is a city as highly industrialized as mine where only the brewery workers and the building trades are organized. In northern Illinois there is a very large and very fine printing plant doing business of millions of dollars a year, which is entirely nonunion. And it may surprise you to know that my friend Beatty of the Graphic Arts Association, whom I previously quoted, wrote me recently—and I have his letter here if you want it for the record—as follows:

> You ask if there are any nonunion shops in Chicago. From a numerical standpoint there are about 2,000 established ones, of which about 500 have contractual relations with one or more unions. About 250 have the union label.

My own observations have been that most of the nonunion printing plants in Chicago are small ones. But the R. R. Donnelly Co., the biggest commercial printing plant in the world, is an open shop. Quoting again from Mr. Beatty's letter:

> In the case of the Donnelly Co., the plant is still running as an open shop, but has contractual relations with two unions—

and I think you heard the other gentleman say there were usually about six crafts involved in the operation of a printing plant—

> namely the Amalgamated Lithographers, Local No. 4, and unit No. 1 of the Pressmen's Union.

For the same reasons that I oppose a ban on the closed shop, I oppose the provision in the administration bill to override the power of the States to legislate on the question of the closed shop. Experience has shown that it is wise to recognize prevailing sentiment and practices as they have grown up in various parts of the country, and the Supreme Court has practically written that principle into the law by rulings on State legislation. The State legislatures are apt laboratories for experimentation and development of law relating to human relations, and I would leave them free to experiment in this field, following developing public sentiment, for the benefit of their own people and as an example to others.

Moreover, it must be said that so long as sentiment and practice varies throughout the country, economic forces discourage extreme practices on the part of both unions and employers, just as any extremity in other fields defeats itself. Citing a case in the printing field, the recent disturbed conditions in printing in Chicago, due to the foolish policy of the president of the ITU, have driven a great deal of printing away from Chicago. A legislator with whom I formerly served told me last month that the plant where he is employed has lost 30 percent of its business to other shops outside of Chicago, some of it to nonunion shops. And quoting again from Mr. Beatty:

> Nobody knows exactly how much work has left Chicago, but there has been enough to cause trouble.

So, I approve neither the anti-closed-shop provision of the Taft-Hartley law nor the proposal to forbid the States to legislate on the subject. Extreme sumptuary legislation has proved itself bad in other fields, and local option has been found to be the best means of dealing with one of our worst vexatious problems of human conduct. I would apply it to labor relations, and I hope the Congress omits from its present program any reference to the closed shop.

The non-Communist oath: The other day a Mr. Howard Young, of St. Louis, appeared before the Senate Labor Committee, speaking mainly on the non-Communist-oath provision of the present law. He urged that the law be "strengthened," though he did not suggest how. It has bedeviled him and his men, because the officers of the union in his plant, which is near Collinsville, had refused to sign the oath, and he has refused on that account to negotiate with it, provoking a strike which has lasted for months. It was a piece of hard-headedness on both sides, but that is not the question here. Neither is Mr. Young's plea for a strengthening of the provision, that being only some sort of confession that the law is no good.

To me this is the silliest thing I ever read in a statute. For it imputes to Communists who are officers of a union a probity beyond that which obtains among other men. I have little respect for the value of oaths generally, less and less as I grow older and see more of men. The Chicago Crime Commission recently published as its opinion that 65 percent of witnesses in criminal trials perjure themselves whenever occasion suggests, and when they do so their statements are subject to disproof and they then are liable for prosecution for perjury. In Ilinois the law requires the members of the general assembly to take an oath that they have not accepted and will not accept any money or other consideration for their action upon legislation; this swearing of 204 men is often referred to among the members themselves as the greatest demonstration of mass perjury in the State. The fact is, as I have had ample opportunity to observe, that many men will accept consideration for their votes, while there are many other honorable men who will not. But the honorable men are deterred by their honor and not by their oath.

And so it seems to me to be assinine for anyone to imagine that a Communist, who is apprehended, to be capable for seditious effort to revolution would balk at a little perjury, which other men supposed honorable will swallow without gulping. Hence, I would say that since this law cannot be remedied, it should be abandoned. For if a union is not dominated by Communists it will be smart enough to elect officers who either are not Communists or, being Communists, will not hestitae to take the oath and then violate it. Either way the oath is futile and it is an insult to honest American patriots who fill most of the union offices.

The injunction against strikes: Waiving other and lesser questionable features of the present law, I think the one deserving most consideration is the injunction provision. That seems to me to be undemocratic, lacking in legislative quality, and in improper employment of the judiciary.

Let me say first that I do not accept the proposition of the President that he has some "inherent" power to call for an injunction to prevent a strike. I am not at all persuaded by the statement of the Attorney General that such power resides in the Executive, and I do not think he can document it in a brief based upon the Constitution. So I shall treat it as a subject of legislation.

The law purports to reach the matter of preventing strikes which jeopardize the national welfare, and it is founded on the principle, not expressed specifically in the law, but stated by Judge Goldsborough in his ruling last April in the Mine Workers case, that "as long as a union is functioning as a union it must be held responsible for the mass action of its members." I think that what has been said about the relation of union members to their officers is relevant here: that members are responsible for the acts of the officers, but that it does not follow that the officers are responsible for the acts of the members.

The more practical question, it seems to me, is, regardless of the theoretical responsibility, and therefore will, respect the orders of the union, particularly when the union orders are in contravention of the union's policy and are, moreover, delivered under duress of a court order. Neither the union laws nor the statute, nor the court order suggest any such eventuality. So far as I can discern any inhibition in the law, the men can strike as quickly and as long as they please. And, again being practical, no matter how crippling a court order may be to the union nothing is achieved for industrial resumption unless the men go to work. One may say that the men have some responsibility to obey the orders of the officers, but the law does not say so, and Judge Goldsborough did not say so, and even if both did there is no penalty on the men if they refuse, which makes the law well-nigh a nullity.

Aside from that, what disturbs me is the employment of court discretion, rather than legislative determination of the penalties which are to be applied in the strikebreaking formula, either against union officials who fail to order their men back to work or, when it comes to that, to the men who may refuse to follow the union order. I consider it the most abject abnegation of legislative responsibility for this Congress to shunt to the courts the duty of determining in a ocntempt proceeding the guilt and fixing the penalty whenever a paralyzing strike occurs, whether it be by the stubbornness of union officials or of the men who refuse to follow them. When Judge Goldsborough found the miners' officials in contempt he could, for anything in the law to the contrary, have fined John L. Lewis 5 cents or every dollar he possessed or ever expected to possess; or he could have lodged Lewis in jail for whatever time he thought necessary to purge John L.'s contempt. And he could have fined the union 5 cents or every dollar in its treasury. That procedure I submit, gentlemen, does not grow out of sound legislation. That, I submit, is not the acceptance on the part of the Congress, or of individual Congressmen, of a proper legislative responsibility to determine what are illegal acts and to fix and declare the penalties for such acts. I regard it as plain cowardice, wholly unbefitting a proper concept of legislative duty and judgment. Is there any reason why you should not fix penalties in this matter as you do in all others? If you wish to blame only the unions and the union officials for strikes, can you not contrive some formula for determining the extent of their guilt which ensues and fixing the penalty for it? Nothing, I repeat, except cowardice. And that being so, it is hardly necessary to suggest that this cowardice doubtless prevented you from placing any guilt on the men and fixing a penalty for that.

As yet there has been no real test of the capacity of the injunction against unions to stop a paralyzing strike. I know that it will be said at once that John L. Lewis called off the miners' strike last April. But it must be remembered also that at the same time he got what he wanted in the welfare fund which was at issue. The longshoremen's strike last November on the two coasts was not ended by the order to the men to work but by the settlement while they were still idle of the disputed matters. I do not want to be taken as an inciter to strikes or to defiance of the Government by workers, but I predict that under the present law there will be strikes where the men will not follow the orders of the officials who give them under injunction. And I suggest to you that in such event you will have left the Nation helpless by not providing any penalty upon the men who strike.

No one can except to the waiting periods before strikes, which are all the law seeks through the injunctions. But they are not enough. They inflame passions and make negotiation of the disputes more difficult, and of themselves they never can prevent a strike. A program of coercion ought to go all the way along the road it travels, or those who engineer it should turn back. Halfway measures are but a Tantalus.

If you should be so enamored of the waiting-period idea, and whether you enforce it by injunction or by explicit statute, this suggestion comes to me as being worth tendering to you. It would be extremely soothing to men who have to work under threat of a penalty for refusing, if you would provide that whatever benefits they may secure through the negotiations which ensue during the waiting period should be retroactive to the date on which the coerced period began. That matter of simple justice would appeal to the men, would allay their feeling of injustice and would, I think, facilitate settlement of disputes.

Strike problem not settled: In conclusion, let me say that in my judgment the Congress has not faced the problem of paralyzing strikes with anything like the courage which would measure up to its expressions of the gravity of the problem. It has provided only for cooling-off periods, with no answer to the question as to what follows if no agreement is reached during such periods. And for all its bravado it has not showed enough courage to fix penalties on the unions which do not respect the waiting period, rather shifting this duty to the court where, without any mandate of statute, either judicial judgment or cruel capriciousness may prevail. And of course it completely ignores the fundamental fact that it is workers, and not unions, who either do the Nation's work or refuse to do it—and in the end, I insist, it is they who must be dealt with. Manifestly there has been no disposition to adopt summary measures. The law amounts to intimidation: not compulsion.

All this leads up to the conclusion that the Taft-Hartley law was aimed at preventing strikes only incidentally, and that the real object was to break the unions, as the representatives of big business enterprises frankly demand when they ask for a ban on the closed shop.

And it leads to the conviction that even the loudest prophets of the peril which lurks in impending paralyzing strikes may be overstating their case.

Personally, I am not persuaded that the state of our industrial relations yet demands summary measures, though I am contemptuous of anything else. I think there is still time and still field for the trial of amicable negotiations. The present law has harmed, rather than helped, peaceful settlement of disputes. Hence it should be repealed. It may be that it can be judged to have served a good purpose in showing to extreme elements in labor that the country is cognizant of the public interest in industrial production and will not endure privation while stubborn management and stubborn labor battle to the death. It may be that labor and management both will discern that if and when such stubbornness becomes so fixed a pattern as to portend industrial paralysis, the people, through their representatives, will face the problem with the courage it demands and will adopt summary measures—direct penalties, compulsory arbitration, public ownership or whatever they may be, but certainly not any more of the present cringing type now in the law.

Finally, I would say that for the present if you would repeal the Taft-Hartley provisions of the labor law and write a strong section against jurisdictional strikes, you can then go home feeling that you have done a good day's work. Effective compulsion, penalties, and forced labor can await a day when our dangers are more apparent than they are now.

Mr. Bailey. Thank you, Mr. Monroe, for a forthright statement.

Do you have any question, Mr. Kelley?

Mr. Kelley. I was interested in the gentleman's statement. I like your approach, and I think you have analyzed it better than anyone we have heard yet.

Mr. Monroe. Thank you very much. I appreciate that.

Mr. Bailey. Mr. Jacobs?

Mr. Jacobs. I have no questions, but I should like to make arrangements to get copies of that statement.

Mr. Monroe. I sent 75 copies to the secretary, and being a printer, I set it up on my own linotype machine, and I can print you a million of them if you want them.

Mr. Bailey. Mr. Wier?

Mr. Wier. I have just one question, in regard to the waiting period.

You know it has been referred to many times as the cooling-off period. As a member of the public press, do you not think that is a bad and rather unfortunate and ridiculous sort of thing, because most workers feel that if it is referred to as a cooling-off period, they must be heated up about something that they were wrong about in the first place?

Mr. Monroe. When anyone goes into court to stop someone from doing something; that would be regarded as enjoining a man from not doing something. And when anybody goes into court and gets a mandamus it is not going to cool me off by a damned sight.

Mr. Wier. Very few issues have been settled by mandamus in labor disputes?

Mr. Monroe. No. There was a lot of propaganda going around about how 65 percent of the unions had accepted this, and you would have thought Mr. Taft would have been the proper candidate for

President, but even the members of his party did not think so, and the election results did not show it by any means.

Mr. Kelley. We will now hear from Mr. Copeland.

STATEMENT OF GEORGE W. COPELAND, PERSONNEL DIRECTOR, HART & COOLEY MANUFACTURING CO., HOLLAND, MICH.

Mr. Copeland. My name is George W. Copeland, and I am employed by Hart & Cooley Manufacturing Co. located in Holland, Mich. I serve this company as their personnel director and in so doing have daily relationships with the other employees of the company and with the bargaining representatives of those classified in the bargaining unit. Holland is a town of about 15,000 and our factory employs about 330 people in the bargaining unit.

I definitely am not and do not profess to be a skilled person, expert, or attorney on labor law but rather come before you as one who works with organized employees in a relatively small plant in a small town, so I will not take up too much of your time with the few observations I have to make. However, I do want to tell you gentlemen that I appreciate very much the opportunity you have given me to testify before you on H. R. 2032.

As I understand it this bill proposes to reenact the Wagner Act which would again put into effect the rules under which labor relations were conducted prior to June 23, 1947. My experience during the latter part of that period has convinced me that those old rules did not provide an adequate foundation for the growth of sound relationships and confidence between the employer, the employee and the bargaining agent which is essential to industrial peace and prosperity.

During this early period we had our first and only strike—that was in 1945. And many other plants with which I had personal contact had like experiences. According to national strike figures put out by the Bureau of Labor Statistics strikes have declined from a peak of 4,985 in 1946 to 3,300 in 1948. It is interesting to note that from 1921 through 1935 strikes averaged 1,150 per year, whereas the 1935–42 period averaged 3,000 per year, which was during the first 7 years under the Wagner Act. In short, that act did not reduce industrial strife.

During this earlier period, in my opinion, employees didn't seem to realize their responsibilities under a collective-bargaining agreement. I remember an instance when about a dozen men refused to work at their machines in direct violation of contract and complete refusal to recognize grievance procedure. Their union officers' attitude was "So what? The boys won't work until you meet these demands. What can I do about it?" When similar cases of irresponsibility involve all the employees of an employer it becomes serious. Since 1947 employees have realized that it is to their own advantage to live up to their contract responsibilities. I do not believe this type of understanding was fostered or encouraged under the rules of the Wagner Act.

One way to gage attitudes of employees is by an analysis of the grievances filed. When both parties worked under the old rules we averaged many more grievances than has been the case since that time. Where it was common practice to receive one grievance a week it is now unusual to receive one a month. A more mature attitude toward the employee-employer relationship exists now than formerly.

I will always remember the bargaining experience I had in a small plant of approximately 60 employees. The bargaining representative of these employees was one of the large international labor organizations. My associates and myself arrived on time for our first meeting. We waited 3 hours before the labor representatives appeared. When the meeting did get under way it only lasted a short time because we were served with a virtual ultimatum, accompanied by abuse and invective. I don't believe the representatives of the employer, of which I was one, were free to act in that manner but rather under the law that was in effect then and according to present law the employer was and is required to bargain in good faith. Perhaps that deliberate conduct by a labor organization was intended to intimidate us and was one of the tricks of the game, but in my estimation it was not bargaining in good faith. Without question this experience created or widened a split in the employer-employee relationship and by driving them farther apart made the understanding by each of the other problems more difficult.

The inequality of bargaining power existing when a small plant of 60 employees or less is dealing with a large international labor organization is worthy of notice. The bargaining agent, in the event of a strike, can afford to compensate strikers for picket duty while some and usually most obtain employment elsewhere. The small employer stands to lose his customers; any surplus he may have is drained in trying to keep his supervisory or office force together and if the strike continues he goes out of business. Although such was not the result in the case I just mentioned nevertheless the eventuality had to be considered.

As I see it, management has the responsibility of operating its business efficiently in all phases such as sales, purchases, finance, and, most important, in the direction of the people whom it employs. As a business develops. the operating head must delegate to others some of the duties he used to perform himself when the business was small. If he can no longer supervise his work force personally he appoints a supervisor to handle this function for him. The supervisor so appointed then becomes a manager of a part of the business and gradually through this process a management organization is built up.

When supervisors are encouraged to organize, which was the result during Wagner Act days, a wedge is driven into the management organization and management is split into two parts. The impairment of management's efficiency is the inevitable result. One quick way for employees to lose respect and confidence in their management is to cause this inefficiency to develop. Employees and their representatives are the first to criticize. In such cases their critical position is sound because any way you look at it, it is to the advantage of both the employer and the employee that business continues to prosper and grow. To return to the old rules of the Wagner Act in my opinion would bring about management inefficiencies.

Much is written nowadays in the newspapers about Communists and often when I read these articles I am reminded of the Communist affidavits which the officers of the local with which we deal, filled out and signed. They happened to sign them before me because I am a notary public as a matter of convenience of our employees. I think their slant on this requirement was that they should not be singled out as a group separate from others with whom they deal. It was a matter of pride and I think their point was well taken. They brought to my attention that their international representative or business agent was not required to file such a statement. Certainly among those who are required to sign but do not, there are those that must follow this same reasoning, whereas undobutedly others are members of the Communist Party.

It seems obvious the solution is to require management and labor who do plant-level bargaining to include such a provision. Then the Communists in both groups will stick out like sore thumbs. To revert back to the Wagner Act is closing one's eyes to the proposition that the conditions in existence in 1935 were different from those existing now. This is true of our whole economy and clearly true in respect to Communist activity.

I cannot help but feel that America is a society of salesmen. Right now, for example, I am trying to sell you something and since I am not a salesman I am probably not doing such a good job of it. You can accept or reject my opinions as you see fit. Both management and labor organizations to be successful must sell. I can remember a situation which occurred in our plant which I think shows the need for a selling philosophy. We were operating under a union-shop agreement at that time and one ardent union member approached a new employee in an antagonistic and belligerent attitude. An argument ensued. The newcomer became stubborn and would not join whether or not his job depended on it. Because it did, he lost his job. I know this former employee could have been sold on becoming a member and if done properly might have developed into an enthusiastic salesmen for this labor organization. This occurrêd under the old rules of the Wagner Act when the big-stick attitude was prevalent. During the past 2 years when salesmanship has been at work, no incidents like that have occurred and I dare say that more members are in our bargaining unit now without an agreement calling for compulsory membership than there were then. Accurate figures are not available to me but I believe this comparison is correct.

As an employer it has been our policy to maintain strict neutrality so that our employees would have freedom of choice. To give you a better idea of what I mean, I quote from a statement made by the company at a National Labor Relations Board hearing held September 10, 1946:

> I have no objection, Mr. Examiner, to restating the position of the company. We favor neither one or the other, the petitioner nor the intervenor. We do desire only that out of these proceedings it be determined who is the rightful bargaining agent, if either of them, for the employees. And the company is prepared to recognize whomever the Board certifies. We have only one desire in this matter and that is that the matter be treated fairly, and if an election follows that all employees have the free and proper opportunity to declare their beliefs. That is the position of the company, and it is the position we have attempted to adhere to throughout these proceedings, continuing as has been testified to recognize the present certified union, the intervenor, only for the purposes that have been testified—to process grievances and the like. But we are holding off further negotiations with respect to a contract or from holding the discussion of a contract pending determination of these proceedings.
>
> With respect to the question of whether or not the petitioner has a right to an election, we take no position whatsoever. That is a matter for proof to the Board, and whatever the Board determines, from the findings, the company will comply with. The same with the position of the intervenor, the company takes

no position with respect to their rights, but again will comply and abide by whatever determination is made by the board. I think that states our position rather clearly. Just merely repeating one more thing, we understand if an election follows that whatever labor organization appears on the ballots, there will also appear an opportunity for the employees to indicate their desire of having either union, or neither union, or no union.

However, the employer must at times also be sales-minded and nowadays practically all of the time in matters other than labor relations. Many times misunderstanding arise in the best of homes and when applied to industrial relations it is essential that employees be aware of all facts so that they may clearly weigh their position. Under the old rules of the Wagner Act an employer in submitting facts did so at his own peril. The effectiveness of his salesmanship was very restricted and I don't mean by salesmanship the wielding of the big stick of threats and promises.

Let me summarize: I have attempted to explain to you how going back to the Wagner Act will affect adversely the following:

(1) Industrial disputes.
(2) Contract responsibility and grievances.
(3) Duty to bargain.
(4) Bargaining equality.
(5) Supervision and management efficiency.
(6) Knowledge of Communist operations.
(7) Freedom of the employee from coercion.
(8) Freedom of speech.

In conclusion I would like to say that my experience with these matters, over the last 2 years, convinces me that the present rules under which industrial relations are conducted are far better for the general welfare of all groups in our society than will be a return to the old rules of the Wagner Act. If it's a fair deal the people of this country desire it cannot be accomplished by granting privileges to one select group without consideration for the rights and privileges of the other groups in our country. The slogan "Fair Deal" is, to say the least, misleading when applied to bill H. R. 2032.

I want to thank you gentlemen very much for letting me testify here.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. No questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. No questions.

Mr. KELLEY. Thank you very much.

Mr. COPELAND. You are very welcome, sir. Thank you for staying late for me.

Mr. KELLEY. Mr. Dunn?

TESTIMONY OF STEPHEN F. DUNN, ATTORNEY, GRAND RAPIDS, MICH.

Mr. DUNN. Mr. Chairman and gentlemen, I likewise shall be very brief in my statement.

My name is Stephen F. Dunn. I am an attorney. I have devoted most of my time to industrial labor relations law since 1939. I am familiar mostly with the problems of smaller employers. I have also represented employees in legal problems. I have served on the War

Labor Board and also on the War Manpower Commission and have done some lecturing and teaching on the subject of labor relations.

I would like to submit to you, gentlemen, that the subject of labor relations actually should be viewed historically. It is not simply the Taft-Hartley law standing by itself as a monument or any other statute. It seems to be the trend which is important. Now, I have separated the law affecting labor relations into four separate stages. The first stage, which I believe is the most unfortunate stage, might be called a suppression stage, as represented by the decisions of the English courts and the early American courts, where it was held that unions were contrary to public policy.

The second stage, a toleration stage, under which the unions were not declared illegal, but the Government did not actively try to promote them.

Then the third stage, which I refer to in my brief as the union promotional stage, climaxed by the Wagner Act in 1935, where not only were unions recognized, but aggressively promoted by governmental agencies under a theory that only the employer could be wrong and that the public had no interest in labor disputes.

I submit to you that the first or suppression stage, very wrongfully said that only the union could be wrong, and that the third, or promotional stage, just as fantastically said that only the employer could be wrong.

I think that the Taft-Hartley law represented a fourth stage, a stage where the Government recognized by statute that the public has a vital interest in labor disputes and that the rules must be fairly drawn for both unions and managements, with responsibilities commensurate with the rights granted or protected by the Government. In other words, the Taft-Hartley law is a recognition that unions have come of full age and are a part of our economy.

The question which is now before your committee, gentlemen, I think, is whether you are going to recommend by your action that Government return to the third, or union promotional stage, in which Government places its weight against management, in favor of unions and therefore creates class warfare. I submit also that the Taft-Hartley law actually was passed because public opinion demanded it, after lengthy and full hearings.

There were many items in the trend which created that. Changes in the Wagner Act to bring about equality between unions and management at the bargaining table had been advocated ever since the act was passed in 1935. A number of factors caused this. One was the attitude of the original members of the National Labor Relations Board, plus the Communist infiltration both in unions and in the ranks of some Board agents.

Then we had the sit-down strikes of 1937; then the reports of the Smith committee of the House of Representatives. Then we had the work stoppages and jurisdictional strikes during World War II; then the failure of the President's Labor-Management Conference in 1945, and then the terrible catastrophe, the Nation-wide strikes of 1946.

Disputes over legislation, failure to agree with these important matters, as well as disputes over the bargaining table, altogether too often result from insistence on international union policies at an international level instead of bargaining at the local plant level under existing facts.

Why does every union leader agree that the Wagner Act should be reinstated without change? Why did every union leader in 1947 say, "The Wagner Act is a must"? That has never been the attitude of any business representatives or of the public. Business representatives, in fact, have recommended certain changes in this Taft-Hartley law. I think that business today, and most people who have given this subject thought over a long-term period of time, believe that changes should be made which are in the public interest instead of in any special interest, whether it be employer, employee, or union.

Now, actually, the Taft-Hartley law retains all of the obligations on the employer that the Wagner Act has, and all of the rights of the employee and the union which the Wagner Act has. However, there are at least 16 new rights which are placed in the individual employee under the Taft-Hartley law, which were not in the Wagner Act. Therefore, altogether too often, the fact is overlooked that the Taft-Hartley law actually is a statute for the benefit of the American worker, individually.

For instance, these 16 rights are as follows:

(1) The right to know how his union is run and how the union spends its money.

(2) The right to know which of the unions' officers are Communists.

(3) The right to hold his job as long as he is willing to pay union dues and the right to protection against arbitrary union bylaws.

(4) The right to hear the employer's side of disagreements under the free-speech clause.

(5) The right to permit pay-check deductions through check-off only on voluntary consent.

(6) The right to go directly to supervision with a grievance.

(7) The right not to pay excessive union dues.

(8) The right to be protected against pay-off deals, as union representatives cannot be paid for services not rendered.

(9) The right not to work with featherbedders.

(10) The right to stay at work regardless of jurisdictional disputes or secondary boycotts which do not concern him.

(11) The right to have his welfare funds properly treated as trust funds.

(12) The right not to be thrown out of work by national strikes.

(13) The statutory right to refrain from joining, as well as the right to join, a union.

(14) The right to vote on the question whether his union should ask for union security, and the right to work without being hired from the union hiring hall.

(15) The right to an election to get rid of a union he no longer wants.

(16) The right to file unfair labor practice charges and petition for elections.

Do we want workers to have these rights? And what evidence actually has been submitted against the Taft-Hartley law to show that it is in any way contrary to the best interests of American workers?

Now, the purpose and goal of the Wagner Act admittedly was to promote union development. Do unions need more promoting or governmental protection? Evidences of unions' power are too apparent to require repeating, but I do refer to the hearings before the committees in 1947, and we need recall only the events of 1946 to know that the unions today can stop the entire economic life of the country.

And what about the union's financial strength? The results of a survey published in the May 31, 1948, issue of Life magazine show 32 unions which disclosed in their treasury assets a combined wealth of $224,000,000 available for any emergency. Unions have actually grown to such a size and financial power that small- and medium-sized employers, such as those in our area, are quite helpless to withstand pressure exerted by them. For example, every year in the negotiations, employers are faced with bargaining plans developed not by the local unions but by the international union located in some large city elsewhere. Each item of the contract must meet the requirements of the international union's pattern and the wage demands are uniform. Either they are met or the small employer is faced with a very serious strike backed by finances of these great unions in case he fails to comply.

This has been going on in Michigan since 1947, when the whole State suffered a flurry of sit-down strikes. Many plants were permanently put out of business and workers permanently deprived of employment there through those strikes.

In 1946, Grand Rapids was faced with a long jurisdictional dispute. The sole cause of it was that the CIO leaders sold out to the AFL and then tried to sell out to the employers, to sell out both unions, and the people he represented. So don't unions require some kind of regulation? All other economic groups are regulated. We have many instances in our area—I wish I had time to go into them—where individual employees have been deprived of the right to work, through no fault of their own, by union pressure and without the consent of the employees. Some of them are referred to in my brief. I would be pleased to submit additional evidence to the committee.

So to say that the unions are weak and defenseless and that the employer is rich and overbearing flies in the face of the facts. And furthermore, if small employers are put out of business through the pressure of the patterns, it makes a mockery of the attempts of government to avoid the concentration of business in large concerns.

Now, gentlemen, the sincerity of the union leaders' objections to the Taft-Hartley law must be questioned when we analyze the arguments of the unions against employers, together with the actions of the unions toward their own employees. This subject has been treated. One observer said—

> In dealing with its working personnel, labor as an employer does not have the exemplary record which might be expected from such a vociferous advocate of social improvement.

I cannot take the time now to go through the rest of that analysis. But it points out this. It is now the time to take a tantalizing look at a curious minority. It is doubtful whether as many as 20,000 of the 110,000 people who work for the unions are protected by collective bargaining and enjoy the benefits which organized labor demands that we establish for our employees.

So, gentlemen, this makes it appear that perhaps the union which really is needed most of all is a union to organize the organizers.

It does not take a soothsayer to predict what might happen if we return to the Wagner Act. Do not forget the strikes of 1946, and the Coca-Cola episode in Detroit on D-day, the invasion of Europe, when two big unions struck war plants to determine which one would deliver Coca-Cola to the plants, and the sit-down strikes, which put many an employer out of business.

Can we ever hope to be united in this country under the Wagner Act, which pits class against class? Do we want to be ripe for fifth columns or invasions? Of course not. We want unity. And the Wagner Act is based on many false assumptions.

In the first place, it seems to assume that all labor is exploited by all management. This is as silly as saying that unions are out to break companies. There are good unions and there are good managements, good employers. That will be seen by the fact that many employers today, smaller employers who are unorganized, do as much or more for their employees as any unionized plants. We also have evidence of the many employers who themselves adopted collective bargaining before there ever was a Wagner Act.

Another false assumption is that employees and employers seem to be foes. Actually, they must be allies. They are independent; they are serving the public as fellow-employees. Is it not time to abandon catch-word phrases and emotional assumptions? As the late Will Rogers once said, the only exercise some people get is jumping at conclusions.

The self-styled liberal says, "I am for labor every time." Who is not? But is there not a vast difference between the employee, or group of employees, and the professional union representative?

I submit that the fundamental purpose of our labor statutes should be to give the maximum opportunity to individual employees to act in accordance with their own wishes. The Wagner Act does not do that. Instead of making it easy for employees to have or not have unions, the Wagner Act actually assisted the professional labor organizer to gain control over the economic security of the individual employee, so that instead of the union being the agent of the employee, the employee has become the servant of the union.

I have many case histories which I wish I had the time to go into now.

A third fallacy upon which the Wagner Act is based is the claim that special interests instead of the public interest need protection, and that people can somehow or other be herded into one economic group. But isn't today every act of an American in some way a part of all economic groups? If he works for a living, he is labor. When he buys things, he is a consumer, and he is also an investor. John Smith is a machine in factory "X." From 7 a. m. to 3 p. m., he is a laborer, and asking for higher wages. But from 3 p. m. to 4 p. m., he goes shopping with his wife and immediately becomes a consumer interested in lower prices. When he goes to call on his insurance agent to collect his dividend check, he becomes an investor, or a capitalist, vitally interested in obtaining a higher return on his investment.

The attempt of the Wagner Act to protect professional unions as a segment of the public or a special interest against other segments must be wrong, because each of us participates in each element in our society, depending on what activity we are carrying on at the moment;

and any policy setting one economic group in this country against the other is bad for all groups.

As to the Taft-Hartley law contrasted with the Wagner Act, it is to be noted that most of the provisions of the Wagner Act are actually incorporated in the Taft-Hartley law. However, the Taft-Hartley law did do the thing that has caused most of the objections and the complaints from the professional union leaders, although not from the workers themselves as to those separate and distinct provisions. As a matter of fact, the Taft-Hartley law only gives employers as such four new privileges, and they likewise are in the public interest. He has a statutory right to speak freely in union matters, the same as unions. He has the right to complain of unfair labor practices by unions. He has the right to ask for bargaining elections, the same as employee or unions, and the right to sue unions the same as any other parties for breach of contract.

Otherwise, the employer has absolutely no additional rights.

It was contended that the Taft-Hartley law would do a number of things. I submit that not one of these points made by those opposing the act has ever come true. For instance, it was said that it would increase the number of strikes. However, the figures of the Bureau of Labor Statistics for the first 16 months under the Taft-Hartley law and the last 16 months under the old Wagner Act provide statistical proof against this, set forth in my brief at page 17, and showing a percentage reduction in strikes of 38 percent.

Now, let us take Michigan, the State where I come from. The period from January 1, 1946, to July 1, 1947, under the Wagner Act, 482 strikes; the period from July 1, 1947, to March 1, 1948, 214 strikes; the reduction under the Taft-Hartley law, 268; the percentage reduction, 55.6 percent.

These figures speak for themselves, gentlemen.

The act has, according to the official Government statistics, reduced jurisdictional strikes from five per month to three per month. The act shows that foremen and supervisory strikes, far from being increased, have been eliminated, but the act has resulted in additional benefits for supervisors. The facts of Government statistics show that the economic power of organized labor has vastly increased, and that the average wage of the American worker has increased over 13 cents per hour in 1 year, more than any other comparable period.

The A. F. of L. had according to the published Government statistics, 6,977,716 members when the Taft-Hartley law went into effect in 1947. One year later, it had 7,220,530 members. The CIO, likewise, has reported that its membership has been climbing steadily. In the last year under the Taft-Hartley law, it not only recouped losses which occurred in the immediate postwar conversion period under the Wagner Act, but has reached a new all-time peak in its membership.

So far as economic power is concerned—and this is particularly significant—in the final 16 months under the Wagner Act, average hourly earnings in industry rose 18.4 percent, while the cost of living index rose 20.8 percent; for the purchasing power of an hour's work fell slightly, and labor actually lost ground. But in the first 16 months under the Taft-Hartley law, earnings rose 12 percent and living costs went up only 8.2 percent. So labor was able to recover all it had lost in the closing months of the Wagner Act, and more.

I have various other points in my brief, from pages 18 to 20, showing that the various predictions against the Taft-Hartley law have simply not been borne out, and that on the contrary the law has actually proven its stated objective in the public interest of helping promote labor-management peace.

I think that all that management and the public are seeking, gentlemen, is a law with equal rights and equal duties on both unions and management, on the theory that they are not foes. Management has never taken the position, as have the unions, that there should be no changes.

Just a word about the closed shop. Some discussion has been had this afternoon while I have been listening. I myself cannot in any way understand how it can be argued that the closed shop should be legal and the yellow-dog contract should be illegal, and I for one think that the yellow-dog contract definitely should be illegal, and I hope it always will be, because it destroys the freedom of the individual to work. It says that the employee cannot work if he belongs to a union. The closed shop says a man cannot work unless he already is a member of that union before he is hired. So the degree of compulsion is exactly the same.

Suppose it is an A. F. of L. shop and the man happens to be a member of the CIO. He would have to change his union affiliation or lose his work opportunity and the opportunity to support his family.

In conclusion, I wish to congratulate this committee on holding these public hearings. I realize that these same unions which seek a return to the strife-producing Wagner Act wanted no hearings whatever. I submit that the only way a good labor bill can be written in the public interest is in committee, and experience has shown it cannot possibly hope to result from amendments simply tacked on on the floor.

In view of the fact that I received very short notice of my appearance, due to your crowded docket, and prepared my statement very hurriedly, and my appearance is short, as I believe, the last witness, I wish to file a copy of my statement and have it as part of the record.

Mr. KELLEY. Without objection, it will be inserted in the record.

Mr. DUNN. Thank you. Shall I file it right here?

Mr. KELLEY. Yes, sir.

Mr. DUNN. Thank you very much.

(The statement is as follows:)

STATEMENT OF STEPHEN F. DUNN, ATTORNEY, GRAND RAPIDS, MICH., IN OPPOSITION TO CERTAIN PROVISIONS OF H. R. 2032

My name is Stephen F. Dunn. I am presently practing in Grand Rapids, Mich., as a partner in the firm of McCobb, Heaney & Dunn. I was graduated from Cornell University in 1930 and received my LL. B. degree from the University of Michigan in 1933. Since 1939 I have devoted most of my time and attention to various phases of industrial and corporate practice, including labor relations. During World War II, I served for 3 years as an industry member of the War Labor Board, region 11, at Detroit and as an industry member of the War Manpower Commission's Management-Labor Committee for region 5. Following the end of the war, I returned to general practice. I have continued my close contacts with the problems of industrial relations, through teaching and speaking activities and general practice. I am the author of Management Rights in Labor Relations, a book dealing with problems in this field faced by industrial management.

I represent employees, as well as employers, in their legal problems.

I should like to begin by referring to what I call the four stages of development in this country of the law affecting labor relations. The first stage might be called the "suppression stage" under which the English and early American court decisions for some time declared unions were illegal in themselves. The second policy stage is sometimes referred to as the "toleration stage" under which unions, were not declared illegal in themselves as against public policy, but they were not in any way supported by the Government. During this second stage, unions made some progress. The third stage is regarded as the "union promotional and coddling" stage during which we had first the railway labor legislation, then the Norris-LaGuardia Act, then section 7 (a) of the National Industrial Recovery Act and, finally in 1935 the original National Labor Relations Act. During this period unions were not only recognized but were aggressively promoted by governmental agencies under the lopsided Wagner Act. The fourth stage is represented by the Taft-Hartley law. In this stage government for the first time has recognized that the public has a vital interest in labor disputes and that rules must be fairly drawn for both unions and management, with responsibilities commensurate with the rights granted or protected by the Government. The Taft-Hartley law is a recognition that unions have come of full age. The question which is now before this committee is whether or not government, by its action, should return to the third or union-coddling stage in which government places its weight against management and in favor of labor unions.

I submit that the Taft-Hartley law is simply an item in the trend which has been developing in this country. It should be viewed historically and objectively as a part of that trend with sufficient investigation of the history and background to determine its proper position. It would be a tragic mistake—and one which I sincerely hope will not be made by this committee or by Congress—to view the basic law of labor-management relationships as a political football to be kicked back and forth every 2 or 4 years.

The Taft-Hartley law itself was passed as a result of the urgent demands of public opinion that something be done to more fairly regulate union and management relationships in the public interest. Changes in the Wagner Act to bring about equality between unions and management have been advocated ever since the act itself was passed in 1935. The impetus for these proposals was caused by quite a few different circumstances. One of the most important initially was the prolabor and completely biased attitude of the original members of the National Labor Relations Board plus the Communist infiltration, both in unions and in the ranks of the Boards' agents. The sit-down strikes of 1937 which had their focal point in Michigan, contributed to the public interest in a more equitable labor-management statute. Then, too, the reports of the Smith committee of the House of Representatives pointing out the inequitable actions on the part of the Board and the various unfair practices which were being utilized by the unions brought forth, year after year, repeated proposals to amend the statute, all of which were buried in committee. During World War II the numerous work stoppages and jurisdictional strikes brought the attention of the public directly to the danger of aribtrary control in the hands of a few labor leaders, rendering management and the Government completely helpless. I will cite examples of these wartime work stoppages and disputes later in my brief.

The "public be damned" attitude of union leaders (a very few men when compared with rank and file workers, or the public as a whole) had not changed at the time of the President's labor-management conference in 1945. The failure of this conference can be attributed solely to the unwillingness of the leaders of labor unions to sit down with management representatives and work out, on a mutual give-and-take basis, policies which would aid in solving the serious problems which were then arising.

This same situation causes so many disputes at the bargaining table, where insistence on unilateral union policies prevail, instead of bargaining at the local plant level, under existing facts. The union leaders' attitude continued on into the Nation-wide strikes of 1946. I believe that no little part of the present inflation can be attributed to the lack of production which resulted from the tremendous man-hour loss during these Nation-wide strikes. Finally, in 1947, the Congress took up the question of remedial legislation which would solve, in the public interest and on a basis of equality, some of the problems of union-management relationships. Labor leaders, at that time, merely appeared before Congress and objected to any changes whatever in the Wagner Act, which had clearly proved itself to be a failure. Now, after 2 years of living under the Taft-Hartley law, we find that union leadership is maintaining the same position and is insisting upon a return to the old Wagner Act itself and, thus, a return to all of the evils and abuses from which the general public suffered for 12 years under that statute. This insistence has been accompanied by a demand that this Congress eliminate any hearings. In other words, these few leaders—these special pleaders for special interests—say that the facts as to the Taft-Hartley law and the public interest are unimportant. The union spokesmen want to go back to the Wagner Act, at which time union leaders could function as complete dictators, without any tempering regulations by Government.

The attitude of union leaders—these continued attempted to "freeze out" the public—have outraged the American sense of fair play and equality of participation in Government—not only in 1947 and prior years, but also during well-known episodes in the hearings before the Senate committee.

Why does every union leader agree that the Wagner Act should be reinstated without change? For the simple reason that no professional union leader wants any curbs whatsoever on his personal and political power over human beings. Far from being a "slave labor" law or an insult to employees as so glibly stated by those who have not read or do not understand the Taft-Hartley law, the facts are that the individual worker favors the provisions of the law, which contain at least 16 new rights and protections for his benefit.

(1) The right to know how the union is run and how the union spends its money.

(2) The right to know which of the unions' officers are Communists.

(3) The right to hold his job as long as he is willing to pay union dues, and the right to protection against arbitrary union bylaws.

(4) The right to hear the employer's side of disagreements under the "free speech" clause.

(5) The right to permit pay-check deductions through check-off only on voluntary consent.

(6) The right to go direct to supervision with a grievance.

(7) The right not to pay excessive union dues.

(8) The right to be protected against "pay off" deals, as union representatives cannot be paid for services not rendered.

(9) The right not to work with "featherbed loafers."

(10) The right to stay at work, regardless of jurisdictional disputes or secondary boycotts which do not concern him.

(11) The right to have his welfare funds properly treated as trust funds.

(12) The right not to be thrown out of work by national strikes.

(13) The statutory right to refrain from joining, as well as the right to join, a union.

(14) The right to vote on the question whether his union should ask for union security, and the right to work without being hired from the union hall.

(15) The right to an election to get rid of a union he no longer wants.

(16) The right to file unfair labor practice charges and petitions for elections.

What evidence has ever been actually submitted against the Taft-Hartley law? Certainly the statements made before the Senate committee by those objecting to the continuance of the Taft-Hartley law have not produced any facts indicating any reasons for the repeal of the law. To the contrary, the facts that have been shown, and which we shall discuss later, indicate that the law has accomplished its purpose. The overwhelming evidence submitted in more than 5 months of hearings before the Senate and House committees in 1947 provides the best evidence that the return to the Wagner Act would be most unfair and would not be in the public's interest.

The United States was the first country ever to legislate the rules of bargaining. Other nations have more successfully solved their labor-management problems, without such legislation. Before the Taft-Hartley law was passed, a liberal friend of labor occupying a most important governmental position during World War II said: "The Wagner Act has served its purpose and ought to be repealed." The darkest incidents in labor history in this country have occurred under the Wagner Act. It has failed in its stated purpose of reducing disputes burdening commerce. It has completely failed in providing employees with protection of their right to work without interference and the right to treat labor unions as their agents. What has actually happened is that the unions have become the masters and the employees the servants of the unions through the devices of the closed shop, industry-wide bargaining, and coercive control over individual employees.

If the Government continues to deal so unsuccessfully with labor-management problems it might be argued that all of the Wagner Act—as well as the Taft-Hartley law—should be repealed. What if it were? Employees would still have the common-law right to organize collectively for whatever purposes they might desire. The purpose and goal of the Wagner Act was to promote union development. Do unions need any more promoting or governmental protection? Evidences of union power are too apparent to require repeating. I refer again to the lengthy hearings held in 1947 before the House and Senate committees. We need only recall the events of 1946 to realize that the unions can stop the economic life of the entire country. What about the unions' financial strength? The results of a survey published in the May 31, 1948, issue of Life magazine show 32 unions which disclosed as their treasury assets a combined wealth of $224,000,000 available for any emergency.

Unions have grown to such a size and have such financial power that small and medium-sized employers such as those in the Grand Rapids area with which I am familiar are becoming helpless to withstand pressure exerted by these unions no matter how unreasonable their demands may be. For example, we find every year in our negotiations that we are faced with a bargaining plan developed not by our locals but by the international union located in some large city elsewhere. Each item of the contract must meet the requirements of the international union's "pattern" and the wage demands are uniform. Either they must be complied with or the small employer is faced with a serious strike backed by the finances of these great unions in case he fails to comply. In 1937 Grand Rapids suffered a flurry of sit-down strikes which were organized and put into effect by international unions, effectively closing the plants, destroying the financial ability of several companies to continue business and costing employees thousands and thousands of dollars in lost wages. The upshot of the sit-down strikes, incidentally, was that the international representative of the union absconded with funds collected from the employees during the sit-down strike period.

Since 1937 numerous manufacturing establishments have failed, because of their inability to recover from the colossal financial blow struck during the sit-down strike.

In 1946 Grand Rapids was faced with a long jurisdictional dispute between the International Upholsterers Union, AFL, and the United Furniture Workers of America, CIO. This dispute was caused solely by the action of the international representatives of the UFW who, after conferring with the representatives of the AFL, called an emergency meeting and announced that the employees were transferring their allegiance from the CIO to the AFL. The resultant battle between these two big international unions brought many high-powered union attorneys and international representatives to Grand Rapids. Much money was spent, production in the firms dropped and general unrest occurred for a period of several months. The employees themselves profited nothing by this condition; the international unions were the ones who stood to gain. Another example of the international interference with collective-bargaining relationships between employers and employees is to be found at one of our large furniture companies. This company offered a very comprehensive sickness and accident insurance policy which its employees were prepared to accept. However, the international union interfered and refused to permit the local to accept this policy, insisting that the policy offered by the insurance company with which the union had a contract for insurance, with any return of premium to be made to the international union would be the one that had to be accepted. The upshot was that the employees had no insurance for that entire period. We have just recently seen the effect of the power of a large international union on an individual employee. In one of the largest plants in Grand Rapids, the company has been forced by threat of strike to enter into a union-shop agreement. Not many weeks ago an employee of this establishment who had worked there for some time prior to existence of a professional international union came to see us because he had been threatened with the loss of his employment if he failed to join the union. This employee had been a faithful worker for the company for many years, had never joined the union, had no interest in joining the union, and yet he found that his right to a job and all his seniority rights depended on his membership in a labor union in which he had no interest. Imagine the case of a small local company with 10 employees managed by a man and his wife who were forced to bring their baby child to the office every day in an effort to minimize cost and devote maximum effort to keep the business going being faced with continual harassment by an international union boasting of many thousands of members. This union attempted to organize the shop and lost the NLRB-held collective-bargaining election. Despite the election results it is now engaged in a policy of annoying this small employer by filing unfair labor practice charges every time the employer lays off or discharges an individual. Such a case is actually going on in Grand Rapids today.

To say that unions are poor, weak, and defenseless and that the employer is all powerful, rich, and overbearing not only flies in the face of facts, but makes a mockery of our governmental attempts to help small business and to discourage all attempts toward monopoly.

It has been simply the victim of a name-calling contest and it is most commonly called the slave-labor law. No argument should carry the day before this committee if its sole proof is name calling without any factual material whatever to justify the appellation.

In an attempt to inquire into the individual citizen's mind concerning what he thought should be in a fair law regulating labor-management relationships, in the public interest, questionnaires were circulated through direct-mail and newspaper advertising containing pertinent inquiries (exhibit A). For example we asked:

A law which permits the Government to get court orders to delay strikes which would harm the country's health and safety?

A law which would protect the employee's job during disputes involving other companies or other unions? (Secondary boycotts and jurisdictional strikes.)

A law which protects the employee against unfair practices by both unions and management?

It was suggested that the questionnaire be answered and sent to Senators and Congressen. We are advised that great numbers of citizens have followed this suggestion, and that the replies to the questions have been "Yes" by an overwhelming majority. This informal poll plus the information contained in Look magazine entitled "The Strange Case of the Taft-Hartley Law" shows that the private citizen, whether union member or not, demands legislation protecting the public interest against unfair union practices.

The sincerity of the union leaders' objections to the Taft-Hartley law must be questioned when we analyze the arguments of the unions against employers with the actions of the unions toward their own employees. For example it is estimated that unions employ in excess of 110,000 persons to carry on their own internal operations. How does labor deal with its own employees? One observer was curious enough to seek an answer to this question and I quote him as follows:

"And, in dealing with this working personnel, labor as an employer does not have the exemplary record which might be expected from such a vociferous advocate of social improvement. The fact is that, as employers, labor leaders exhibit most of the conservative characteristics of their fellow executives on the management side of the fence, with the result that there are some rather large discrepancies between what they say and what they do.

"In the light of conditions today on the labor front, there is one particularly notable inconsistency in the relationship between labor and its own employees. This involves the failure of the unions to provide their own employees with anything like the general increases won last year, or with anything like the 25 percent cost-of-living adjustment now being headlined as labor's major demand.

"* * * Not so long ago, an outstanding labor leader said: 'A guaranteed weekly and annual wage is in the forefront of the goals toward which the CIO is working. * * * Most of the unions have declared for the annual wage and that is now a matter of CIO policy.' This is indeed a worthy policy. But what union guarantees an annual wage to its own rank and file employees? Even after diligent search I have been unable to discover one international union which provides its own rank and file employees with a guaranteed annual wage! This is somewhat puzzling in view of the fact that the annual income of the unions is a lot more predictable, with check-offs and maintenance of membership clauses, than are the sales of companies in a competitive market. I would be inclined to hazard a guess that every business in America would welcome the chance to place its customers on an annual check-off basis.

"* * * Another inconsistency, which may be of more than passing interest to you gentlemen, permeates those unions which publish their own newspapers and journals for the benefit of their membership. Today, various labor organizations regularly publish over 600 of these journals and newspapers. It has been competently estimated that this huge labor press reaches over 10,000,000 readers. There is a union, the name of which is quite familiar to most of your newspaper publishers, which has jurisdiction over the staffs of those labor publications. This ancient and honorable guild of writers and scribes has a separate department known as the labor press department, which is designated to service newspaper workers employed by the unions. By the latest survey made, covering the more than 600 labor publications, I am reliably informed that this union has active collective bargaining contracts with only 7 labor newspapers! From this it would seem obvious that the union recognizes the fulsome difficulties that are encountered in publishing a newspaper.

"* * * Perhaps now is a good time to take a tantalizing look at a curious minority. It is doubtful whether as many as 20,000 of the 110,000 people who work for the unions are protected by collective bargaining and enjoy the benefits which organized labor demands that we establish for our employees."[1]

All this makes it appear what the union needed most of all is a union to organize the organizers. They certainly have no seniority rights or grievance procedure.

Of paramount interest at the present moment is the example set by the UAW-CIO in granting to its own employees the kind of a pension plan it claims it wants employers to grant. This belated attempt by the unions to overcome the arguments thrown at them because of their own poor labor relations with their employees points out the vast financial power this particular union now holds. The plan itself is an elaborate and expensive one. Do not forget that the money with which this plan is to be put into effect does not come from the employer out of the hard-earned profits he makes from manufacturing and selling his goods in active competition, but comes from the money wrenched by this union from its individual members including those under compulsory union membership contracts. How can the union then object to the employer who wishes to provide the benefits of group insurance to his employees and only asks them to pay perhaps one-half the cost? Here the UAW–CIO is putting into effect a very fancy and comprehensive plan which is being paid by Joe Doaks who works in Grand Rapids in a UAW-CIO plant and pays his union dues every month whether he wants to or not—and he is paying for the whole pension plan.

In view of the dark history in labor-management relations under the terms of the Wagner Act, it is indeed difficult to imagine how the employee and the public can fail to be victimized by unions if labor-management relations continue to be a political football. For example, are we to return to the "deals" which were made between certain union representatives in Grand Rapids designed to transfer membership in a union from the CIO to the AFL, without knowledge or consent of even the employees? No employees as individuals gain one cent from such a transfer, but the international unions in their struggle for more members and more membership dues did gain quite a bit. Or are we to return again to the type of strike which occurred at the Dodge truck plant at Detroit in early 1947 where the AFL teamsters struck and picketed the plant, although they had no contract with the employer, in order to force that employer to require that all of his contract driveaway truckers and their employees become members of the union? The driveaway truckers, of course, were independent contractors who worked for the Dodge truck plant and others in the job of driving away new cars and trucks.

It doesn't take a soothsayer to predict what will happen if we return to the Wagner Act. Don't forget the strikes in 1946 over the issues of the closed shop and industry-wide bargaining. Don't forget the Coca-Cola episode in Detroit, Mich., during World War II on D-day, when two big unions struck war plants to determine which one would deliver Coca-Cola bottles to industrial plants. Don't forget the sit-down strikes which started in Michigan in 1937 and spread throughout the country. Imagine the chaos each year if we are to have entirely new labor laws followed by attempts at gag rule and disgraceful name calling and pitting of class against class as has just occurred before the Senate Labor Committee. The attempt to jam through a repeater of the Taft-Hartley law without hearings failed because it outraged the American sense of fair play and good sportsmanship. Can we ever hope to be united in this country under a program of this kind? Do we want to be ripe for fifth columns and invasions? Arbitrary action on the part of majorities to deprive the minority groups of a fair opportunity to speak partakes of dictatorship, not democracy. The contrast between the Eighty-first Congress hearings in the Senate against the more than 5 months' hearing in the Eightieth Congress before the same committee does not compare favorably. I think all of you know, as experienced Members of Congress, that a good statute is secured by careful consideration of the pros and cons of each item of the bill in committee. To say that a good statute results from floor amendments flies in the face of many years' experience by the Congress. I congratulate this committee on its decision to hold hearings with the membership of the full committee eligible to attend the hearings. By a careful consideration of the issues raised in the public interest, the public may be served.

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[1] Charles Luckman, Civil War of 1947, a speech January 14, 1947, at Chicago, Ill., before the Newspaper Advertising Executive Association.

THE WAGNER ACT

The Wagner Act is based on completely false assumptions.

In the first place it assumes that all labor is exploited by all management. This is as silly as saying that all unions are out to break all companies or overthrow the Government. There are many good unions, and there are many good employers. Just investigate what management today does for its employees. Many establishments in the furniture and other industries, both in Grand Rapids and elsewhere, have been paying employees vacation, holiday and sick benefits in excess of those urged by the unions. Rest periods are not new—many of these plants have had them for years. Wage rates have been increased steadily until Grand Rapids has become one of the highest wage cities in the furniture industry. All of these changes have been the result of good human relations programs instituted by employers (and not by unions, who fail to provide equivalent benefits for their own employees). Employers and employees are natural allies. They get along fine together if only given a chance. Trouble arises because of the arbitrary interference of professional union organizers who, after all, receive remuneration commensurate with the amount of organizing that they successfully accomplish regardless of the methods used.

Another false assumption is that employees and employers are enemies. Actually they are mutual allies and are interdependently serving the public as fellow employees. I suggest that it's time to abandon catchword phrases and emotional assumptions. As the late Will Rogers, once said: "The only exercise some people get is jumping at conclusions." The liberal emotes "I'm for labor every time." Well, who in the world isn't? Doesn't "labor" include everyone who works for a living? I think we have lost sight of the difference between an employee, or group of employees, and a professional union. The purpose of our labor statutes should be to give the maximum opportunity to individual employees to act in accordance with their wishes. The results that have been accomplished under the Wagner Act have developed elaborate heirarchys of professional labor organizers who are not employees but are men whose livelihood is dependent upon their ability to induce or coerce individuals into joining unions. Instead of making it easy for employees to have or not have unions, our Government has assisted the professional labor unionist to gain control over the economic security of the individual employee so that instead of the union being the agent of the employee the employee has become the servant of the union.

A third fallacy upon which the Wagner Act was based was the claim that special interests instead of the public interest need protection and that people can be herded into one economic group. Every active American today is part of all three economic groups. If he works for a living, he is labor. When he buys things, he is a consumer and also an investor. John Smith is a machine operator at Factory X. From 7 a. m. to 3 p. m. he is "labor," and is asking for higher wages. But from 3 p. m. to 4 p. m. he goes shopping with his wife and immediately becomes a consumer interested in lower prices Then he goes to call on his insurance agent to collect his dividend check. He then becomes a capitalist vitally interested in obtaining a higher return on his investment. The attempt in the Wagner Act to protect professional unions as a segment of the public, a special interest, against other segments of the public with equivalent interest must be false because each of us participates in each element in our society depending on the particular activity that we are following at the moment. Any policy setting one economic group in this country against another is equally bad in the long run for all of us. Speaking of special interests, let me point out that the Thomas-Lesinski bill which you are now considering, as I am told and as the papers and other periodicals advise us, was written by the representatives of one particular group, and no management or public experts were consulted.

Finally, the Wagner Act falsely assumes all employees want to join or need protection of unions and that the public has no interest in such an activity by employees. This was certainly shown to be false in the hearings in the 80th Congress in which individual after individual objected to being forced to belong to a union. To say that the public has no interest in unionization is to ignore the publc clamor which arose after the arbitrary actions of the unions in 1946 and which resulted in person after person and group after group requesting permission to testify in 1947.

TAFT-HARTLEY LAW CONTRASTED WITH THE WAGNER ACT

It is impotant to note that the Taft-Hartley law incorporates almost all of the provisions of the Wagner Act. No provision of the Wagner Act imposing an obligation on an employer has been eliminated in the Taft-Hartley law. However, the Taft-Hartley law did do the thing that has caused most of the objections and complaints from professional union leaders: It imposed equivalent obligations on professional union leadership. As a matter of fact, the Taft-Hartley law gave to employers only four new privileges; i. e. the right to speak freely in union matters the same as unions; the right to complain of unfair labor practices by unions similar to the previous and continuing unfair labor practices which might be committed by meployers; the right to ask for a bargaining election to determine the interests of employees just the same as unions have a right to ask for such elections; and lastly the right to sue unions for the breach of a contract made in good faith between the employer and the union, a right which the unions also have.

It is only fair to compare the compaints made about the Taft-Hartley law with the facts concerning the operation of the law itself. I propose to take up the major objections one by one and point out the facts rebutting those objections.

(1) It was contended that the Taft-Hartley law would substantially increase strikes. However, the figures of the Bureau of Labor Statistics for the first 16 months under the Taft-Hartley law and the last 16 months under the old Wagner Act provide the following statistical proof that such a claim is totally incorrect.

Period	Number of strikes	Number of workers affected	Man-days of idleness
16 Wagner Act months	6,300	4,785,000	83,725,000
16 Taft-Hartley months	3,925	2,143,000	39,060,000
Reduction under Taft-Hartley law	2,375	2,642,000	44,665,000
Percentage reduction	38	55	53

The figures in Michigan, a great industrial State, as supplied by the Michigan Department of Labor and Industry, show similar dramatic changes:

Period:	*Number of strikes*
Jan. 1, 1946, to July 1, 1947	482
July 1, 1947, to Mar. 1, 1949	214
Reduction under Taft--Hartley law	268
Percentage reduction	55.6

The figures speak for themselves.

(2) That unions would be forced to call jurisdictional strikes in order to get them before the NLRB for settlement. The Department of Labor, however, reports that the number of jurisdictional strikes in 1946 under the Wagner Act averaged more than four per month. In 1947, prior to the time the law became effective, jurisdictional strikes increased to five per month. In 1948 the first full year under the Taft-Hartley law, jurisdictional strikes dropped to three per month.

(3) That unions of supervisors and foremen would be forced to strike to gain their economic ends. The Department of Labor concedes that there were very few foremen strikes under the Taft-Hartley law. More important the congressional "watchdog" committee reported that the FAA strike at the Ford Motor Co. at the time the Taft-Hartley law was passed collapsed within a few days and that shortly thereafter the company went to work and devised a plan to insure that the salaries of its foremen were equal to or better than those paid elsewhere. The Joint Congressional Committee concluded in its report, and I quote, "not only has the exclusion of supervisory employees from the benefits of the act failed to produce the work stoppages predicted by opponents of the provision, but it has served to promote the establishment by employers of plans creating many new benefits for supervisory employees."

(4) That the membership and the economic power of organized labor would be destroyed under the Taft-Hartley law. The American Federation of Labor shows no such ill effect. The facts indicate that, exclusive of the United Mine Workers, the AFL had 6,977,716 members when the Taft-Hartley law went into effect in 1947. One year later it had 7,220,530 members, a gain of nearly a quarter of a million members. The CIO has reported that its membership has been

climbing steadily. In the last year under the Taft-Hartley law, it not only recouped losses which occurred in the immediate postwar conversion period under the Wagner Act but has reached a new all-time peak in membership. So far as economic power is concerned the records of the Department of Labor show the following: In the final 16 months under the Wagner Act, average hourly earnings in industry rose 18.4 percent while the cost-of-living index rose 20.8 percent, so the purchasing power of an hour's work fell slightly and labor lost ground. In the first 16 months under the Taft-Hartley law, earnings rose 12 percent and living costs went up only 8.2 percent so labor was able to recover all it had lost in the closing months of the Wagner Act and more.

(5) That the injunction provisions of the law would be abused. The statistics of the National Labor Relations Board show that out of nearly 4,000 strikes occurring since the Taft-Hartley law became effective, exactly 43 injunctions have been sought and the courts have granted only 24. In national emergency strikes, however, President Truman, himself, has six times ordered the Attorney General to seek injunctions against a labor organization and in each time the restraining order has been granted. The facts show that in only six-tenths of 1 percent of all the strikes occurring under the Taft-Hartley law has injunctive relief been granted by the courts.

(6) That the free-speech proviso giving to employers the same right to speak as labor unions would make it impossible for National Labor Relations Boards to assemble evidence in unfair labor practice cases, particularly where it was an unfair practice to induce or encourage certain types of strikes or boycotts. One of the administration's spokesmen, Chairman Herzog of the National Labor Relations Board, stated in testimony before the Senate Labor Committee that he saw no reason why the free-speech section should not be permitted to remain in force. Even William Green, president of the American Federation of Labor, stated publicly that he had no objection to the free-speech guaranties now in the law.

(7) That the provisions of the law providing for unfair labor practices of unions would permit employers to harass unions by filing case after case, without any foundation in fact, merely for the purpose of keeping the union so busy answering unfair labor practice charges they could not do any effective collective bargaining or organizing. One would expect that, if such a contention were true, the facts would show that the number of cases brought by employers would vastly outnumber those brought by unions. Or even if the law were exactly equal, there would be as many cases by employers as unions. However, the record of the National Labor Relations Board shows that in the first 15 months under the Taft-Hartley law 5,324 unfair labor practice cases were brought to the Board. Of these, 4,136, or nearly 80 percent, were instituted by unions against employers. Unions and individual workers filed 528 of the remaining cases against other unions, and employers brought only 660 cases or about 13 percent of the total against unions.

(8) That the provision giving the employers the right to sue unions would destroy the unions by giving employers an effective harassing tool permitting them to file suit after suit against unions, thus destroying the union's ability to bargain collectively or organize because of the necessity of defending lawsuits with a corresponding drain on their treasury because of legal and other costs. The congressional "watchdog committee," after surveying the records of all the Federal courts, reports the facts as follows:

> Although there are more than 100,000 labor contracts in force under the Taft-Hartley law, there have been only 57 damage suits filed in the Federal courts. Instead of taking thousands of minor grievances to law, unions have filed only 19 such actions against employers and an individual employee has filed 1. Employers, instead of resorting to endless litigation have begun only 37 suits against the unions. In no instance has either party received as much as 1 cent in damages from the other. Many of the cases were dismissed by agreement between the parties. The practical answer is that in 99–94/100 percent of all the bargaining agreements now in effect the parties have settled their disputes without resort to the courts. The watchdog committee came to this conclusion: "The committee believes that the suits reported to date show that neither party desires to recover money damages from the other but that the very presence of this remedy has encouraged employers and unions alike to act with a deeper sense of responsibility." And, in support of this conclusion, the committee cites the sharp decline in the number of wildcat strikes since the Taft-Hartley law became operative.

There have been two very interesting developments under this section of the statute. In the first place, several cases have been filed in which either party has sought a declaratory judgment of the court which would quickly clarify basic arguments between the parties. For example, the Upholsterers International Union, AFL, has filed in the Federal District Court in Philadelphia a petition for a declaratory judgment concerning the welfare program of that union and the court handed down a decision favorable to the union. This is a sensible way of solving problems of this type because it provides the parties with a speedy answer and provides the losing party with legal protection for his action under the court's decision. In the second place, there have been no cases in the territory in and about Grand Rapids in which companies and unions have carried on long and involved court battles against unions. In our Federal district court there is presently pending one case involving the Shakespeare Co. of Kalamazoo, Mich., a city some 48 miles from Grand Rapids. This is an interesting case because it involves a lawsuit over the violation of a contract and is doubly interesting because the complaining party is the union, not the employer. This case certainly bears out the contention made by Walter Reuther at the time NLRB issued a complaint against General Motors that "the Denham complaint serves to remind those employers who backed the Taft-Hartley law that its restrictive provisions can serve as a two-edged sword."

That's what management and the public have been asking—a law with equal rights and equal duties on both unions and management. Management has never taken a position, as have the unions on the Wagner Act, that there should be no changes whatever in the Taft-Hartley law. In fact, management has favored changes which are in the public interest.

CLOSED SHOP

The present ban on the closed shop should be continued. The objections to this type of compulsory union membership are many. I will summarize some of the major ones.

In the first place, through the closed-shop device, an individual is forced to join and pay tribute to an organization for the right to a job. If an employer exercised similar compulsion, the heavens themselves would shake with the roars of outraged protest from labor-union leaders. The closed shop is completely destructive of individual freedom. Control of whom he shall employ is taken from the employer and placed in the hands of a union organization which may, for any reason it sees fit, refuse to accept an individual as a member and thus deprive him of the right to a job. The individual worker will become a pawn to be shuttled from place to place as, not himself, but the unions choose. The closed shop is the final step taken in destruction of the rights of an individual employee to organize for collective bargaining and the ultimate step in securing control of industry by union organizations.

Secondly, the closed shop is blood brother to the "yellow dog" contract. The only difference is that one requires an employee to refrain from joining while the other requires an employee to join. The element of compulsion and the destruction of the individual right of choice is just as bad in one case as in the other. The Government has for many years forbidden the "yellow dog" contract; and I submit it is equally necessary to forbid the closed shop. The evil is the same.

We believe that the closed shop represents the most dangerous threat to individual liberties presently existent in this country. It is a little difficult to reconcile the attitude taken by unions in favor of the closed shop with their open advocacy of Fair Employment Practices Acts in State and Federal Legislatures. The unions object to any discrimination practiced by an employer, with regard to race, color, creed, sex, national origin, or political affiliation; but they are consistent advocates of the company's duty to discriminate against an individual for his affiliation or nonaffiliation with a labor organization where the union so demands. If a man should not be hired for or fired from a job because he is in favor of or opposed to the certain religious or racial groups, then logically he should not be hired or fired because he does or does not belong to a union.

It is also difficult to reconcile the fact that the unions are completely oblivious to the rights of the individual employees when they advocate the closed shop. Yet, some of those same unions were the greatest champions of the rights of the individual workers when they fought for enactment of all the basic labor laws, including the Clayton Act, section 6 of which states "that the labor of a human being is not a commodity or article of commerce."

Union leaders contend that a law banning the closed shop is an antilabor law. Nothing could be a greater distortion of the truth. The closed shop has nothing to do with employees: it is purely and simply a protective device used by unions against employees. Nothing prevents an employee from joining a union and giving full voice to his rights and opinions; but, by banning the closed shop, we preserve the right of the employee to withdraw from or not joint a union, as he sees fit.

It should be pointed out that the principles of the Wagner Act are designed to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment and other mutual aid or protection." There is nothing in the closed shop that protects the freedom of workers; it is a device for perpetuating unions and union management by compulsion on the individual workers. I believe that any device such as the closed shop, which deprives employees of their rights as individuals to speak freely, act freely, and believe freely, is inherently opposed to our philosophy of government and should be made unlawful.

CONCLUSION

H. R. 2032 would repeal the Taft-Hartley law and reinstate the Wagner Act with no changes of any significance. No only the fate of labor-management relations but also the very security of our country is in the hands of you gentlemen and your colleagues in Congress. H. R. 2032 should not be enacted. It is completely opposed to the public interest and is, therefore, opposed to the best interests of all economic groups for the reasons explained and set forth in this brief. The Labor-Management Relations Act of 1947 is a fair law enacted after careful consideration in the public interest and because public opinion demanded it. Therefore, the law should be retained either in its present form or with such changes as are clearly shown to be necessary in the best interests of the American public.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Mr. Chairman, in the absence of all five of the minority members of the committee, I shall refrain from asking the gentleman any questions.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. I have just one or two questions that I want to put, in order to clear up something for the record.

In your statement, Mr. Dunn, you say that on May 31, 1948, Life magazine carries a list of some 32 unions. Are you quite sure that that was not 45 unions that showed $224,000,000?

Mr. DUNN. I thought it was 32, Congressman, although, as I say, this brief was prepared in one afternoon. There may be some typographical errors there.

Mr. JACOBS. For the record, I will say that I just counted them. I have the copy that he refers to, and I just counted them. There are 45.

Mr. DUNN. I understood, Congressman—and again I am speaking from recollection of the article—that 45 unions reported, but only 32 of the 45 disclosed the data with respect to their financial status.

Mr. JACOBS. Well, here is the article. There are 45, and the amount of their treasury is set opposite each of them.

Wait a minute. No; there are some blanks on the treasuries.

Mr. DUNN. The point I wanted to make, Congressman Jacobs, is——

Mr. JACOBS. Just a moment. I will have to say that you are correct. I counted the unions, but you are correct. There are 13 for which the treasury is not given.

Mr. DUNN. Thank you.

Mr. KELLEY. Will the gentleman yield?

Mr. JACOBS. Yes.

Mr. KELLEY. Did I understand you to say their combined resources were $200,000,000, and some odd, for these 32 unions?

Mr. Dunn. Yes, sir. I have the figure, Mr. Chairman, $224,000,000.

Mr. Kelley. How does that compare with one of our largest corporations, the single corporations mentioned there? Is it $2,000,000,000?

Mr. Jacobs. Oh, no; $9,000,000,000.

Mr. Kelley. $9,000,000,000? One corporation?

Mr. Jacobs. There are 51 corporations in the United States that are worth more than $1,000,000,000. They range from $9,000,000,000 and some million down to $1,000,000,000 and some million.

Mr. Kelley. I would not say there was an economic equality there, would you?

Mr. Dunn. However, do not the corporations have to have those assets in order to carry on their productive facilities, their investments in machinery and equipment, and their necessary reserves for replacements? Unions, of course, do not engage in those productive activities.

Mr. Jacobs. I think the point, though, is this, that corporations are much better able to weather a storm. Now, I divided this up one time, and I think I found that the total treasuries amounted to about $14 per member. Well, if it had come to a union conducting a strike, like the United Automobile Workers, we will say, which is not a rich union for the number of members it has—it is, I think, a relatively poor union for the number of members it has—but it had only $2 or $3 per head at the time I figured it up, and it would not have had but $10 or $15 at the time General Motors went on strike. So, it should pay no strike benefit.

Mr. Dunn. Congressman——

Mr. Jacobs. I am getting to the point where the economic pressure would hit the hardest, and I think, when it hits in the stomach, that is where it has the greatest impact, of course. We all agree on that.

Mr. Dunn. Congressman Jacobs, I cannot agree to that as to the smaller employer. I think that often all of us are confused in treating this subject from the standpoint only of General Motors or General Electric. Now, take the type of employers in our area. I do not know whether any of you are familiar with, say, a small upholstery shop. I cite one of those instances in my brief, a shop employing 10 employees. The proprietors of the business are man and wife. They take their baby to the office every day in order to economize. They are just barely making a go of it. But an international union, with very large resources, after losing an election there, is filing an unfair-labor-practice charge against them every time they lay off an employee.

Now, in our area, the converse is true. It is the employer who is driven to the wall by pattern demands. For instance, suppose General Motors or Chrysler grants the 18½-cent increase, which I believe was the so-called first round, and this little employer, making upholstered furniture, is faced with the same demand; he either has a ruinous strike or he goes into bankruptcy by meeting that kind of demand. The difficulty is that, when these patterns are introduced, it puts all employers on the same level, regardless of the wage they already are paying, the other benefits their other employees enjoy, their own financial conditions, and all those things, and that is why it seems to me that it is important that the law be so framed that bargaining can be at the local-plant level in the light of conditions that exist there.

I happen to have another situation in Grand Rapids. This particular company has just obtained a fourth mortgage in order to carry on its business, but they were struck for the pattern. I mean, that company's inability to pay has nothing to do with it. So, I believe that the facts show that the smaller employer, who is by far the greater number of employers in this entire country, is at a financial disadvantage when dealing with an international union.

Mr. JACOBS. I think you will agree with me as a lawyer that it would be impossible to draw a law that would absolutely equalize all of them.

Mr. DUNN. I think, sir, however, that the Taft-Hartley law, and also a bill which I failed to mention—it just came to my attention as I was leaving—H. R. 3228, which was submitted by one of the Democratic Congressmen of the committee, Mr. Wood—I think those two types of laws do meet the situation. And H. R. 3228 follows the recommendations of the Joint Congressional Committee, which is the only group which has spent any long term considering the problems of the operations of the Taft-Hartley law.

Mr. KELLEY. Do you yield there, Mr. Jacobs?

Mr. JACOBS. I yield.

Mr. KELLEY. I was a member of that joint committee, and I do not think they did any sort of job. At least, they did not follow out the instructions that they were supposed to follow.

Mr. DUNN. I take it you were one of the minority report?

Mr. KELLEY. Exactly.

Mr. DUNN. I realize there was a difference.

Mr. KELLY. I think the idea of the joint committee was good, though.

Mr. DUNN. I do, too, Mr. Chairman. I think it is——

Mr. KELLEY. It came too late. It should have come before they made all these studies, and then make the recommendations to the Congress if they want legislation. If that had been done, we would not be in the mess with the Taft-Hartley law today.

Mr. DUNN. I think there would be a lot of truth in that. I served on some joint labor-management study committees myself. They can be very productive with good results.

Mr. KELLEY. I think it is the only real approach to the problem.

Mr. DUNN. I think it is, too.

Mr. KELLEY. Mr. Wier?

Mr. WIER. No questions.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. I would like to ask this question. You list a series of 16 instances where you believe the Taft-Hartley Act has emancipated the worker from his union, from certain practices. I will not go through all of them, because I do not have the time. I would like to start with No. 1, the right to know how the union is run and how the union spends his money.

Are not unions associations of people, union members?

Mr. DUNN. Unions?

Mr. BURKE. Yes.

Mr. DUNN. Yes; I think that is a correct statement, Congressman Burke.

Mr. BURKE. From that, would you not say that in most, if not all, cases, the member does know how his union is run, because he is the one that is running it?

Mr. Dunn. I do not believe that is so on the basis of actual experience. It has been my experience and observation, and I think it is borne out by the figures, that a relatively small percentage of union members attends union meetings. And, unless there is some accounting or financial report to the members, there is no way in which they can ascertain those facts. I believe, also, that the non-Communist affidavit requirement is very important. I have had some of my friends, professional union leaders, tell me it has helped them purge Communists from their own ranks. I happen to be one of those who believes, however, that the requirement should be applied also to officials of employer concerns.

Mr. Burke. The way you propose this, you say the right to know which of the union's officers are Communists. Did the Taft-Hartley Act give them that, in effect?

Mr. Dunn. I think it did.

Mr. Burke. How?

Mr. Dunn. Because the individual worker under the Wagner Act had no way of finding that out. He now can determine by inference that if the non-Communist affidavit has not been filed, the official may be a Communist.

Mr. Burke. That he may be?

Mr. Dunn. Yes.

Mr. Burke. It is possible that he can have some conscientious objections to filing it; is that not true?

Mr. Dunn. I think that is true, sir. But I think workers also should be honored in their conscientious objections against joining a union they do not want to join.

Mr. Jacobs. Will you yield, Mr. Burke, for one question?

Mr. Burke. Yes.

Mr. Jacobs. Are you in the business of furniture manufacturing?

Mr. Dunn. No, sir, I am not.

Mr. Jacobs. No. But the firm you are talking about representing?

Mr. Dunn. I represent——

Mr. Jacobs. Are you talking about that UIU and the United Furniture fight?

Mr. Dunn. Oh, you mean the jurisdictional dispute?

Mr. Jacobs. Yes.

Mr. Dunn. There was a jurisdictional dispute——

Mr. Jacobs. I do not want to go into detail. I just wondered. The plan that you represent, what does it have? UIU, or United Furniture?

Mr. Dunn. They have both.

Mr. Jacobs. All right. I am way ahead of you.

Mr. Dunn. It was an amazizng situation.

Mr. Jacobs. I do not want to take any more of Mr. Burke's time. I really wanted to know that fact.

I turn it back to him. He is limited in his time.

Mr. Burke. Could you tell me by what method the worker was given a statutory right to refrain from joining a union, as well as having a right to join?

Mr. Dunn. Section 7 of the Labor-Management Relations Act of 1947 specifically states that; so that it is clear the individual has the right to engage or not to engage in concerted activities.

Mr. Burke. That was true under the Wagner Act, also; was it not?

Mr. DUNN. It was true under decisions of the National Labor Relations Board, but it did not appear to be true specifically in the statute itself. And there always was a possibility that a change in the Board's personnel or a court overruling the Board would upset that interpretation of the Wagner Act.

Mr. BURKE. You say there is a right to hear the employer's side of the interference under the free-speech clause. Did you hear Mr. Reilly's statement this afternoon, and especially his answers to Mr. Jacobs?

Mr. DUNN. I heard part of it, Congressman Burke.

Mr. BURKE. He is, I understand, probably the main architect of the Taft-Hartley Act. He made the statement this afternoon, unless I misunderstood him, that the Wagner Act did not prohibit the employer from exercising the right of free speech. Did he not say that?

Mr. JACOBS. I did not ask him about that. I rather asked him about the technical application of section 8 (c). That is what I examined him on.

Mr. BURKE. He made that statement, though.

Mr. JACOBS. I did not hear him if he did. He could have, without my catching it.

Mr. DUNN. I did not hear that statement either, sir. However, I might say that I made an independent research at one time of the authorities, and found that there was a vast amount of confusion in the decisions of the Board, specifically, as to just what the rights of free speech involve. Under the early decisions of the Board, an employer practically suffered gag rule. But under later decisions of the Board, those rulings were very much eased up. However, even in 1946, there were two decisions of the Board—I do not have the citations with me—which were squarely in conflict with each other. And it seems to me only fair that, after all, employers are Americans as well as employees, and certainly nobody wants to see an employer unable to talk to his people. They ought to be close; they ought not to have obstacles to good relationships.

Mr. BURKE. I personally never had any objection to an employer's talking to his people, even to putting up a bulletin in his plant about what he might have offered the union. But I certainly did object when he told one of his employees, "Either you stay out of that so-and-so union, or else."

Mr. DUNN. I think, sir, that you would find most employers today completely agreeing with you. I think all of us have to bring our thinking up to date with respect to this labor-management problem. I mean, if we were back in the Dark Ages or even in the early days of the industrial revolution, where the courts were holding that unions were illegal conspiracies, then we might need a Wagner Act. But we are not in that situation today.

Mr. BURKE. We needed a Wagner Act, though, at the time the Wagner Act was enacted. I think you will agree with me on that.

Mr. DUNN. I think, sir, that the history of the labor-management relations would have been much better if we had had a more two-sided statute at that time, because whatever may be said about the American employer in the early days, there is no group of employers in the history of the world in any other country who have done so much for their employees and as much for charity on a voluntary basis. Unfortunately, there were some employers, particularly in those early days, who did not do that. I think that employees do need protection under the laws, but I certainly believe a law modeled more on the basis of the Taft-Hartley Law would have served a better purpose than the Wagner Act in 1935.

Mr. BURKE. Without the Wagner Act, the organization of the industry in which I worked would have been impossible. That was the automobile industry.

Mr. DUNN. Do you not think it would have been possible under the Taft-Hartley law?

Mr. BURKE. No.

Mr. DUNN. Because after all, you see, the employee is given the same right of self-organization. The unions are given the same rights, and the employers are under the same obligations.

Mr. BURKE. We never could have gotten started, as a practical matter. I know that.

Mr. DUNN. No, sir; I do not know anything that did not happen.

Mr. BURKE. That is speculation, as far as I am concerned.

Mr. DUNN. It is.

Mr. KELLEY. Is that all, Mr. Burke?

Mr. BURKE. That is all.

Mr. KELLEY. Thank you very much, Mr. Dunn.

Mr. DUNN. Thank you, sir.

Mr. KELLEY. The committee will stand in recess until 7:30.

(Whereupon, at 7 p. m., the subcommittee recessed until 7:30 p. m. of the same day.)

NIGHT SESSION

(Pursuant to recess, the subcommittee reconvened at 7:30 p. m.)

Mr. BAILEY. The subcommittee will be in order. At this time we will be pleased to hear from Mr. Arthur L. Winn, Jr., of the National Independent Meat Packers Association.

TESTIMONY OF ARTHUR L. WINN, JR., REPRESENTING THE NATIONAL INDEPENDENT MEAT PACKERS ASSOCIATION

Mr. WINN. May it please the committee, my name is Arthur L. Winn, Jr. I am appearing on behalf of the National Independent Meat Packer's Association, an organization of small- and medium-sized packing plants, over 600 in number, located in almost every State.

General counsel of our association, Wilbur La Roe, Jr., has intended to appear before the committee, but is unable to appear today. I shall limit myself to a few fundamental considerations and ask the committee's permission to file Mr. La Roe's longer statement.

Our association of independent packers, and its members, are not among those who oppose all liberal measures, or among those who fight everything that benefits labor. We wish that all industry and all labor interests would realize that our Nation cannot attain maximum strength if industry and labor regard each other as enemies. They must regard themselves as partners. It takes teamwork to build a democracy.

Our association favors a fair deal for labor. It feels that this fair deal may best be protected and its permanence assured if there is a fair deal all around, for the employer and for the general public. The essence of a successful democracy is not unlimited freedom or unrestrained privilege but rights and privileges with responsibility and so limited as to safeguard the rights of others and the well-being of the general public.

The Taft-Hartley Act, which H. R. 2032 would repeal, provides, in connection with the rights and privileges of labor, safeguards for the rights of the employer—the other partner—and for the general public. In our opinion, these safeguards and beneficial provisions of law should not be discarded. Their repeal would, we believe, deprive the other half of the partnership and the general public of their part of a fair deal.

When we examine the individual provisions of the Taft-Hartley Act, it is difficult to see why they should be struck down. For example, the present law recognizes the rights of an employer to free speech. This is a fundamental right of every American citizen. Employers, as well as well as other citizens, should have this right safeguarded.

The closed shop is a denial of freedom to work. It represents an attempt by a particular group to deny freedom to other men, not in the interest of the whole, but in the interest of the particular group. The union-shop arrangements say to the employer "You shall not employ these men, no matter how good they are as workers or how high their standing as American citizens, because we want a monopoly for our own benefit." That sort of thing can kill freedom. It is banned by the present law and that ban should be continued.

The present law gives the public and employers protection against disruptive and destructive jurisdictional strikes and secondary boycotts. Workers certainly have the right to work or not to work and based on this fundamental right they may strike for better wages or working conditions. However, neither the employer nor the public should suffer because of a dispute between unions as to which has jurisdiction over workers.

That question should be decided peaceably and without unnecessary injury to innocent third parties. The secondary boycott, likewise, involves unfair and harmful injury to innocent third parties. The present law protects these third parties and that protection should not be eliminated.

The right of workers to bargain collectively carries with it a duty to bargain. This duty on the part of the union is stated in the present law. If that duty is eliminated by repeal, we shall have not a fair deal but a one-sided arrangement in which the only statutory duty to bargain is imposed upon the employer.

Under the present law, the special position of foremen as a part of management is recognized. If this provision is repealed, foremen will be considered in the same status as other employees and management will have to treat them not as a part of management but merely as employees.

There are many other safeguards to the rights of these parties and the public in the present law which we believe are necessary to a sound national labor policy. My time does not permit me to deal with each of these. We ask that the general provisions of the Taft-Hartley Act be continued in effect and ask the committee to disapprove the general repeal proposed in H. R. 2032.

May I have the permission of the committee to file the longer statement by Mr. La Roe?

Mr. Bailey. You may do so.

(The statement referred to is as follows:)

Statement of Wilbur La Roe, Jr., on Behalf of National Independent Meat Packers Association

My name is Wilbur La Roe, Jr., general counsel, National Independent Meat Packers Association, 743 Investment Building, Washington, D. C. I appear on behalf of National Independent Meat Packers Association, the largest association of meat packers in the United States. It members are so-called independent meat packers, the big packers not being members.

My clients are not among those who oppose all liberal measures or among those who fight everything that benefits labor. We wish that all industries and all labor interests would realize that our Nation cannot attain maximum strength as long as industry and labor regard each other as enemies instead of partners. It takes teamwork to build a democracy. Our Nation has shown a genius not only for solving its great problems but for maximum production. It is only by continuing heavy production that we shall have enough goods to provide the abundant life for everybody, and it is only by teamwork that this goal can be achieved. There is no surer way to spoil our democracy than by having capital and labor continually fighting each other, with the public badly injured as an innocent bystander.

The whole democratic world is looking to America for leadership today—not so much for leadership in technology as for leadership in maintaining the principles of democracy. There are invisible golden strands in the Stars and Stripes which account for America's leadership among the democracies of the world. Our Nation was founded by men who were willing to pay any price for real freedom. When they came over here they brought their Bibles with them, and the cornerstone of their faith was the dignity and sanctity of man. Once we get into our heads the proposition that the humblest man in a factory is a sacred individual we have gone a long way toward solving what I consider to be the most important problem confronting America today, namely, the relationship between capital and labor.

The freedom which was brought for us at great price and which we have inherited without too heavy a contribution by ourselves is, I solemnly believe, in danger of being lost unless we steadfastly and courageously adhere to certain fundamental principles which must control any legislation on this subject.

The first of these principles, obviously, is that there must be minimum interference with liberty, whether the liberty of the industrialist or the liberty of the workingman. This does not mean unrestrained liberty, for it is axiomatic in a democracy that the good of the many is more important than the good of the few. And the rights of men must always be exercised with due regard to the rights of others. Freedom cannot be absolute in a democracy. If I were an absolutely free man I could drive my car at 80 miles per hour through the streets of Washington, but it is not in the public interest that I have so much freedom. If I were absolutely free I could employ labor of any age group, and work them as many hours as I please and under any conditions. But society has a right to say to me as an employer that certain types of employment and certain conditions surrounding employment are injurious to society and that I must obey certain reasonable regulations if I am to be an employer. By the same token the workingman must understand that his freedom is not absolute. He must not use violence. He must not resort to force any more than I may try to collect a debt by force. If a democracy is to succeed it is basic that there shall be peaceful adjudication of differences.

The strike is not necessarily violent. If men have a right to join together peacefully in labor unions, as they clearly do have, they also have a right to agree to quit work, provided there is not a substantial public interest that would be grievously injured. Unless wages are to be fixed by the Government, which is inconceivable in a democracy, capital and labor must be free to bargain with each other, and the right to bargain presupposes the right to disagree.

I must pause here to say a word about the fixing of wages by the Government although no such thing is proposed by anybody. There is no greater danger confronting the world today than totalitarianism, the principal indicia of which are a denial of human freedom, a denial of God, the making of the Government the master instead of the servant of the people and the reducing of man to a point where he is a mere cog in a gigantic state machine. The individual must at his peril conform to the desires of the dictatorship as to his philosophy, his expressions, and even his religion. In America the Government is the servant and not the master of the people and government exists, not as something for the people to serve, but as something to serve the people and protect the most sacred thing we have in our democracy, the dignity and sanctity of the individual.

In saying this I am not one of those who believes that the Government must always remain in a narrow predetermined channel. Those who want a do-nothing government are often those who derive some selfish advantage from exercising their freedom as they please and without regard to the rights of others. But Woodrow Wilson used to warn us at Princeton—and I wish that he were alive to speak now—that there is danger in having the voice of America emanate from Washington. He said that the true voice of America comes from the little farm, the little plant, the little white church and the little red schoolhouse. He wanted the people to tell the Government what to do, and he feared the day when the Government might tell the people what to do. When you have the latter you have totalitarianism.

It follows from what I have said that in a democracy there must always be a middle course between too much freedom and too much government. Too much freedom is anarchy or chaos. Too much government is fascism or communism or some other type of totalitarianism.

This may seem like a lecture on political philosophy, but it has a direct and very important bearing on the issues here. Let us deal with a few phases of industry-labor relations and apply these sound principles to them.

The first principle—one so important that it cannot be subordinated to anything else—is that labor must have an adequate and if possible an abundant standard of living. Our whole democracy must fail if labor does not share reasonably in the fruits of industry. But as to this matter we in America have succeeded better than any nation on the face of the earth, and we have not done it by decreeing wage levels or standards of living by law. If the great mass of our workingmen today have their own little home and their own car and ample food and clothing and reasonable opportunity to educate their children, which the masses of men do have, it is not because this standard of living was legislated for them, as in Russia. This high standard of living in America is the result of our passion for the dignity of man and the incentive that flows from freedom and inspires a man to do his best. It is this respect for the dignity of man and the inspiration that it gives the human soul that account for our huge production and our great wealth and the welfare of the masses of men. If we try to legislate these goals we destroy one of the most precious things in American life.

Do not understand me as being opposed to all labor legislation. Legislation that protects the people as a whole against dangerous practices or which protects the individual against manifest injustice is of the very essence of democracy. Laws are often necessary to assure that greatest good for the greatest number. But you cannot attain that highest good if you kill the spirit that is the genius behind our great success as a nation, and that spirit is the spirit of enterprise, of initiative, of doing better, of improving one's lot, of freedom to choose, of freedom to work or not to work, of freedom to bargain with others, of freedom to use the talents which God has given us to accomplish the highest we know. That spirit must at all costs be kept alive, both for employers and for workers. Regimentation kills it.

The closed shop is perhaps the best illustration of denial of freedom and unwarranted regimentation in the field with which we are here dealing. When you analyze the closed shop, you find that it is a system in which freedom is denied for the benefit, not of the whole, but of a particular group. It represents an attempt by a particular group to deny freedom to other men, not in the interest of the whole, but in the interest of the few. It says to another group of men: "You shall not be permitted to work unless you join our union." And it says to the employer: "You shall not employ these men, no matter how good they are as workers or how high their standing as American citizens, because we want a monopoly for our own benefit." That sort of thing can kill freedom, and it must not be sanctioned by legislation.

Dealing next with the principle of the injunction, it is a very dangerous weapon to use in the area of human freedom, and its use must be sparingly exercised. When you deal with a man's right to work or not to work, you are dealing with something very precious, and you have got to be careful how you deal with it if you are to preserve the spirit to which I have referred. If a man has a right to strike he has a right not to have that right interfered with, unless he strikes in a manner that works injury to the community. It is not the right to strike that may be enjoined, but the right to strike in a manner that works injury to the public.

There are certain occupations which are so closely related to the general public welfare that those engaged in them have a greater responsibility than others have to refrain from any action that would injure the whole public. Taking an extreme illustration to start with, if I am employed by the Navy I should not be permitted to induce my fellow employees to strike and imperil the Nation. When I join the Navy it should be with the understanding that I am willing to have my compensation fixed by the Government. When I work for a water company or a gas company, even if they are privately owned, I must be willing to accept machinery provided by law for the adjustment of my grievances because it ought to be an implied condition of my employment in public utility work that I will not strike because I know that a strike would endanger the health and even the life of the community. Now this does not mean that the private water company or private gas company is to have its own way and be protected in the maintenance of subnormal wages or poor working conditions. The very best machinery must be devised to insure prompt and adequate adjudication or arbitration of such disputes, for they involve far more than the rights of the contesting parties. There must be no surrender of the proposition that the rights of the public are not to be subordinated to the rights of the contestants in such a dispute. This very important principle is violated in the proposed bill because it withdraws or weakens protection to the public which is afforded by the Taft-Hartley law. A situation where the whole public is thus endangered should be regarded as an exception to the general rule against injunctions and the public should receive the fullest protection, but machinery should be devised, as it has been in other areas of life, to provide for peaceful adjudication. Otherwise John L. Lewis will continue to be above the people. I do not have the dislike for him personally which some people have—I think he has done wonders for those whom he represents, but those who love America and the precious things that have made America great cannot but see a grave danger in letting any man become more important than the public. I speak impersonally when I say that the kind of power which John L. Lewis exercises is a threat to our democracy. This bill would tend to restore his power.

Jurisdictional strikes must be made unlawful. When two unions get to quarreling with each other as to which has jurisdiction there is grave danger that the public, the third party, will be seriously injured although it is no party to the dispute. My enemy and I have a legal right to hate each other, but we do not have a right to batter each up on F street because our fighting would inconvenience and disturb the public. The secondary boycott is in the same category because it would punish innocent parties in the interest of the contestants. The bill is sound in attempting to prevent such wrongs.

The attempt to wipe out State laws where they attempt to prohibit the closed shop involves a twofold danger and represents a double violation of principle. In the first place, the closed shop is per se a denial of freedom. In the second place, it was never intended under our Constitution that sovereign rights of the States should be destroyed. There is no more basic right of a State than the exercise of the police power, including the right to control the health and welfare of the citizens. If a State decree by law that freedom within the State demands that there shall be no such monopoly and no such denial of human rights as the closed shop represents, it would be a grotesque interference with the sovereign rights of the State for the Federal Government to hold that it has the power to prevent a State from exercising such control over its own citizens. The United States Supreme Court has recently spoken on this matter, and it will speak again if there is an attempt to deny to the States this basic right.

As to minimum wages, our Association has taken no position, probably because all our members pay well over the minimum. In most of our plants the hourly wage is now over a dollar or close to a dollar.

Of late wages generally have sharply increased due to the operation of economic laws. This increase has applied, as everybody knows who employs labor, to common labor. The best way to ensure a high wage, including the wages of common labor, is to give encouragement to huge production and to the most effective operation of the free-enterprise system. What that system can do when it is encouraged to function at its best has been demonstrated in recent years, and I know full well what an enormous part the Government has played in giving direction to some of the economic forces that have helped to make this result possible. This experience has demonstrated in my opinion that Government can cooperate with business and that business can cooperate with Government and that huge production and the abundant life for the masses of workers can be attained through teamwork and without legislating wages. Teamwork is the real answer to most of these problems—teamwork primarily between industry and labor. But the Government is now definitely a part of the team and it can serve best by cooperating with industry and with labor. If that teamwork continues to be effective we shall find that we can attain the abundant life for our people without an excessive amount of legislation.

The whole world has its eyes on us. There are those who say that our system is sure to break down. It will not break down if we work together as a team and safeguard the sacred principles which have made us the leading democracy of the world.

Mr. BAILEY. Mr. Winn, what percent of the individual companies making up your association are organized—I mean what percent of their plants are organized?

Mr. WINN. I am sorry, Mr. Chairman, but I do not have the information. I know some are CIO, and some are A. F. of L. They seem to work on an individual basis. I have a feeling that most of our plants are certainly organized, even in some southern towns.

Mr. BAILEY. Do you have any questions, Mr. Jacobs?

Mr. JACOBS. Mr. Winn, I am quite impressed with the attitude of almost every representative of the employer who comes here, in his testimony against the closed shop. Perhaps you have been here and have heard some of the questions I have put to some of the witnesses.

Mr. WINN. I have heard some of them; yes, sir. I have not heard them all, though, by quite a bit.

Mr. JACOBS. I would like to get someone to get me some procedure whereby the employees, the workers, can formulate for themselves a unified front to meet the unified front that the employer, by the nature of his corporate status, generally has.

Mr. WINN. It seems to me where you have a union shop, or a right to a union shop, each employee thereunder becomes required to become a member of the union, and he finds in doing so that the union does present a unified front. It represents him, and he is bound by it. It is his agent, so, there, you have, it seems to me, a strong unity. In our industry the unions are in a very favorable position because they make a good deal with a competitor, and the other fellows then have to go along, or get struck, and it is a lovely situation for the unions. The unions in our industry are much more unified than the employers.

Mr. JACOBS. I think you are right. I think the union shop adapts itself very well to the permanent employees, but I am thinking now not only of the employees working in the shop, where there is a permanent force, but I am thinking also of what I have referred to as the intermittent worker in building construction trades, et cetera.

The union shop is not adapted, to may way of thinking, to that type of work.

Mr. WINN. It may not be.

Mr. JACOBS. You come here as counsel for this group, and you think in terms of their requirements, do you not?

Mr. WINN. Of our situation, and I cannot plead guilty to knowing anything about the construction industry, or anything about their labor problems or questions.

Mr. JACOBS. Of course, we who sit up here are supposed to think of all of them.

Mr. WINN. Quite right.

Mr. JACOBS. I am aware of the fact that in 1921 in the building construction trades in Chicago an open shop was awarded, which sounds good—I mean open shops sound good. It gives every man a free choice, and it sounds fine. As a practical proposition, it was not very long before the contractors did not want it themselves, because they figured they got better men from the union halls, and they went back to it, so when you speak of the union shop you have in mind only the type of plant where there are permanent employees; that is what you are familiar with?

Mr. WINN. In the past, and even today, there is much seasonal work in the packing industry because farmers bring their livestock to market seasonally, but our industry has been striving to give uniform year-round work to workers, so we are working towards more permanent staffs for permanent workers.

Mr. JACOBS. It is not the intermittent type of work that the carpenter and bricklayer and plumber, and so forth, has, of course?

Mr. WINN. It is not.

Mr. JACOBS. And you are not thinking in terms of those which opposed the closed shop, I take it?

Mr. WINN. I know nothing about those problems.

Mr. JACOBS. You know nothing about it and don't pass judgment?

Mr. WINN. I do not.

Mr. JACOBS. I do not know whether I was woolgathering and failed to get your statement, but did you say you favored the continuation of the union-security election?

Mr. WINN. I did not specifically on that, but under the present statute which we favor the continuance of, you do have the union shop, where it is agreed they be protected. Do I answer your question?

Mr. JACOBS. What I want to know is, do you think we should continue to have the election before the union is entitled to bargain for a union shop?

Mr. WINN. I have not thought about that question, Mr. Congressman. I think you normally have to have some procedure for determining whether a certain union does in fact represent your worker.

Mr. JACOBS. No. I do not mean that. Of course, we must always have an election before we can determine union A or union B represents the employees, and if there is a dispute there is one way to settle it and that is to set up the ballot box and let them vote, but we have had the election, and I am the representative of the union, and I come to you, as the employer; do you think I should be allowed to bargain with you for the union shop without having another election as a condition precedent? You know under the Taft-Hartley law you cannot have a union shop unless you hold a second election; you know that do you not?

Mr. WINN. Yes, I know that, but I have not, frankly, Mr. Congressman, thought that thing through, and I would not want to give any half-baked answer to you. It would not help you or help me.

Mr. JACOBS. Do you know whether it is covered in the longer statement you filed?

Mr. Winn. We do not cover that.

Mr. Jacobs. I take it that your position, then, has not been arrived at? You have not arrived at a position in your industry?

Mr. Winn. That is right. We have dealt only with the question as to whether the general provisions of the Taft-Hartley Act and the Wagner Act, as they stand today, should be changed by taking out the Taft-Hartley amendment.

Mr. Jacobs. Then, as a matter of fact, did you have closed shop before the Taft-Hartley, or union shop? Which did you have?

Mr. Winn. When you say "we," you must remember again we have the greatest variety of packers, and we have the big packers in Chicago which are not members of our association. And our little plant in Georgia might have one arrangement, and our plant in Iowa would have another arrangement.

Mr. Jacobs. I mean, by and large, was the union shop prevalent, or was the closed shop prevalent?

Mr. Winn. So far as I know, the union shop was not prevalent. I misspoke: The closed shop was not prevalent.

Mr. Jacobs. It is my impression that the closed shop, as such, was generally not prevalent in industrial plants. The union shop was what obtained in most instances.

Thank you very much.

Mr. Bailey. Thank you.

Mr. Winn. Thank you, and thank you for your patience.

Mr. Bailey. Is Mr. Keefe present, of the Shipbuilders Council of America?

Mr. Keefe, we will hear you at this time.

TESTIMONY OF J. P. KEEFE, REPRESENTING THE SHIPBUILDERS COUNCIL OF AMERICA

Mr. Keefe. Mr. Chairman and members of the committee, may I state at the outset that we have filed a formal statement of our position with the committee.

With your indulgence, I would like to summarize that statement, reducing it to an abbreviated oral presention.

Our position, however, is presented in full in the printed matter left with the committee.[1]

My name is J. P. Keefe. I am director of industrial relations for the Alabama Drydock & Shipbuilding Co., Mobile, Ala.

I appear on behalf of the Shipbuilders Council of America, an association whose members operate 43 yards employing approximately 70 percent of the employees in the industry.

It is the purpose of this statement to present the views of the members of the Shipbuilders Council in support of retaining in the law provisions of the Labor-Management Relations Act which members of the council consider vital to the building up and continuance of sound and healthy labor relations and which have, in a measure, restored the balance of responsibility between management and labor.

In June 1946, when President Truman vetoed the Case bill, he stated to Congress the criteria which should govern the drafting of corrective labor legislation. He said:

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[1] The statement referred to is reproduced in full in the appendix following the close of today's testimony. See p. 655.

> There should be no emphasis placed upon considerations of whether a bill is antilabor or prolabor. Where excesses have developed on the part of labor leaders or management, such excesses should be corrected—not in order to injure either party—but to bring about as great an equality as possible between the bargaining positions of labor and management. Neither should be permitted to become too powerful as against the public interest as a whole.
>
> Equality for both and vigilance for the public welfare—these should be the watchwords of future legislation.
>
> A comprehensive study of this problem should be based on a realization that labor is now rapidly coming of age and that it should take its place before the bar of public opinion on an equality with management.

The shipbuilding and ship-repair industry believes that the provisions of the Labor-Management Relations Act which it is not urging Congress to retain are fully within the spirit of those words of the President. I shall discuss the principal provisions briefly.

(1) Exclusion of supervisory personnel from the coverage of the act. The original Wagner Act did not contain any provisions relating to supervisory personnel, but it seems to have been generally assumed that foremen and other supervisory personnel represent "the boss" and therefore were not covered. It was not until 7 years after Congress passed the Wagner Act that anyone even asked the National Labor Relations Board to establish a separate unit composed of supervisors. The Board then certified a union of supervisors which claimed to be independent but was in fact affiliated with the union that represented the rank and file (matter of Union Collieries Coal Co., 41 N. L. R. B. 961 (1942)). There was promptly introduced in Congress a bill to exclude foremen from the Wagner Act; but, while it was pending in committee, the Board, on May 10, 1943, reversed itself and held that it would not certify a unit of supervisory personnel (matter of Maryland Drydock Co., 49 N. L. R. B. 733). Congress then dropped the bill. Thereafter, the Board confirmed its decision in the Maryland Drydock case in a number of subsequent cases; but 2 years later it again changed its mind and certified a union of foremen (matter of Packard Motor Car Co., 61 N. L. R. B. 1212 (1945)).

It was that state of affairs that Congress in the Labor-Management Relations Act excluded supervisory employees from the coverage of the act.

Congress did not have to go beyond the opinion of the Board in the Maryland Drydock case for powerful reasons for taking that action. As the Board there stated (pp. 740–741):

> The very nature of a foreman's duties makes him an instrumentality of management in dealing with labor * * *. To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests.

But the Labor Committees of both the Senate and House did not rest on the authority of the Board in drafting the provision under discussion. They called witnesses from both management and labor, whose testimony eloquently bore out that the unionization of supervisors led to divided loyalties on the part of men whom management regards as its representatives and whom management must employ as its agents, not only to assign employees to their work, but to see that they keep at their work and do it well, to correct them when they are at fault, to settle their complaints and grievances and to discipline them. The evidence before the committees showed incontrovertibly that supervisors' unions necessarily had to be under constant obligation to the rank and file unions; that supervisors cannot successfully strike without the agreement of the rank and file not to do the work of striking supervisors: that the Foremen's Association of America had adopted a policy of forbidding its members to enter plants, even for the purpose of maintenance, where the rank and file unions were on strike and had not given their consent. One official of a rank and file union testified before the House committee:

> Well, we are trying to get them (the supervisors) to join the union * * * and then we'll be their bosses. We'll be their bosses. (H. Report No. 245, 80th Cong., 1st sess., April 11, 1947, p. 16.)

In the shipbuilding and ship-repair industry particularly, it is of extreme importance that supervisory personnel be absolutely loyal to management and free from the pressures of union groups which they supervise. It is not a mere coincidence that the National Labor Relations Board reestablished the principle of excluding supervisory personnel from the coverage of the Wagner Act in a case where the employer was a ship-repair company, the Maryland Drydock Co. Shipyards cover large areas, operations are greatly decentralized, and many separate operations are performed by small groups of workers working in isolated places. The employers are forced, by physical circumstances, to place great reliance for the supervision and direction of such employees upon their immediate supervisors. In a shipyard, unlike an ordinary factor, a department head cannot enter a room and at a glance see whether operations are proceeding efficiently. As a result, in shipyards greater reliance, perforce, is placed on the lower echelons of supervisory personnel than is necessary in a mass-production manufacturing plant.

The shipbuilding and ship-repair industry therefore urges, on the grounds of the need of management for faithful agents and the inevitability that unions of supervisory personnel will fall under the domination of rank and file unions, that this Congress not make any change in the law that will bring supervisory personnel under the coverage of the Wagner Act.

(2) Freedom of speech: It is so obviously desirable that employees have an opportunity to hear both sides of a labor controversy before making a decision that it is unthinkable that the free-speech provision of the Labor Management Relations Act should in any way be weakened or repealed.

If anything, it should be strengthened by blocking a loophole revealed by a recent decision of the National Labor Relations Board, with two members dissenting, holding that the free speech provision is restricted to unfair labor practice cases.

There is no reason why any distinction should be made between representation cases and unfair-labor-practice cases, and it is recommended that the act be amended so as to insure the constitutional right of free speech in preelection campaigns.

(3) Union responsibility: Every fair-minded person subscribes to the principle that unions should be responsible for their actions—responsible in their dealings with management, in their treatment of

their members, and in their relations with the public. But that principle is nothing but an ineffectual generality unless it is implemented and applied in specific situations.

The shipbuilding and ship-repair industry, therefore, urges that there be retained in the law those provisions of the Labor Management Relations Act which are designed to foster union responsibility. Most important among those provisions are the following:

(*a*) Responsibility for acts of agents. Section 2 (13) of the Labor-Management Regulations Act makes applicable to labor disputes the common-law rules of agency, instead of section 6 of the Norris-Laguardia Act.

Section 6 of the Norris-Laguardia Act has been interpreted by the Supreme Court in such a way that it has become practically impossible to prove an agency relationship, even though under the normal common-law rules of evidence, and in common sense, there could be no doubt that an agency relationship existed. As Justice Frankfurter states in a dissent in which he was joined by Chief Justice Vinson and Justice Burton, the interpretation given to section 6 by the majority of the Court "serves to immunize unions, especially the more alert and powerful, as well as corporations involved in labor disputes, from Sherman Law liability." *United Brotherhood of Carpenters* v. *United States*, 330 U. S. 395, 422 (1947). That difficulty of proof, of course, extends to other acts besides Sherman-law violations.

Naturally, unions are opposed to any attempt to deprive them of the artificial protection afforded by the Norris-Laguardia Act. At the same time, they are opposed, as they properly should be, to having such artificial protection extended to employers. It should not be the law and, indeed, is not the law, as Mr. Lee Pressman, formerly general counsel to the CIO, stated in an anlysis of the Taft-Hartley Act which he prepared just before it was submitted to the President:

> If supervisors go around making threats and doing all the other things which employers are forbidden to do under the law, the employer can deny any responsibility for the actions of his foremen, superintendents, etc., simply by denying that these people are technically his agents for these purposes. * * *

At the same time, it also should not be the law, and it is inconceivable that any fair-minded person should wish it to be the law, that, paraphrasing Mr. Pressman:

If union officials go around making threats and doing all the other things which unions are forbidden to do under the law, the union can deny any responsibility for the actions of its officials, shop stewards, organizers, etc., simply by denying that these people are technically its agents for these purposes.

If, as President Truman has recommended, labor is to "take its place before the bar of public opinion on an equality with management," then both labor and management must be accountable for the actions of the individuals through whom they act, whenever those individuals are acting within the scope of their authority, real or apparent. Section 2 (13) of the Labor-Management Relations Act should be retained without change.

(*b*) Unfair labor practices by unions: The original Wagner Act was labor's "bill of rights" and management's "bill of duties". The Labor-Management Relations Act preserves labor's "bill of rights", but it adds a "bill of duties" for labor correlative to that for employers.

The shipbuilding industry urges that Congress should no more lightly eliminate or weaken labor's "bill of duties" than it would labor's "bill of rights." In particular, we urge that no change be made in the following provisions:

(i) Restraint or coercion: The debates in Congress show the types of activities by unions to which the ban on restraint and coercion of employees was intended to apply—the use of goon squads, threats to charge larger initiation fees if employees did not promptly join the union, physical violence on employees, threats to their families, mass picketing (93 Congressional Record 4016–4017, 4021).

Mass picketing as a form of coercion by unions was condemned by the National Labor Relations Board in the recent case of International Longshoremen's and Warehousemen's Union—that was Mr. Harry Bridges' union out on the west coast—and Sunset Line & Twine Co. (79 N. L. R. B. No. 207) decided on October 22, 1948. There the company's plant, employing about 100 persons, mostly women, was located in the small community of Petaluma, Calif., with a population of about 9,500. The union called a strike. Girls who attempted to go to work were villified; pickets followed them to their homes and threatened them. Finally, between 200 and 300 pickets massed before the entrance to the plants and physically barred access to all who approached. The chief of police testified that while "nobody got hurt," the police had "quite a time all right;" and that he "wouldn't want to go through it again." The sheriff made a number of arrests and had to threaten the use of a gas bomb to disperse the massed pickets. Such activity said the Board, in a statement marked by typical judicial understatement, "patently involved restraint and coercion of employees."

And, incidentally, that was a unanimous decision by the National Labor Relations Board. There were two dissents which related only to the question as to the extent of the liability, of them finding that the liability for the acts I have just related extended to the international as well as the local. Two of the members dissented, including the chairman, but as to the acts themselves constituting a violation of the law, being mass picketing adding up to restraint or coercion, which is prescribed by the law, there was a unanimous decision.

Even the most vociferous opponents of the act did not attempt to condone such activities, although some contended that they were usually unauthorized by the union (93 Congressional Record 4016). Some opponents of the provision against union restraint and coercion insisted that local police action was all that was necessary to deal with such activities. Incidents such as the recent raid by imported thugs on the plant of the Shakespeare Co. at Kalamazoo, Mich., and the incidents described in detail in the report of the House Committee on Expenditures in the Executive Departments on its investigation into the Nation-wide meat-packing strike in the spring of 1948 (U. R., Rept. No. 2464, Dec. 20, 1948, p. 3) give eloquent evidence that local police forces are frequently unable to cope with mass picketing, accompanied by lawlessness, violence and destruction, and that such conduct is not a thing of the past. The latter report gives concrete food for thought for those who realize that no economy can survive without a decent respect for law and order.

Congress should not impliedly condone such lawless activities by repealing or weakening in any way the present provision prohibiting the use of threats or coercion on employees by unions.

(ii) Refusal to bargain: The provision imposing upon unions the same duty to bargain collectively that the original Wagner Act imposed upon employers has not met any meritorious criticism and, therefore, it should be retained in the law, in our opinion.

(iii) Jurisdictional strikes and boycotts: The President in his state of the Union message condemned jurisdictional strikes in the following words:

> * * * In such strikes the public and the employer are innocent bystanders who are injured by a collision between rival unions. This type of dispute hurts production, industry, and the public—and labor itself. I consider jurisdictional strikes indefensible.

There cannot be any reasonable difference of opinion over the President's statement that jurisdictional disputes are "indefensible." Even representatives of labor have admitted that jurisdictional strikes are unjustified. For example, Mr. Gerhard P. Van Arkel, formerly general counsel to the National Labor Relations Board and now a prominent attorney for labor unions, has flatly stated that "union representatives will not defend jurisdictional strikes" (article on the Taft-Hartley Act in the April, 1948, issue of Social Action). The President, in his veto message, far from finding any objections to the provisions of the act relating to jurisdictional strikes, objected to them because they did not go far enough.

Congress, therefore, should not eliminate the provisions of the Labor-Management Relations Act relating to jurisdictional strikes. In order to meet the President's criticism concerning the lack of means for settling jurisdictional disputes over assignments of work before they ripen into a strike, it is recommended that section 10 (k) be modified so as to provide that any union involved in such dispute, or the employer of the employees concerned, may petition the Board to appoint an arbitrator to determine the dispute, whose decision shall be final and binding on all parties concerned, subject to reasonable review by the Board.

(iv) Secondary boycott and strikes: The provisions against secondary strikes and boycotts were enacted in response to the President's request, in his 1947 state of the Union message, that Congress outlaw "secondary boycotts in pursuance of unjustifiable objectives."

Secondary strikes and boycotts to compel an employer to recognize or bargain with a union which has not been certified as a representative of his employees is certainly "in pursuance of unjustifiable objectives." If a union which is not the freely designated representative of the majority of the employees may resort to secondary pressure to force an employer to recognize it, then the basic right of such employees to be represented only by representatives freely chosen by a majority may be defeated.

Secondary strikes called by one union against an employer either because his employees are not unionized or because his employees belong to a different union are likewise directed toward "unjustifiable objective." The fundamental fallacy of all the arguments in favor of secondary strikes of that type is that they fail to recognize that such secondary strikes are inconsistent with the fundamental right of employees, written into the law by the original Wagner Act, to make a free choice as to whether or not they will join a union and to bargain collectively through representatives of their own choosing, free from interference, restraint, or coercion by their employers.

The method by which a union should seek to unionize employees is not the method of indirect coercion but the direct and democratic method of persuasion and selling itself by the advantages which it offers.

There is, course, a superficial appeal to the argument that union men should not be required to handle material made under sweatshop conditions. But the answer to that is that the law has set up machinery, for the declared purpose of preventing strikes and industrial strife, by which unions may directly and effectively organize the employees who are subject to sweatshop conditions.

What has been said concerning the impropriety of secondary strikes and boycotts directed against nonunion employers and nonunion labor applies with even greater force with reference to such activities directed by one union against employers whose employees are unionized by a different union. Secondary strikes and boycotts under such circumstances are nothing more than instruments of interunion warfare, of which innocent employers, employees, and the public are all victims.

As for secondary strikes and boycotts of the sympathetic variety, they have the vice, which is also common to the other type that I have discussed, that they not only operate to spread and intensify industrial strife far from the original area of dispute but they also bring hardship to innocent disinterested employers, their employees, their customers, and the public.

Carried to its logical extreme, the secondary strike leads to the general strike and the economic paralysis of the whole Nation. The ban on secondary strikes is, therefore, a necessary measure for localizing disputes between the immediate employer and his employees.

Archibald Cox, professor of labor law at Harvard University, in an article on the Labor-Management Relations Act, has this to say (61 Harvard Law Review, 1, 26–27 November 1947):

> * * * Banning the use of secondary strikes and boycotts as weapons of organization is primarily a prohibition against economic pressures; the interference with the freedom of presuasion is relatively slight, since all avenues of communication except the picket line are left open. Furthermore, the measure is necessary to localize industrial disputes, this minimizing the resulting loss to the community, and forms an important part of any labor policy based on collective bargaining between employers and representatives chosen by their employees.

(*c*) Injunctions: The injunction provisions of the Labor-Management Relations Act are a necessary implementation of the unfair labor practices provisions. It was the experience under the original Wagner Act that, by reason of the lengthy hearings and litigation leading up to the enforcement of its orders, the Board was not able in some instances to correct unfair labor practices until after substantial injury had been done. It is only fair, therefore, that the Board should have available, when it needs it, the normal remedy of courts of equity of a temporary restraining order pending final adjudication by the Board. That is particularly true in the case of secondary strikes, which are directed against third parties, not directly concerned in the dispute, whose business may be substantially injured or even ruined, if prompt action cannot be taken to prevent the continuance of such strikes. In the case of "indefensible" jurisdictional strikes, in which, as the President stated, "the public and the employer are innocent bystanders who are injured by a collision between rival unions," it is extremely difficult to see how any legitimate objection can be raised against the requirement that the Board obtain a mandatory injunction to restrain them.

The cry of "government by injunction" may not fairly be leveled at the injunction provisions of the act. That phrase was a shorthand condemnation, two decades past, of the abuse of the injunction by the Federal courts, at the behest of employers, in dealing with labor controversies, unrestrained by Federal legislation. Those criticisms do not apply here. Under the act, an injunction cannot be obtained by either employer or union, but only by the National Labor Relations Board, the impartial guardian of the public interest. Furthermore, the policy of the Nation on labor matters is declared in the act, and the authority of the courts is defined by is provisions. There is no longer any reason to fear that the courts will exercise their injunctive powers according to their own considerations of public policy and their own social and economic philosophies.

(*d*) Suability of unions for contract violations: In his 1947 state of the Union message, President Truman expressed the opinion that "collective-bargaining agreements, like other contracts, should be faithfully adhered to by both parties." The remedy of a suit for damages for unjustified breach of contract is one of the most potent means of securing adherence to contracts. There is no reason why a collective-bargaining agreement should have a different status in that respect than any other type of commercial contract.

Perhaps the finest statement in favor of section 301 is that contained in an address which that great friend of labor, Justice Brandeis, delivered before the Economic Club of Boston on December 4, 1902, and which was referred to in the course of the congressional debates (93 Congressional Record 4282); and I quote an excerpt from Justice Brandeis' address:

> The unions should take the position squarely that they are amenable to law, prepared to take the consequences if they transgress, and thus show that they are in full sympathy with the spirit of our people, whose political system rests upon the proposition that this is a government of law, and not of men.

I quote further from Justice Brandeis' address:

> I can conceive of no expenditure of money by a union which could bring so large a return as the payment of compensation for some wrong actually committed by it. Any such payment would go far in curbing the officers and members of the union from future transgressions of the law, and it would, above all, establish the position of the union as a responsible agent in the community, ready to abide by the law. This would be of immense advantage to the union in all of its operations.

(4) The closed shop: The prohibition of the closed shop certainly was not intended to destroy unions, as its critics have alleged, nor does it have that effect. The Railway Labor Act forbids any kind of compulsory unionism, yet the railroad brotherhoods certainly have not suffered because of that ban. On the contrary they are among the largest, most powerful, and richest unions in the country.

Congress outlawed the closed shop in order to guarantee to the individual worker the right to work.

As recently as the beginning of this year, the Supreme Court of the United States unanimously upheld the constitutionality of certain State statutes prohibiting the closed shop. on the ground that the constitutional right of workers to organize does not give them a further constitutional right to drive from remunerative employment all other persons who will not or cannot participate in union assemblies.

Justice Brandeis always maintained it was in the interest of employers and the community that "unions should be powerful and responsible." But, nevertheless, he maintained that the idea of the closed shop was "so antagonistic to the American spirit" that it was indefensible. He predicted, furthermore—and I quote Justice Brandeis again—that:

> * * * the American people should not, and will not accept unionism if it involves the closed shop. They will not consent to the exchange of the tyranny of the employer for the tyranny of the employees.

Congress should retain the present prohibition against the closed shop.

(5) Non-Communist affidavits: If the retention of the anti-Communist affidavit provision depends on its success in accomplishing its desired end, then it is clear that it should be retained. Not only has the President's prediction completely failed to materialize, but that provision has had remarkable success in stimulating responsible labor leaders and the rank and file of union members to sweep Communist officials out of office and control. In many instances, union memberships took decisive action to compel reluctant officers to comply with the filing requirements. In other instances, refusal by incumbent officers to sign the affidavits was made an issue in union elections, which resulted in those officers being repudiated at the polls.

Apparently, no one has had the temerity to suggest that Communists should be unrestricted in their rights to engage in trade-union activities. Certainly in shipbuilding and ship repairing, upon which the national welfare has from time to time depended, Communist control or interference is unthinkable. The American public has in recent years been made acutely conscious that, as stated in the interim report of the House Committee on Education and Labor on its investigation of Communist infiltration into labor unions (report 16, Dec. 17, 1948, p. 5):

> The Communist Party regards trade unions as a means rather than an end. In the hands of the Communist Party, a trade-union in a strategic industry is an effective means to accomplish the ultimate objective: control of the state.

David Dubinsky, head of the International Ladies Garment Workers Union and a vice president of the American Federation of Labor, in the January 1949 issue of Foreign Affairs, writes:

> Precisely because the Communists place the capture and control of the trade unions as the first prerequisite for foisting their dictatorship on any industrial country, it is imperative for the democratic trade unions of all countries to pool their resources and join forces in the protection and promotion of their welfare and liberties * * *
>
> The lesson must be reiterated: The attempt to work with Communists is futile folly. * * *
>
> Collaboration by trade unions and liberals with Communists serves only to provide them with a means of deception and with prestige which they subsequently exploit for party purposes.

The intent of the Communists is plain from their own statements:

Lenin:

> It is necessary to be able to agree to any and every sacrifice, and even, if need be, to resort to all sorts of devices, maneuvers, and illegal methods, to evasion and subterfuge, in order to penetrate into the trade unions, to remain in them, and to carry on Communist work in them at all costs.

Earl Browder (1944):

> Communists are active in the PAC, in AFL nonpartisan committees * * *

Program of the Communist International published by the Communist party of the United States:

> Mass action [under Communist leadership] includes a combination of strikes and demonstrations; a combination of strikes and armed demonstrations; and, finally, the general strike cojointly with armed insurrection against the state power of the bourgeosie.

It would be indefensible, therefore, if the anti-Communist affidavit provision of the act should be eliminated or in any way weakened.

(6) National emergency provisions: The Labor-Management Relations Act contains provisions enabling the President to deal with strikes or lock-outs constituting national emergencies. Some machinery to deal with paralyzing Nation-wide strikes was requested by the President, and its need is universally conceded.

Experience has shown, however, that the machinery set up by the act is deficient in a number of respects. The "last offer" ballot has proved ineffectual; the delay caused by the appointment and report of a board of inquiry has been objectionable, since a strike may in the meantime be called or continue, and the President may not seek an injunction until after the report is rendered; the report of the board of inquiry is not as effective as it could be because it may not contain recommendations.

Admittedly suitable legislation to deal with Nation-wide strikes is difficult to devise. On one thing, however, both labor and management are agreed: They are not ready to accept compulsory arbitration as the solution. In the current climate of opinion, therefore, the procedure provided for in the Labor-Management Relations Act, with modifications to meet the defects pointed out above, should be acceptable and is recommended by the shipbuilding and ship-repair industry.

Conclusion: The shipbuilding and ship-repair industry does not believe that the Labor-Management Relations Act cannot be improved. No law is perfect, especially one dealing with such a dynamic field as labor relations. The act, however, represents an honest effort to restore an equitable balance between management and labor, and by and large its provisions, and especially those which have been specifically discussed in this statement, will promote greater responsibility on the part of unions, progressively improved relations between management and labor and a decrease in industrial strife. The shipbuilding and ship-repair industry is sure that if Congress will reexamine those provisions in the spirit of "equality for both and vigilance for the public welfare," which President Truman, albeit almost 2 years ago, declared should be "the watchwords of future legislation," Congress will not find those provisions wanting.

And may I further, beyond the statement I have read, state that the Shipbuilding Council, which I am here as spokesman of, is deeply grateful to this committee for its kind indulgence to sit here at this late hour on a Saturday evening to give us an opportunity to be here and present our position. It certainly is clear and convincing evidence of the determination of this committee to learn the facts and to arrive at the recommendations for legislation in their wisdom they deem feasible, and we are grateful to you for your kind consideration.

Mr. BAILEY. Mr. Keefe, were you present this afternoon when I was questioning Mr. Moody of the southern coal operators?

Mr. KEEFE. Yes, I was, sir.

Mr. BAILEY. Then you must know my deep feelings on the use of mandatory injunctions in labor disputes?

Mr. KEEFE. Yes, sir.

Mr. BAILEY. You made a statement in your presentation that neither the employer or the employee had the right to apply for an injunction, and that was at the discretion of the Labor Board. Am I quoting you correctly?

Mr. KEEFE. Yes, sir.

Mr. BAILEY. I would like to ask you, then, why some months ago in my home State and home city of Charleston, at a strike in the Dupont plant, the company applied for and secured an injunction from the circuit court of Kanawha County and an injunction was issued, prohibiting mass picketing?

Mr. KEEFE. I think the answer to that, Mr. Chairman, and I am speculating——

Mr. BAILEY. That does not coincide with your statement.

Mr. KEEFE. No, it does not. I think the answer may be—and I am speculating, not knowing more of the facts than I do—perhaps the injunction was obtained in the State court under the State law under State procedure, but I dare say it was not obtained in a Federal court under the provisions of the Taft-Hartley act.

Mr. BAILEY. I am aware it was a State court. You should have been more explicit in saying the injunction could not be secured except through the Labor Board.

Mr. KEEFE. Perhaps I may have, but I was discussing the national legislation. I am aware that many of the States of the Union will permit injunctions to be obtained, and other States will not.

Mr. BAILEY. One other question: I think you will agree with me that in the case of the coal strike the first injunction procedure in Judge Goldsborough's court came before the effective date of the Taft-Hartley Act; is that right?

Mr. KEEFE. I am not entirely certain. My memory is that the chairman is right in his statement, but I am not certain.

Mr. BAILEY. And the second procedure, or the second injunction proceedings, came after the act was in effect?

Mr. KEEFE. That is possibly so.

Mr. BAILEY. Who secured the injunction before Judge Goldsborough?

Mr. KEEFE. My memory serves me that it was the Attorney General.

Mr. BAILEY. Acting on behalf of Government?

Mr. KEEFE. Yes, sir.

Mr. BAILEY. That is true in the first case, but who got the injunction in the second case?

Mr. KEEFE. I think it was the Government and, I think, in the second case it may have been at the instigation of the National Labor

Relations Board. I am not certain of that, but I am fairly certain that in both instances it was obtained by the Government.

Mr. Bailey. That is all the questions I have at this time.

I will call on Mr. Jacobs.

Mr. Keefe. I might say, if I may, Mr. Chairman, along those lines, in answer to your question——

Mr. Bailey. Before I have concluded, I will put at the disposal of a minority member the 4 or 5 minutes of my time remaining. He has no right to question unless it is delegated to him, so after the members of the majority have finished questioning, I will allow him to question.

We will hear from Mr. Jacobs at this time.

Mr. Jacobs. Do you have any members in your industry in Portland, Oreg.?

Mr. Keefe. I did not hear you.

Mr. Jacobs. Are there any of the shipbuilding companies you represent located in Portland, Oreg.?

Mr. Keefe. I am not entirely certain whether they are members of the council, but there are representatives of the industry in Portland, Oreg.

Mr. Jacobs. Are you familiar in any respect with the case of local 72, the Boilermakers?

Mr. Keefe. Just in a vague sort of way, but not to the extent that I could discuss it intelligently.

Mr. Jacobs. You know there was quite a bit of difficulty out there in local 72?

Mr. Keefe. I understand there was at one time.

Mr. Jacobs. I believe you are an attorney, are you not?

Mr. Keefe. Yes, sir.

Mr. Jacobs. Do you know in a general way what that difficulty was?

Mr. Keefe. No, I do not. I do not recall. Perhaps you might refresh my memory, Mr. Congressman.

Mr. Jacobs. I believe the headquarters of the union is at Kansas City; is that right?

Mr. Keefe. Yes, sir.

Mr. Jacobs. According to the court records I examined, it seems about three and a half million dollars went down to Kansas City, and Judge Donaldson appointed a receiver out there, and they finally got the money back. Does that refresh your memory?

Mr. Keefe. No, I am sorry. Do you recall the year it was?

Mr. Jacobs. It has been during the last 4 or 5 years, or probably the last 2 or 3 years.

What I was leading up to was, you were speaking of union responsibility and I was wondering if you find anything under the Taft-Hartley law that gives a local union any remedy under those circumstances?

Mr. Keefe. I would like to know more of the circumstances. You mean the funds had been impounded?

Mr. Jacobs. What I am getting at is this: The Taft-Hartley law requires a financial statement to be filed with the Government and made available to all members; that is about as far as it goes, is it not?

Mr. Keefe. I believe so.

Mr. JACOBS. Except that if a statement is not filed it curtails the right of the union to use the Labor Board?

Mr. KEEFE. That is true.

Mr. JACOBS. And the same thing is true in reference to the non-Communist affidavit; the actual effect it has is to immunize the employer from an unfair labor practice in case there is some union officer around who does not file the affidavit?

Mr. KEEFE: That works out that way.

Mr. JACOBS. It would work out that way, would it not? As a lawyer, do you know that even a convicted traitor could bring an action in court for tort and collect damages, could he not?

Mr. KEEFE. Yes.

Mr. JACOBS. A convicted murderer, or anyone else?

Mr. KEEFE. That is true.

Mr. JACOBS. I am against Communists, but I believe we should handle the problem in a more direct manner.

I do not want to spend too much time on that.

There is something I want to ask you about in reference to the national emergency strike. I have thought about that a lot. We have the situation where the emergency may be delayed and there are probably those occasions when it would be delayed even if there were not a law, though I agree with you it should be spelled out specifically. I think Theodore Roosevelt, in 1902, said they were going to mine coal in Pennsylvania when the operators refused to arbitrate, and if they had not he was going to send the troops in, but I am thinking about an orderly law to govern this thing.

You made one statement that it was very difficult to devise.

Mr. KEEFE. Most difficult.

Mr. JACOBS. I have gone up a blind alley every time I have tried to devise one in my mind, and I am looking for someone to give me a remedy where we will not go up a blind alley. Suppose we delay a strike 80 days, and follow the Taft-Hartley procedure, or the procedure outlined in your testimony; eventually, the time is going to expire, and the period of delay is going to end. What if the dispute is not settled? What would you do then? I know I am handing you a tough question.

Mr. KEEFE. That is the problem; that is exactly the problem that was met on the west coast in the shipping strike. They reached the end of the rope and they had not arrived at a solution, and it proved effective in that case.

Mr. JACOBS. I am in dead earnest about this. I have talked about it a lot, and I would like to follow it through a little further.

The next step under Taft-Hartley is a report to Congress and I suppose the mail man would be bringing our mail in in wheelbarrows under such circumstances, and I read in that a direct threat that Congress, under the pressure of public opinion, would settle that strike by compulsory direction, whether you call it compulsory arbitration, or how, but that we would step in and say, "This strike is settled, and the wages are so much." We will have to fix the wages and the terms and conditions if we tell the people they must work together when they have not agreed, and we have to impose the agreement upon them; that is what it amounts to.

Mr. KEEFE. That may be the solution.

Mr. Jacobs. That would be the solution, but let us see where we go to from there. Let us suppose it is the coal industry and we say the miners have to go back to work, and we are going to give them $2 an hour, and the next thing we know the miners are in here saying, "We cannot buy shoes for our children at that price because prices have gone up. We go down to buy a Ford automobile, and we used to pay $800 for it, and now they charge us $2,000, for it." And they say, "Now, Mr. Congressman, we want you to fix the price on those things. We cannot work for that figure."

We have bottled up one end of the log and the possum is in there, and if we are going to keep him from getting out, we will have to bottle up the other end.

Mr. Keefe. That is right.

Mr. Jacobs. Can you tell me what we are going to do with that situation? As the learned Omar Khayyam said:

> I always came out the same door I went in.

I have always come out the same door, and maybe you can find another exit.

Mr. Keefe. Frankly, Mr. Congressman. I do not know the answer. I have, to some extent, like yourself, probed and explored and discussed this thing at some length trying to find an answer. I do not know what the answer is, and apparently there were other horns of the dilemma when your predecessors were engaged in this legislation during the Eightieth Congress.

Mr. Jacobs. Let us go a little further and see what happened. We have fixed the wage, and now the workers come back and say, "Fix the price," and we have done that. Do you not think that some measure of ownership is going to be lost on the part of proprietors, and the resistance against nationalization of the industry is going to be broken down considerably?

Mr. Keefe. Yes, that is true, but I am inclined to believe, Congressman, that somewhere along the line that some effective means must be available, the transcendent right of the public can step in and halt the paralyzing, or the threat to a paralyzing national work stoppage. It seems to me that some measure should be available to call a halt, particularly where there has been this period of 80 days in a consciously sincere effort to reconcile differences.

Mr. Jacobs. As a matter of fact, as far as I can recollect from reading history, it always had, even before the 80 days, had it not? Now, here is where I am separated from you in my thinking. You represent the employer. You want to draw the line up here 80 days some place, and you recognize with me that there is a terrific amount of danger in doing it?

Mr. Keefe. I do.

Mr. Jacobs. But you started down a road that we do not want to go down when we do that. You agree with me on that?

Mr. Keefe. I agree with you thoroughly.

Mr. Jacobs. Do you remember a fellow named Fritz Thyssen?

Mr. Keefe. Yes.

Mr. Jacobs. He thought that that line was going to be drawn somewhere, too.

Mr. Keefe. Yes.

Mr. Jacobs. You had better think about that a lot, I believe.

Mr. KEEFE. Well, we have been. And we feel this way, Mr. Congressman, that these are days when the Nation is probing and exploring and trying to find an answer to some of these questions. We admit quickly, as we have in this prepared statement, that certainly the present act is deserving of changes here and there. For example, you mentioned one when an earlier speaker was in the witness chair concerning these union-shop elections. I do not know whether it is treated in the brief, but I certainly did not refer to it in this summary. We feel, as the Congressman stated, that the present provisions for the union-shop election are superfluous and might well be eliminated.

Mr. JACOBS. Did you hear what I said the union wanted us to do?

Mr. KEEFE. I could not subscribe to that thinking.

Mr. JACOBS. I say, did you hear it?

Mr. KEEFE. Yes, I did.

Mr. JACOBS. I could not, either. I wrote and told them that I could not, but it is a good indication of how one thing leads to another, is it not?

Mr. KEEFE. That is true.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Wier?

Mr. WIER. I just want to ask one question, and then I will yield to Mr. Gwinn.

You made quite an outline of your position on the Taft-Hartley Act. I think you cited about six sections that you laid particular emphasis on as being very important to labor-management relations.

Mr. KEEFE. Yes.

Mr. WIER. So I will not take up the entire 16 sections that have been referred to by others as being important. But the shipbuilding and its allied fields are quite representative of labor relations. I know that, because I have been on the west coast, the Gulf coast, the east coast, and the Great Lakes.

Of these 16 proposals that are under fire pro and con in this Congress as against the Wagner Act and the present Taft-Hartley Act, all these 16 that have been referred to in the Wagner Act, which one of the 16 do you think is the most important and the most vital? Just pick out one with some deliberation that you think is the most vital necessity to be maintained in the law as establishing good relationships. You might pick out two or three. That is all right. But I mean, what is the pertinent one? I have been listening to employers now for 4 days, and in some cases they are bitterly against the closed shop and another fellow is bitter against the secondary boycott, and another one is bitter on jurisdictional disputes. And that is the way it goes.

I want to hear your reaction if the Congress were to accept the administration's bill here that is before us. Which do you think would be the most vital loss to the industrial relations, removing all the points that the President wants?

Mr. KEEFE. If I might answer your question, Mr. Congressman, that is exactly what we have tried to do here in our presentation by the shipbuilding and ship repair industry. Of all the various features of the Taft-Hartley Act which are presently under discussion, and I think the Congressman summed them up as 16 points—I think I heard a speaker earlier today refer to them as 16 points—we have in the shipbuilding industry in this presentation attempted to point out to the gentlemen of this committee that in our opinion there are six points which are of outstanding importance. We do not mean, and we hope that the inference will not be left with the committee, that we believe that all other matters may well be repealed. We do not mean that. But we feel that we could conscientiously come before this committee and present a sincere position on those points which we thought, to our industry, were of controlling importance, and those are the six points I have mentioned:

No. 1. Exclusion of supervisory personnel from the coverage of the act.

No. 2. Freedom of speech.

No. 3. Union responsibility.

No. 4. The closed shop.

No. 5. Non-Communist affidavits.

No. 6. National emergency provisions.

Mr. WIER. Thank you.

That is all.

Mr. BAILEY. Mr. Gwinn, have you any questions?

Mr. GWINN. Mr. Chairman, I appreciate your asking me, and thank you, Mr. Wier.

This does bring me back to old times a bit, sitting here. May I ask the gentleman if you have seen any recent efforts to redefine what the right to strike is? Have you seen any good treatment of that subject lately, by a justice or a scholar on the subject?

Mr. KEEFE. I think the best that I have seen is a collection that is available at the Harvard Law Library on the works and addresses and writings of Mr. Justice Brandeis. They are not recent, but in my opinion, they are so solid and they are so loaded with 100 percent Americanism, and they are so loaded with that which we are also proud of as part of our heritage, that I think it could be well for all of us to refer again to them, because I believe when we are treating with a subject such as this, we could well refer to the authority of Mr. Justice Brandeis.

Mr. GWINN. Mr. Chairman, you might be interested to know that we felt when we drew that provision, which was rather late in the deliberations of the committee, we had not explored that whole subject thoroughly enough, and we had very little testimony on the point as to wheher or not the right to strike went so far as to permit absolute monopolistic, compulsory positions on the part of labor, just as a total monopoly might develop in industry, which we refused to tolerate under the antitrust laws. The question was raised, and not very well answered, whether or not labor in the labor law should not have provisions governing labor in the same way the industrial monopolies were treated in the antitrust law.

Mr. JACOBS. Will you yield at that point, Mr. Gwinn? I do not care whether this goes in the record or not, if you want to make in informal. I am interested in that angle. I think there was a bill introduced here in the last Congress along those lines. But it was a type of bill which would have absolutely destroyed the right to strike in any industry with the exception of big industries, like automobiles, steel, aluminum, and so forth. And that was Mr. Hartley's bill introduced forbidding a monopolistic strike and defining a monopolistic strike as the striking of more than one proprietor in an industry. Now, let us take the 6,000 coal operators, for exemple. I mean, if you strike one coal operator, all the rest of them would be immune as long as that mine was out.

Of course, I am with that as I was with the anti-Communist affidavit. I would rather go at it directly and be forthright. It would just destroy the right to strike entirely.

Mr. Gwinn. Yes.

Mr. Jacobs. Whether fair men could devise a rule and fix a level for industry and labor both, or a percentage for industry and labor both, I do not know. It is a pretty dangerous rule. If it gets into the hands of somebody who wants to manipulate it a little, they can pay off awfully big favors one way or the other.

Mr. Gwinn. It would depend entirely on the exercise or the threatened exercise of absolute power, so that there would be no competition, no possibility of employing competing labor in the job, and also there would be the question of whether or not monopoly force was threatened or about to be exercised.

Mr. Jacobs. It is a little difficult, of course, for us to think of labor in the same category that we think of goods and commodities. That has been the reason why we have never applied the monopoly laws to labor as such. It goes against the grain of American people to consider labor in the same category.

Mr. Gwinn. I think you would be interested, in that connection, Mr. Jacobs, in this. We came to the conclusion that the Antitrust Act could not be applied to labor for the reason that you have intimated, that it would have to be framed within the Labor Management Act itself, and it would be a provision that would be applicable to labor and not to industry.

Mr. Jacobs. I have stated a lot about this emergency business, and in reflecting on history, I came to this conclusion, and I stated to labor in my campaign that I felt that it had to be dealt with legally. So my campaign was made on the thesis that it should be. I have studied it, reflected upon history, and I am not sure but what maybe if we want to maintain a completely free economy, maybe we had better prepare ourselves to take a little lacing once in a while. I do not know. I am not convinced that maybe we had better not just take our medicine once in awhile and not take the chance of going down that road we were talking about.

Mr. Keefe. I think that you gentlemen of the Congress have a terrific burden. I think the whole Nation is looking to you to find a solution to a strike that threatens the national welfare.

Mr. Bailey. Could I join in the conversation at this point?

You gave us some rather definite advice that we should keep the Taft-Hartley Act.

Mr. Keefe. Yes.

Mr. Bailey. You did not help us much in reaching a middle ground.

Mr. Keefe. The most that we have tried to do here today, Mr. Chairman, is to present what is our conscientious opinion, reduced to a position, and we feel that it was our duty and our responsibility to come here and represent that position to you.

Mr. BAILEY. The committee, I am sure, appreciates very sincerely your coming back this evening for the night session to enable us to get back on our schedule. It was rather an imposition that you have had to wait as long as you have. You understand that on Wednesday last, it was necessary to forego these hearings, and it put us a day behind. And by having two night sessions, we are now caught up.

We appreciate it very much. Thank you.

Mr. KEEFE. Thank you.

Mr. BAILEY. The committee will stand adjourned until 10 o'clock Monday morning.

(Whereupon, at 9:20 p. m.. the subcommittee adjourned until 10 a. m., Monday, March 14, 1949.)

APPENDIX

The Position of the Shipbuilders Council of America With Respect to the Proposed Revision of the Taft-Hartley Act

This statement is made by the Shipbuilders Council of America, an association whose members operate 43 yards employing approximately 70 percent of the employees in the industry. It would be superfluous to emphasize the fundamental importance of the shipbuilding and ship repair industry to national defense, as well as the part it plays in the normal peacetime economy of our country.

It is the purpose of this statement to present the views of the members of the Shipbuilders Council in support of retaining in the law provisions of the Labor Management Relations Act which members of the Council consider vital to the building up and continuance of sound and healthy labor relations and which have, in a measure, restored the balance of responsibility between management and labor.

For a number of years prior to passage of the Labor Management Relations Act, it became increasingly apparent that the Wagner Act was not accomplishing its express purpose of reducing industrial strife, because unions and their leaders were abusing the privileges and powers which the Act conferred on them and their conduct in many instances was encouraged by the one-sided administration of the Act by the National Labor Relations Board. The tidal wave of strikes following the end of the war, which in some instances threatened the economic paralysis of the whole country, finally brought from an aroused public a demand for corrective legislation.

President Truman shared the public sentiment in favor of such legislation. Three times during 1946 and 1947 he requested Congress to amend the Wagner Act. In May 1946, when the Nation was threatened by an industry-wide strike on the railroads, President Truman appeared before Congress and requested corrective legislation (92 Cong. Rec. 5753), in response to which Congress enacted the Case bill. President Truman vetoed that bill on June 11, 1946 (92 Cong. Rec. 6674–78). He again acknowledged, however, the need for such legislation and recommended to Congress that it make another attempt to draft a bill that would be acceptable to him. The President stated as his criteria:

> There should be no emphasis placed upon considerations of whether a bill is "antilabor" or "prolabor." Where excesses have developed on the part of labor leaders or management, such excesses should be corrected—not in order to injure either party—but to bring about as great an equality as possible between the bargaining positions of labor and management. Neither should be permitted to become too powerful as against the public interest as a whole.
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> Equality for both and vigilance for the public welfare—these should be the watchwords of future legislation.
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> * * * * * * *
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> * * * A comprehensive study of this problem should be based on a realization that labor is now rapidly "coming of age" and that it should take its place before the bar of public opinion on an equality with management.

In the State of the Union Message which the President delivered on January 6, 1947, he told Congress that it was "essential to improve the methods for reaching agreements between labor and management and to reduce the number of strikes and lock-outs." The urgency of the problem was emphasized by his appeal for specific legislative recommendations not later than March 15, 1947. The Labor Management Relations Act, which was passed by Congress on June 6, 1947, was Congress's answer to the President's request. It was passed after extensive hearings before Congressional committees, compromises between the Senate and House views, and full debate in Congress; and it was repassed over the President's veto by an overwhelming majority that strikingly cut across party lines.

President Truman's statements have been dwelt on at such length, because the shipbuilding and ship repair industry believes that the provisions of the Labor-Management Relations Act which it is now urging Congress to retain are fully within the spirit of the President's recommendations. It is believed that those provisions, as the President stated, "bring about as great an equality as possible between the bargaining position of labor and management." It is believed that those provisions are necessary in order to prevent either labor or management from becoming, in the words of the President, "too powerful as against the public interest as a whole." It is believed that those provisions are, again to quote the President, "based on a realization that labor is now rapidly 'coming of age' and that it should take its place before the bar of public opinion on equality with management." It is believed that the principal provisions of the Labor Management Relations Act conform to the ideal of the President of "aquality for both and vigilance for the public wefare." The shipbuilding and ship repair industry urges, therefore, that the Congress retain the provisions which are hereafter discussed and which this statement demonstrates come within that ideal.

1. EXCLUSION OF SUPERVISORY PERSONNEL FROM THE COVERAGE OF THE ACT

The Labor-Management Relations Act excludes supervisory personnel from the coverage of the Wagner Act (Sec. 2 (3), 2 (11)).

In appraising this provision, "a page of history," as Justice Holmes once said, "is worth a volume of logic." A brief historical background is therefore in order.

The original Wagner Act did not contain any provisions relating to supervisory personnel, but it seems to have been generally assumed that foremen and other supervisory personnel represent "the boss" and therefore were not covered. It was not until seven years after Congress passed the Wagner Act that anyone even asked the National Labor Relations Board to establish a separate unit composed of supervisors. The Board then certified a union of supervisors which claimed to be independent but was in fact affiliated with the union that represented the rank and file (*Matter of Union Collieries Coal Company*, 41 N. L. R. B. 961 (1942). There was promptly introduced in Congress a bill to exclude foremen from the Wagner Act, but while it was pending in Committee, the Board, on May 10, 1943, reversed itself and held that it would not certify a unit of supervisory personnel (*Matter of Maryland Drydock Company*, 49 N. L. R. B. 733). Congress then dropped the bill. Thereafter, the Board confirmed its decision in the *Maryland Drydock* case in a number of subsequent cases; but two years later it again changed its mind and certified a union of foremen (*Matter of Packard Motor Car Company*, 61 N. L. R. B. 1212 (1945).

It was in that state of affairs that Congress in the Labor Management Relations Act excluded supervisory employees from the coverage of the Act.

Congress did not have to go beyond the opinion of the Board in the *Maryland Dry Dock* case for powerful reasons for taking that action. As the Board there stated (pp. 740–741):

> The very nature of a foreman's duties makes him an instrumentality of management in dealing with labor * * *. To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests.

But the Labor Committees of both the Senate and House did not rest on the authority of the Board in drafting the provision under discussion. They called witnesses from both management and labor, whose testimony eloquently bore out that the unionization of supervisors leads to divided loyalties on the part of men whom management regards as its representatives and whom management must employ as its agents, not only to assign employees to their work, but to see that they keep at their work and do it well, to correct them when they are at fault, to settle their complaints and grievances and to discipline them. The evidence before the Committees showed incontrovertibly that supervisors' unions necessarily had to be under constant obligation to the rank and file unions; that supervisors cannot successfully strike without the agreement of the rank and file not to do the work of striking supervisors; that the Foremen's Association of America had adopted a policy of forbidding its members to enter plants, even for the purpose of maintenance, where the rank and file unions were on strike and had not given their consent. One official of a rank and file union testified before the House Committee:

> "Well, we are trying to get them (the supervisors) to join the union * * * and then we'll be their bosses." (House Report No. 245, 80th Cong., 1st Sess., April 11, 1947, p. 16.)

In the shipbuilding and ship-repair industry particularly, it is of extreme importance that supervisory personnel be absolutely loyal to management and free from the pressures of union groups which they supervise. It is not a mere coincidence that the National Labor Relations Board reestablished the principle of excluding supervisory personnel from the coverage of the Wagner Act in a case where the employer was a ship-repair company, The Maryland Drydock Company. Shipyards cover large areas, operations are greatly decentralized, and many separate operations are performed by small groups of workers working in isolated places. The employers are forced, by physical circumstances, to place great reliance for the supervision and direction of such employees upon their immediate supervisors. In a shipyard, unlike an ordinary factory, a department head cannot enter a room and at a glance see whether operations are proceeding efficiently. As a result, in shipyards greater reliance, perforce, is placed on the lower echelons of supervisory personnel than is necessary in a mass-production manufacturing plant.

The shipbuilding and ship-repair industry therefore urges, on the grounds of the need of management for faithful agents and the inevitability that unions of supervisory personnel will fall under the domination of rank and file unions, that this Congress not make any change in the law that will bring supervisory personnel under the coverage of the Wagner Act.

2. FREEDOM OF SPEECH

The Labor Management Relations Act provides that the expression of any view, argument or opinion, shall not constitute, or be evidence of, an an unfair labor practice, if such expression does not contain any threat of force or promise of benefit (Sec. 8 (c)).

It is so obviously desirable that employees have an opportunity to hear both sides of a labor controversy before making a decision that it is unthinkable that this provision should in any way be weakened or repealed. Even opponents of the Labor Managements Relations Act conceded its desirability. For example, the Minority of the Senate Labor Committee stated: "We agree with the excellent protection of the rights of free speech accorded by section 8 (c)." (Senate Report No. 105, Part II, 80th Cong., 1st Sess., April 22, 1947, p. 41.)

This provision, therefore, should not be repealed. If anything, it should be strengthened by blocking a loophole revealed by a recent decision of the National Labor Relations Board. *Matter of General Shoe Corp.*, 77 N. L. R. B. No. 18 (April 19, 1948). In that case, the Board, with two members dissenting, held that the free speech provision was restricted to unfair labor practice cases and it set aside an election on the ground that statements made by an employer during a preelection campaign, which were admitedly privileged under the constitutional guarantee of free speech, were expressed in such a manner that they "created an atmosphere calculated to prevent a free and untrammeled choice by the employees."

There is no reason why any distinction should be made between representation cases and unfair labor practice cases, and it is recommended that the Act be amended so as to insure the constitutional right of free speech in preelection compaigns.

3. UNION RESPONSIBILITY

Every fair-minded person subscribes to the principle that unions should be responsible for their actions—responsible in their dealings with management, in their treatment of their members, and in their relations with the public. But that principle is nothing but an ineffectual generality unless it is implemented and applied in specific situations.

The shipbuilding and ship repair industry, therefore, urges that there be retained in the law those provisions of the Labor Management Relations Act which are designed to foster union responsibility. Most important among those provisions are the following:

(*a*) *Responsibility for Acts of Agents*

Section 2 (13) of the Labor Management Relations Act provides:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question

> of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

The effect of that provision is to make applicable to labor disputes the common law rules of agency, instead of the rule that otherwise might be applicable, viz, Section 6 of the Norris-LaGuardia Act, which provides that neither a corporation nor a union participating or interested in a labor dispute shall be held responsible for the unlawful acts of individual officers, members, or agents—

> * * * except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Section 6 of the Norris-LaGuardia Act has been interpreted by the Supreme Court in such a way that it has become practically impossible to prove an agency relationship, even though under the normal common-law rules of evidence, and in common sense, there could be no doubt that an agency relationship existed. As Justice Frankfurter stated in a dissent in which he was joined by Chief Justice Vinson and Justice Burton the interpretation given to Section 6 by the majority of the Court "serves to immunize unions, especially the more alert and powerful, as well as corporations involved in labor disputes, from Sherman Law liability." *United Brotherhood of Carpenters* v. *United States*, 330 U. S. 395, 422 (1947). That difficulty of proof, of course, extends to other acts besides Sherman Law violations.

Naturally, unions are opposed to any attempt to deprive them of the artificial protection afforded by the Norris-LaGuardia Act. At the same time, they are opposed, as they properly should be, to having such artificial protection extended to employers. It should not be the law and, indeed, is not the law, as Mr. Lee Pressman, formerly General Counsel to the CIO, stated in an analysis of the Taft-Hartley Act which he prepared just before it was submitted to the President:[1]

> If supervisors go around making threats and doing all the other things which employers are forbidden to do under the law, the employer can deny any responsibility for the actions of his foremen, superintendents, etc., simply by denying that these people are technically his "agents" for these purposes. * * *

At the same time, it also should not be the law, and it is inconceivable that any fair-minded person should wish it to be the law, that, paraphrasing Mr. Pressman:

> If union officials go around making threats and doing all the other things which unions are forbidden to do under the law, the union can deny any responsibility for the actions of its officials, shop stewards, organizers, etc., simply by denying that these people are technically its agents for these purposes.

If, as President Truman has recommended, labor is to "take its place before the bar of public opinion on an equality with management," then both labor and management must be accountable for the actions of the individuals through whom they act, whenever those individuals are acting within the scope of their authority, real or apparent. Section 2 (13) of the Labor-Management Relations Act should be retained without change.

(*b*) *Unfair Labor Practices by Unions*

The original Wagner Act imposed duties upon employers by making certain acts unfair labor practices; and it is unnecessary to labor the point that the Labor-Management Relations Act preserves essentially unchanged those provisions of the original Wagner Act. The latter Act, however, for the first time, has imposed correlative duties upon unions, and certain other practices by unions which were found to have "unduly infringed upon the rights of individual employees, employers, and the public" (Senate Report No. 105, 80th Cong., 1st Sess., p. 7) have been made unfair labor practices (Sec. 8 (b)).

This attempt to equalize the responsibilities of labor and management has been one of the objects of the indiscriminate and emotional condemnations of the Act as a "slave-labor law." It is, of course, impossible to answer critics who indulge only in name calling. More restrained opponents of the Act, however, have been impelled to concede that it is only right and proper that certain practices by unions should have been made unfair labor practices.

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[1] It might be mentioned by way of footnote that Pressman's analysis was included in the Congressional Record by Congressman Vito Marcantonio as an extension of his remarks (93 Cong. Rec. A2629).

The shipbuilding and ship repair industry urges Congress to retain all the provisions of the Labor-Management Relations Act relating to unfair labor practices by unions. In particular, the industry urges that no change be made in the following provisions:

(i) *Restraint or Coercion.*—It is an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights (Sec. 8 (b) (1)).

The debates in Congress show the types of activities by unions to which the ban on restraint and coercion of employees was intended to apply—the use of "goon quads," threats to charge larger initiation fees if employees did not promptly join the union, physical violence on employees, threats to their families, mass picketing (93 Cong. Rec. 4016–7, 4021).

Mass picketing as a form of coercion by unions was condemned by the National Labor Relations Board in the recent case of *International Longshoremen's and Warehousemen's Union and Sunset Line & Twine Company*, 79 N. L. R. B. No. 207, decided on October 22, 1948. There the Company's plant, employing about 100 persons, mostly women, was located in the small community of Petaluma, California, with a population of about 9,500. The union called a strike. Girls who attempted to go to work were vilified; pickets followed them to their homes and threatened them. Finally, between 200 and 300 pickets massed before the entrance to the plants and physically barred access to all who approached. The chief of police testified that while "nobody got hurt," the police had "quite a time all right"; and that he "wouldn't want to go through it again." The sheriff made a number of arrests and had to threaten the use of a gas bomb to disperse the massed pickets. "Such activity," said the Board, in a statement marked by typical judicial understatement, "patently involved restraint and coercion of employees."

Even the most vociferous opponents of the Act did not attempt to condone such activities, although some contended that they were usually unauthorized by the union (93 Cong. Rec. 4016). Some opponents of the provision against union restraint and coercion insisted that local police action was all that was necessary to deal with such activities. Incidents such as the recent raid by imported thugs on the plant of the Shakespeare Company at Kalamazoo, Michigan, and the incidents described in detail in the report of the House Committee on Expenditures in the Executive Departments on its investigation into the nation-wide meat-packing strike in the spring of 1948 (H. R. Report No. 2464, December 20, 1948, p. 3) give eloquent evidence that local police forces are frequently unable to cope with mass picketing, accompanied by lawlessness, violence and destruction, and that such conduct is not a thing of the past. The latter report gives concrete food for thought for those who realize that no economy can survive without a decent respect for law and order.

Congress should not impliedly condone such lawless activities by repealing or weakening in any way the present provision prohibiting the use of threats or coercion on employees by unions.

(ii) *Refusal to Bargain.*—The Labor-Management Relations Act not only makes it an unfair labor practice for either an employer or a union to refuse to bargain collectively (Sec. 8 (b) (3)), but it also defines collective bargaining (Sec. 8 (d)). The definition of collective bargaining represents essentially a codification of the concept of good faith in collective bargaining as laid down in the cases by both the National Labor Relations Board and the courts. In addition, however, the Act provides that the duty to bargain shall also carry with it the obligation of each party to a collective bargaining agreement not to terminate or modify the agreement except on 60 days prior written notice. This added obligation is endorsed by the shipbuilding and ship-repair industry.

The provision imposing upon unions the same duty to bargain collectively that the original Wagner Act imposed upon employers has not met any meritorius criticism and therefore should be retained in the law.

(iii) *Jurisdictional Strikes and Boycotts.*—Subdivision (C) of Section 8 (b) (4) outlaws both primary and secondary jurisdictional strikes and boycotts by minority unions to compel employers to deal with them despite a legal duty to bargain with a certified majority union; and Subdivision (D) of the same Section outlaws jurisdictional strikes and boycotts which involve the question of which labor union or craft is entitled to perform a particular task.

Those provisions were enacted in accordance with recommendations made by the President in his 1947 State of the Union message, in which he condemned jurisdictional strikes in the following words:

> * * * In such strikes the public and the employer are innocent bystanders who are injured by a collision between rival unions. This type

> of dispute hurts production, industry, and the public—and labor itself. I consider jurisdictional strikes indefensible.

There cannot be any reasonable difference of opinion over the President's statement that jurisdictional disputes are "indefensible." The provisions of the Labor Management Relations Act dealing with the subject met with little or no objection on the part of the members of the Congressional Committees who drafted the Act. Even representatives of labor have admitted that jurisdictional strikes are unjustified. For example, Mr. Gerhard P. Van Arkel, formerly General Counsel to the National Labor Relations Board and now a prominent attorney for labor unions, has flatly stated that "union representatives will not defend jurisdictional strikes." (Article on "The Taft-Hartley Act" in the April 1948 issue of "Social Action.") The President, in his veto message, far from finding any objection to the provisions of the Act relating to jurisdictional strikes, objected to them because they did not go far enough, stating:

> The bill would force unions to strike or to boycott if they wish to have a jurisdictional dispute settled by the National Labor Relations Board. This peculiar situation results from the fact that the Board is given authority to determine jurisdictional disputes over assignment of work only after such disputes have been converted into strikes or boycotts.
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> * * * * * * *
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> The bill would require the Board to "determine" jurisdictional disputes over work tasks, instead of using arbitration, the accepted and traditional method of settling such disputes.

Congress, therefore, should not eliminate the provisions of the Labor Management Relations Act relating to jurisdictional strikes. In order to meet the President's criticism concerning the lack of means for settling jurisdictional disputes over assignments of work before they ripen into a strike, it is recommended that Section 10 (k) be modified so as to provide that any union involved in such dispute, or the employer of the employees concerned, may petition the Board to appoint an arbitrator to determine the dispute, whose decision shall be final and binding on all parties concerned, subject to reasonable review by the Board.

(iv) *Secondary Strikes and Boycotts.*—Subdivisions (A) and (B) of Section 8 (b) (4) of the Labor Management Relations Act make it an unfair labor practice for a union or its agents to engage in or induce or encourage certain types of secondary strikes and boycotts. Those provisions were enacted in response to the President's request, in his 1947 State of the Union Message, that Congress outlaw "secondary boycotts in pursuance of unjustifiable objectives." In his veto message, however, the President criticized the prohibition on secondary strikes and boycotts on the ground that:

> It would deprive workers of the power to meet the competition of goods produced under sweatshop conditions by permitting employers to halt every type of secondary boycott, not merely those for unjustifiable purposes.

That criticism certainly cannot justifiably be leveled against Subdivision (B) of Section 8 (b) (4), which makes it an unfair labor practice for a union to engage in or to induce the employees of any employer to engage in, a secondary strike or boycott which has the object of forcing any *other* employer (that is, other than the employer of the striking employees) to recognize or bargain with a union, unless that union has been certified as a representative of his employees. Obviously, if that union is the freely designated representative of a majority of the employees of the other employer, there is no need for secondary pressure, for the union can require recognition and bargaining by the employer through the peaceful and orderly procedures prescribed by the Act. On the other hand, if the union is not the freely designated representative of a majority of the employees, then secondary pressure *on the employer* of such employees to force him to recognize the union may result in defeating the basic right of such employees to be represented only by representatives freely chosen by a majority. Indeed, it is not an unreasonable inference that a union which resorts to secondary pressures in preference to the election procedure of the Act does so for the very reason that it does not represent the majority of the employees whom it claims to represent.

It is submitted, furthermore, that the secondary strikes and boycotts prohibited by Subdivision (A) of Section 8 (b) (4) are likewise directed toward "unjustifiable purposes". That Subdivision covers two broad types of secondary strikes and boycotts—(1) those called by one union against an employer either because his employees are not unionized or because his employees belong to a different union and (2) what is often called the sympathetic strike or boycott, that is, a strike or boycott by a union directed against a disinterested employer designed to bring pressure to bear on the employer with whom the union has its real dispute.

The fundamental fallacy of all the arguments in favor of secondary strikes or boycotts of the first type is that they fail to recognize that such secondary strikes or boycotts are inconsistent with the fundamental right of employees, written into the law by the original Wagner Act, to make a free choice as to whether or not they will join a union and to bargain collectively through representatives of their own choosing, free from interference, restraint, or coercion by their employers. In the face of that right, such secondary strikes and boycotts have no justification. For such a secondary strike is not directed to persuading non-union employees to join the union because of the benefits they can obtain by becoming members; it is directed rather against the employer of those employees. A typical secondary strike of that sort—to compel Employer A not to purchase the product of Employer B—says in effect to Employer A: "Do not do business with Employer B because his employees do not belong to our union. If you and other customers do not deal with Employer B (and we will do our utmost to force you and them not to deal with him), he either will be driven out of business or he will be forced to hire union labor."

But the employer is powerless legally to do otherwise than leave the choice of joining the union entirely to his employees. Under the Wagner Act, and under that Act as amended, the employer cannot take sides. He is forbidden to interfere with, restrain or coerce his employees in the exercise of their rights; he is forbidden to discriminate in regard to hire or tenure of employment in order "to encourage or discourage membership in any labor organization." True, under the original Wagner Act he could have agreed to a closed shop, and under the amended Act, he may agree to a union shop, but it is first necessary for the union to be designated by a majority of his employees as their collective-bargaining agent.

Thus, the conventional secondary strike and boycott of the first type, which labor devised to further its interests long before the Wagner Act came into existence, and which had some justification in the era before labor's bill of rights was passed, is now so obviously violative of the rights of employees and contrary to the duties of employers that it should no longer be countenanced. The method by which a union should seek to unionize employees is not the method of indirect coercion but the direct and democratic method of persuasion and selling itself by the advantages which it offers.

There is, of course, a superficial appeal to the argument that union men should not be required to handle material made under "sweatshop conditions." But the answer to that is that the law has set up machinery (for the declared purpose of preventing strikes and industrial strife) by which unions may directly and effectively organize the employees who are subject to the sweatshop conditions. Indeed, it is strange that unions nowadays should argue for the indirect and cumbersome method of secondary boycott to combat sweatshop conditions. It would seem that employees working under sweatshop conditions should be eager to join a union that is able to better their working conditions; and if they are so satisfied with their lot that they freely choose not to join a union, one may well doubt that they are working under "sweatshop conditions."

What has been said concerning the impropriety of secondary strikes and boycotts directed against nonunion employers and nonunion labor applies with even greater force with reference to such activities directed by one union against employers whose employees are unionized by a different union. Secondary strikes and boycotts under such circumstances are nothing more than instruments of interunion warfare, of which innocent employers, employees and the public are all the victims. A specific example, which is found well documented in the case of *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797 (1945), is the tactics employed by Local 3 of the International Brotherhood of Electrical Workers, which has jurisdiction in the New York area, in forbidding electrical contractors to purchase electrical equipment manufactured outside the area, whether manufactured by nonunion labor or by other unions (usually the United Electrical Workers), and in requiring the dismantling and rewiring of such equipment by I. B. E. W. members before the contractor may use it. Congress had before it other examples of secondary boycotts used as instruments of interunion rivalry (93 Cong. Rec. 4198).

As for the secondary strikes and boycotts of the second type—that is, the sympathetic variety—they have the vice (which is also common to the first type) that they not only operate to spread and intensify industrial strife far from the original area of dispute but they also bring hardship to innocent disinterested employers, their employees, their customers, and the public. Illustrative is the case of *Printing Specialties and Paper Converters Union* v. *Regional Director of the N. L. R. B.*, decided on December 13, 1948, in which the Federal Court of Appeals for the Ninth Circuit upheld the constitutionality of the provision here under discussion. In that case, the union called a strike over wage demands against a manufacturer of paper containers. To make the primary strike more effective, the union then proceeded to picket a trucking concern and a railroad terminal company, both common carriers, with the result that employees of the motor carrier refused to move trucks carrying the containers and employees of the terminal company refused to load them into freight cars. Operations of both the trucking and terminal company were disrupted, some of their employees were deprived of an opportunity to work, and innocent customers had movements of their goods delayed.

In the *Printing Specialties* case, the Court of Appeals stated the purpose of the provision here under discussion as follows:

> * * * In an effort to narrow the area of industrial strife, and thus to safeguard the national interest in the free flow of commerce, it [Congress] has in effect banned picketing when utilized to conscript in a given struggle the employees of an employer who is not himself a party to the dispute.

The Court then upheld its constitutionality, stating:

> It remains to inquire briefly whether the Act, as so construed, infringes the constitutional right of free speech. We think the decision in *Carpenters Union* v. *Ritter's Cafe* (315 U. S. 722), answers the question in the negative. In substance the Court held that the state has the right to determine whether the common interest is best served by imposing restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces. "It is true," said the Court (p. 727), "that by peaceful picketing workingmen communicate their grievances. * * * But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication." And the Court added that the adoption of a contrary view would compel the state "to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose."

Carried to its logical extreme, the secondary strike leads to the general strike and the economic paralysis of the whole nation. The ban on secondary strikes is, therefore a necessary measure for localizing disputes between the immediate employer and his employees.

Archibald Cox, Professor of Labor Law at Harvard University, in an article on the Labor Management Relations Act, has this to say (61 Harvard Law Review 1, 26–27, November, 1947):

> * * * Banning the use of secondary strikes and boycotts as weapons of organization is primarily a prohibition against economic pressures; the interference with freedom of persuasion is relatively slight since all avenues of communication except the picket line are left open. Furthermore, the measure is necessary to localize industrial disputes, thus minimizing the resulting loss to the community, and forms an important part of any labor policy based on collective bargaining between employers and representatives chosen by their employees.

(c) *Injunctions*

To implement the unfair labor practice provisions, the Labor-Management Relations Act empowers the National Labor Relations Board, at its discretion, to petition the Federal District Courts for "appropriate temporary relief or restraining order", upon the issuance of a complaint of an unfair labor practice *by either a union or an employer* (Sec. 10 (j)), Furthermore, it is mandatory upon the Regional Attorney to petition for an injunction in the case of a charge of an unfair labor practice against a union for engaging in a secondary or jurisdictional strike or boycott (Sec. 10 (k)).

Three main objections have been made against those provisions. First, the objection has been made that they are unnecessary; secondly, it has been objected that the cases would be settled by the courts before the National Labor Relations Board had a chance to decide the issues; and the third argument has been that they revive "government by injunction."

As to the necessity for the injunction provisions, particularly the provision for a discretionary injunction, it was the experience under the original Wagner Act that, by reason of the lengthy hearings and litigation leading up to the enforcement of its orders, the Board was not able in some instances to correct unfair labor practices until after substantial injury had been done. It is only fair, therefore, that the Board should have available, when it needs it, the normal remedy of courts of equity of a temporary restraining order pending final adjudication by the Board. That is particularly true in the case of secondary strikes, which are directed against third parties, not directly concerned in the dispute, whose business may be substantially injured or even ruined, if prompt action cannot be taken to prevent the continuance of such strikes. In the case of "indefensible" jurisdictional strikes, in which, as the President stated, "the public and the employer are innocent bystanders who are injured by a collision between rival unions", it is extremely difficult to see how any legitimate objection can be raised against the requirement that the Board obtain a mandatory injunction to restrain them.

As for the argument that the injunction procedure would result in having cases settled by the courts before the Board has a chance to decide the issues, it has been held that it is not the province of the court upon a petition for a temporary injunction to decide whether or not the alleged unfair labor practice is being committed. *Douds* v. *Local 294*, 75 F. Supp. 414 (D. C., N. D. N. Y., 1947). It may reasonably be expected that the federal district courts will continue to heed the admonition of the Supreme Court in *Hecht Co.* v. *Bowles*, 321 U. S. 321, 330 (1944), that:

> * * * court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action. * * *

Finally, the cry of "government by injunction" may not fairly be levelled at the injunction provisions of the Act. That phrase was a short-hand condemnation, two decades past, of the abuse of the injunction by the Federal courts, *at the behest of employers*, in dealing with labor controversies, unrestrained by federal legislation. Those criticisms do not apply here. Under the Act, an injunction cannot be obtained by either employer or union, but only by the National Labor Relations Board, the impartial guardian of the public interest. Furthermore, the policy of the nation on labor matters is declared in the Act, and the authority of the courts is defined by its provisions. There is no longer any reason to fear that the courts will exercise their injunctive powers according to their own considerations of public policy and their own social and economic philosophies.

(*d*) *Suability of Unions for Contract Violations*

The Labor Management Relations Act opens the Federal Courts to suits by or against unions, but any money judgment against the union is enforceable only against the union as an entity and against its assets and not against any individual member or his assets (Sec. 301).

In his 1947 State of the Union Message, President Truman expressed the opinion that "collective-bargaining agreements, like other contracts, should be faithfully adhered to by both parties." The remedy of a suit for damages for unjustified breach of contract is one of the most potent means of securing adherence to contracts. There is no reason why a collective-bargaining agreement should have a different status in that respect than any other type of commercial contract.

Perhaps the finest statement in favor of Section 301 is that contained in an address which that great friend of labor, Justice Brandeis, delivered before the Economic Club of Boston on December 4, 1902, and which was referred to in the course of the Congressional debates (93 Cong. Rec. 4282):

> The unions should take the position squarely that they are amenable to law, prepared to take the consequences if they transgress, and thus show that they are in full sympathy with the spirit of our people, whose political system rests upon the proposition that this is a government of law, and not of men.

* * * * * * *

> I can conceive of no expenditure of money by a union which could bring so large a return as the payment of compensation for some wrong actually committed by it. Any such payment would go far in curbing the officers and members of the union from future transgressions of the law, and it would, above all, establish the position of the union as a responsible agent in the community, ready to abide by the law. This would be of immense advantage to the union in all of its operations.

4. THE CLOSED SHOP

The Labor Management Relations Act makes it an unfair labor practice for employers to enter into, or for a union to insist upon, a closed shop agreement (Sec. 8 (a) (3), 8 (b) (2)).

The prohibition of the closed shop certainly was not intended to destroy unions, as its critics have alleged, nor does it have that effect. Congress had before it the precedent of the Railway Labor Act which forbids any kind of compulsory unionism. Yet the railroad brotherhoods certainly have not suffered because of that ban. On the contrary they are among the largest, most powerful, and richest unions in the country.

Congress outlawed the closed shop in order to guarantee to the individual worker the right to work. It had evidence before it that under closed-shop contracts in certain industries, a man had to join the union before applying for a job; and, if for any reason the union would not take him in, he had to seek work in other fields. No matter how qualified he might have been, no employer could hire him. Furthermore, under the monopoly of the closed shop, many unions rigidly held down the number of apprentices in order to create or maintain a scarcity of skilled workmen. The effect was to deprive young men of the opportunity to learn a trade.

As recently as the beginning of this year, the Supreme Court of the United States unanimously upheld the constitutionality of certain state statutes prohibiting the closed shop. In *Lincoln Union* v. *Northwestern Iron and Metal Co.*, 69 Sup. Ct. 260 (1949), Justice Black, speaking for the Court, said:

> There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or cannot participate in union assemblies.

In a concurring opinion, Justice Frankfurter cited statements made by Justice Brandeis before he went on the bench that it is in the interest of employers and the community that "unions should be powerful and responsible," but that—

> The objections, legal, economic, and social, against the closed shop are so strong, and the ideas of the closed shop so antagonistic to the American spirit, that the insistence upon it has been a serious obstacle to union progress." (Letter of September 6, 1910, to Lawrence F. Abbott of the Outlook.)
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> * * * * * * *
>
> But the American people should not, and will not accept unionism if it involves the closed shop. They will not consent to the exchange of the tyranny of the employer for the tyranny of the employees. (Letter of February 26, 1912, to Lincoln Steffens.)

If the prohibition of the closed shop should be eliminated, then the only reasonable alternative in the public interest is to prohibit the "closed union." But the latter alternative would require regulation of the internal affairs of unions in order to ensure (*a*) the protection of union members against arbitrary action by union leaders and (*b*) the protection of applicants for admission to unions against arbitrary and restrictive rules of admission. The sounder alternative is for Congress to retain the present prohibition on the closed shop.

5. NON-COMMUNIST AFFIDAVITS

The provision of the Labor-Management Relations Act requiring the filing of non-Communist affidavits by union officers was designed to eliminate and to prevent the infiltration of Communists into unions. In his veto message, the President stated: "With this objective I am in full accord"; but he predicted that the provision would not accomplish that result.

If the retention of the anti-Communist affidavit provision depends on its success in accomplishing its desired end, then it is clear that it should be retained. Not only has the President's prediction completely failed to materialize, but that provision has had remarkable success in stimulating responsible labor leaders and the rank and file of union members to sweep Communist officials out of office and control. In many instances, union memberships took decisive action to compel reluctant officers to comply with the filing requirements. In other instances, refusal by incumbent officers to sign the affidavits was made an issue in union elections, which resulted in those officers being repudiated at the polls.

Apparently, no one has had the temerity to suggest that Communists should be unrestricted in their rights to engage in trade-union activities. Certainly in shipbuilding and ship repairing, upon which the national welfare has from time to time depended, Communist control or interference is unthinkable. The American public has in recent years been made acutely conscious that (as stated in the interim report of the House Committee on Education and Labor on its investigation of Communist infiltration into labor unions, Report 16, Dec. 17, 1948, p. 5):

> The Communist Party regards trade-unions as a means rather than an end. In the hands of the Communist Party, a trade-union in a strategic industry is an effective means to accomplish the ultimate objective: control of the state.

David Dubinsky, head of the International Ladies' Garment Workers Union and a vice president of the American Federation of Labor, in the January 1949, issue of "Foreign Affairs", writes:

> Precisely because the Communists place the capture and control of the trade-unions as the first prerequisite for foisting their dictatorship on any industrial country, it is imperative for the democratic trade-unions of all countries to pool their resources and join forces in the protection and promotion of their welfare and liberties. * * *
>
> The lesson must be reiterated: The attempt to work with Communists is futile folly. * * *
>
> Collaboration by trade-unions and liberals with Communists serves only to provide them with a means of deception and with prestige which they subsequently exploit for party purposes.

The intent of the Communists is plain from their own statements:[2]

> Lenin: "It is necessary to be able to agree to any and every sacrifice, and even—if need be—to resort to all sorts of devices, maneuvers, and illegal methods, to evasion and subterfuge, in order to penetrate into the trade unions, to remain in them, and to carry on Communist work in them at all costs."
>
> Earl Browder (1944): "Communists are active in the PAC, in AFL nonpartisan committees * * *."
>
> Program of the Communist International published by the Communist Party of the United States: "Mass action (under Communist leadership) includes a combination of strikes and demonstrations; a combination of strikes and armed demonstrations; and, finally, the general strike cojointly with armed insurrection against the state power of the bourgeoisie."

It would be indefensible, therefore, if the anti-Communist affidavit provision of the Act should be eliminated or in any way weakened. The International Ladies Garment Workers Union has proposed that the affidavit requirement be extended to cover all paid officers of unions (New York Times, Dec. 27, 1948). The suggestion has also been made that the same requirement be extended to employers. Of course, there should be no objection to such an extension.

6. NATIONAL EMERGENCY PROVISIONS

The Labor Management Relations Act contains provisions enabling the President to deal with strikes or lock-outs constituting national emergencies. Some machinery to deal with paralyzing nation-wide strikes was requested by the President, and its need is universally conceded.

Experience has shown, however, that the machinery set up by the Act is deficient in a number of respects. The "last offer" ballot has proved ineffectual; the delay caused by the appointment and report of a board of inquiry has been objectionable, since a strike may in the meantime be called or continue, and the President may not seek an injunction until after the report is rendered; the report of the board of inquiry is not as effective as it could be because it may not contain recommendations.

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[2] The case against the Communists is well documented in 92 Cong. Rec. A–4116–23; in *National Maritime Union* v. *Herzog,* 78 F. Supp. 146 (App. D. C., 1948), in which the constitutionality of the anti-Communist affidavit provision was sustained; in *Barsky* v. *United States,* 167 F. (2d) 241 (App. D. C., 1948); and in *Ames* v. *Dubinsky,* 20 LRRM 2021 (Supp. Ct., N. Y. County); from which sources the above quotations are taken.

Admittedly suitable legislation to deal with nation-wide strikes is difficult to devise. On one thing, however, both labor and management are agreed: They are not ready to accept compulsory arbitration as the solution. In the current climate of opinion, therefore, the procedure provided for in the Labor-Management Relations Act, with modifications to meet the defects pointed out above, should be acceptable and is recommended by the shipbuilding and ship repair industry.

CONCLUSION

The shipbuilding and ship-repair industry does not believe that the Labor-Management Relations Act cannot be improved. No law is perfect, especially one dealing with such a dynamic field as labor relations. The Act, however, represents an honest effort to restore an equitable balance between management and labor, and by and large its provisions, and especially those which have been specifically discussed in this statement, will promote greater responsibility on the part of unions, progressively improved relations between management and labor and a decrease in industrial strife. The shipbuilding and ship repair industry is sure that, if Congress will reexamine those provisions in the spirit of "equality for both and vigilance for the public welfare," which President Truman, albeit almost two years ago, declared should be "the watchwords of future legislation," Congress will not find those provisions wanting.

NATIONAL LABOR RELATIONS ACT OF 1949

MONDAY, MARCH 14, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Cleveland M. Bailey, presiding.

Mr. Bailey. The committee will be in order.

The committee at this time will be pleased to hear from Harvey W. Brown, international president, International Association of Machinists.

Please give your name and your affiliation.

Mr. Brown. Harvey W. Brown, president of the International Association of Machinists, Machinists Building, Washington, D. C.

TESTIMONY OF HARVEY W. BROWN, PRESIDENT, INTERNATIONAL ASSOCIATION OF MACHINISTS

Mr. Brown. Mr. Chairman and members of the committee, I am grateful for this opportunity to appear before your committee to express the views of the International Association of Machinists regarding the Taft-Hartley law and the urgency for its prompt repeal. I trust that my remarks will in some measure contribute toward the enactment of legislation which will restore to American workers the rights which prevailed prior to the enactment of this infamous statute.

As president of the International Association of Machinists, it has been my privilege to view first hand the harm which the Taft-Hartley law has brought to members of our organization. This law has made it necessary for our local unions to retain legal counsel for many cases, which ordinarily could be handled expeditiously and effectively by trained union representatives.

In many situations the workers' funds have necessarily been expended in channels of legal defense rather than for purposes of sustaining the growth and efficiency of their local unions. I am convinced that those who designed and sponsored the Taft-Hartley law deliberately intended for its provisions and restrictions to strangle and deplete the treasuries of labor unions, thereby destroying the rights or organization and collective action. I earnestly believe that the light of American freedom and opportunity which we proudly boast of at home and abroad, will become dim unless this labor-restricting law is promptly repealed.

The absence of a clear definition of the term "agent" has placed local unions in a position in which their funds are vulnerable in the event of an unwise act by any member presumably acting in the interest of the union. The Board's General Counsel has indicated that a union's responsibility for its agents goes at least to the level of shop committeeman, regardless of whether or not such person is acting in violation of the established policy of the local or international union.

In regard to the union-shop requirements of the law, it has been necessary to expend incalculable time and effort in getting authorization cards signed, when such time should have been spent in productive effort, in the interest of the local membership. The overwhelming endorsement of the union shop by employees has demonstrated the fact that workers want their unions to continue. Conducting union-shop elections has cost the American taxpayers approximately $1,377,287 up to February 1, 1949.

The thirteenth annual report of the National Labor Relations Board discloses that 98 percent of the union-shop elections conducted by the Board from August 22, 1947, to July 1, 1948, resulted in authorization for such a provision to be incorporated in labor agreements. It is to be noted, however, that the union shop permitted by the Taft-Hartley Act is only a phoney substitute for a true union shop.

The true union shop protects the majority of members against the actions of destructive or irresponsible members, or the infiltration of undesirables who seek employment for purposes of disrupting the union. The "good standing" provision of the Taft-Hartley law protects all applicants for membership as long as they offer to pay their union dues, regardless of their behavior.

It is our opinion that free collective bargaining is essential to a sound and progressive economy. The Taft-Hartley law has served to engender bitterness and distrust between management and labor and has proven itself to be a barrier to wholesome collective relationships. The process of organizing the unorganized has been greatly retarded by this law which provides many new weapons with which employers may openly carry on their fight against employee organizations. These include the free-speech proviso, the threat of damage suits, the filing of charges against unions by the exercise of section 8 (c) of the act and the threat of injunctions.

I could recite many more aspects of the Taft-Hartley law which have proven to be harmful to the interest of American workers and the public generally, but I do not want to impose on the limited time of your committee.

It is my firm conviction, however, that detrimental restraints have been placed upon precious and essential freedoms by the Taft-Hartley law, resulting in serious curtailment of the processes of collective bargaining. I am convinced that permanent injury to our free-enterprise system will accrue unless the Eighty-first Congress removes from the statute books this law which was obviously conceived in a spirit of hatred and reaction.

The Taft-Hartley law was an outstanding issue in the political campaign last fall and it is significant that President Truman, who stood foursquare for the law's repeal, and campaigned against the act in every rural and urban community in which he spoke, was elected, while his opponent, Mr. Dewey, who endorsed the measure in his famous Pittsburgh speech, went down in defeat.

The American voters conclusively demonstrated their disapproval of the Taft-Hartley law, by their action at the polls on November 2, and a citizens' mandate has been rendered calling for repeal—the clearness with which they have spoken is without parallel. The Taft-Hartley law, with its restrictive and punitive measures, must be abandoned and the traditional American concept of free collective bargaining restored. It is with great hope that we look forward to appropriate action by the Eighty-first Congress, which will completely annul the future effects of this antilabor law.

During the 19 months since the Taft-Hartley law became effective, the members of the International Association of Machinists have had the unfortunate experiences of being caught in many of its retrogressive booby traps. I will briefly cite a few of these unfortunate instances in order to bring to your attention the hardships to American workers that have been flowing from this law.

In one particular case the Interational Association of Machinists and the Boeing Airplane Co. have, over a long period, established a relationship that was generally considered an example of good labor-management relations. In a spirit of teamwork, both parties sought and found the basis for settlement of every dispute that arose, without a hint of work stoppage. The traditional responsibilities of both parties continued on a cooperative basis until the cry for a change in the Wagner Act was heard.

From that time on the attitude of management changed and the usual efforts to resolve disagreements by negotiations were met with strong management opposition and a "dare to strike" attitude. Negotiations for a renewed agreement dragged on from October 1946 to April 1948, and the repeated offer by the union to have the differences impartially arbitrated in accordance with the provisions of the contract was met with refusal unless the company was given the right to veto any and all the proposed members of the arbitration panel.

The employees voted to strike, and on or about April 21, 1948, a strike was legally called, halting all work among the company's employees numbering several thousand. It is quite apparent that this strike, which lasted for several months, involving millions of dollars in losses to both stockholders and employees, would not have been provoked except for the Taft-Hartley law and the reactionary planning for punitive legislation which preceded its enactment.

In another case the employees of the Pipe Machinery Co., Cleveland, Ohio, engaged in a strike against the company after negotiations had broken down for a renewed contract. The company at a later date resumed operations with strikebreakers. This group formed a so-called independent union which filed a representation petition with the National Labor Relations Board. The Board accepted the petition and conducted an election resulting in 148 ballots being cast with strikers and strikebreakers participating.

All ballots were challenged and the National Labor Relations Board, pursuant to the Taft-Hartley law, declared the votes cast by the striking employees to be invalid and gave validity to the no-union votes of the strikebreakers. In substance, this means that under the Taft-Hartley law, no matter how just a strike might be, employees are subject to loss of all equity in their jobs as soon as the unfair employer is able to hire strikebreakers. Under the Wagner Act, it has always been the administrative practice of the Board to give full consideration to the votes of striking employees in representation cases.

The Taft-Hartley law denies to strikers replaced by strikebreakers the right to effectively participate in an election affecting the plant at which they are striking. The denial of the workers' rights in this regard is grossly unfair and presents the possibilities of great harm to the cause of free American labor. The striking employees in this situation are continuing this strike, notwithstanding the hardships imposed upon them by the Taft-Hartley Act.

Another situation in which the Taft-Hartley law has seriously injured the rights of free American labor is at the Granite City Steel Plant in Granite City, Ill. The employees of this plant engaged in a strike after all peaceful means to resolve their differences had been exhausted. The company sent its work to another employer in the same area with which the International Association of Machinists also has a current agreement. The employees in the second plant were compelled to work as strikebreakers against their fellow trade-unionists. Refusal to work on struck work would have subjected the union to the danger of being found in violation of section 8 (b) 4 (A) of the Taft-Hartley Act.

Many additional cases could be cited to show that the Taft-Hartley law has brought great harm to the interest of the Nation's workers.

The situation created by the Taft-Hartley Act calls for immediate correction by Congress. It is my earnest conviction that complete repeal of the Taft-Hartley law and the reenactment of the Wagner Act is the only solution.

The Lesinski bill, H. R. 2032, which is before your committee for consideration, is designed to repeal the Labor-Management Relations—Taft-Hartley—Act of 1947 and provides for the reenactment of the National Labor Relations—Wagner—Act of 1935 with certain amendments.

From what has been said before, I am sure that the position of our association with regard to the repeal of the Taft-Hartley law is clear, and I wish to emphatically present our endorsement of the Wagner Act as the proper and necessary substitute. Insofar as the amendments proposed by H. R. 2032 are concerned, we heartily agree that some carefully planned changes can be made which will improve and strengthen the Wagner Act.

The particular amendment which calls for the continuance of five members of the National Labor Relations Board is very essential in the interest of expediting its cases. It has been conclusively proved that delays in NLRB decisions have had serious and detrimental effect upon labor-management relations. The continuance of the five-man Board, together with the possibility of easing their work by repeal of the Taft-Hartley law, raises some hope for speedier case treatment in the future. We are heartily in accord also with the amendment which would increase the salary of the Board members to $17,500 a year. Certainly the caliber of men needed to administer the Federal labor-management statute are in demand at far greater compensation than they now receive.

Provisions are made in H. R. 2032 for the reestablishment of the Conciliation Service in the Department of Labor. Prior to the passage of the Taft-Hartley Act, the Conciliation Service had functioned with notable success as a division of the Department of Labor. During the 24 years that the Conciliation Service functioned as a division of the Department of Labor, I have no knowledge of any employer expressing lack of confidence in the service until the Taft-Hartley measure was introduced. I am convinced that, because its functions are closely integrated with the Government's over-all labor policy; the Conciliation Service can best serve as a part of the Department of Labor.

That portion of section 106 of the proposed bill which would give the National Labor Relations Board authority to deal with jurisdictional disputes raises a question in my mind. It is my opinion that such disputes between unions can best be resolved by action initiated jointly by the parties to such disputes. I earnestly believe that settlement on any other premise would not resolve the real issues and would only serve, at best, as a temporary award. We are concerned, too, with the past work history criteria set forth in section 106 which would appear to give weight to the position of the union which had been performing the disputed work in the past. We believe that it is necessary in the interest of fairness to determine and depend wholly upon whether or not the performing union is operating contrary to its original jurisdictional grants or interunion agreements. In other words, the fact that one's purse is held by a thief over a period of years does not give the thief any ownership rights.

We believe the secondary-boycott provisions of section 106 are as far as the Government should go in preventing boycotts. Since it is legal for an employer to contract with another employer to finish goods removed from a struck plant, it must be equally legal for the employees in the second plant to act collectively to refuse to work on struck work.

Section 107 of the proposed bill would permit the union shop in establishments engaged in interstate commerce and would prohibit State laws from interfering with the right of the parties to make union-shop agreements. We believe that this is a much-needed amendment which would set the legislative pattern on a national scale on so vital an issue as the union shop. Such matters should not be left to State legislatures, particularly in industries which affect the commerce of our Nation.

We are in accord with title IV of the bill before your committee, particularly section 402. There should be no statutory restrictions against the free participation of labor unions in the election of candidates to public office who receive the endorsement of trade-union members. A labor union is a voluntary association composed of working men and women and formed for the purpose of improving the economic welfare of those its represents.

Unlike corporations, which exist for the purpose of making profits for their stockholders, labor unions exist solely in the interest of improving living and working standards. When union members assemble in union halls and decide to support political candidates whom they find worthy, there is no sound reason to prohibit them from using the funds of their organization in order to assure the election of such favorable candidates. I am convinced that those who fear the political power of labor unions are also fearful of the political power of the people generally.

In closing, I would again like to thank your committee for your thoughtfulness in inviting me to appear here today.

Mr. Bailey. Mr. Brown, do you and the members of the groups of machinists that you represent feel that under the Taft-Hartley law we have free collective bargaining?

Mr. Brown. No.

Mr. Bailey. Would you mind explaining to the committee in what way free collective bargaining is interferred with by the act?

Mr. Brown. First of all, under the Taft-Hartley Act, the employer is free to spite the shop by planting a great number of persons who are employed for no other purpose than to reflect discredit upon the organization, create strife and turmoil with the organization; and under that kind of condition it is almost impossible for an organization to have freedom of action to express the real feelings and sentiments of the sincere and conscientious members of the organization because of the interference by those who are planted there, because of that particular provision of the Taft-Hartley Act.

Furthermore, it is our position that where an employer and a union believe that it is for their mutual benefit to have a union shop, so-called, we believe that the Taft-Hartley Act is wrong in denying that right.

Mr. Bailey. You mean, the right of a closed shop?

Mr. Brown. The right of a closed shop.

Mr. Bailey. I notice, Mr. Brown, you mentioned the fact that you favored the provision of the proposed bill of enlarging the membership of the National Labor Relations Board.

Mr. Brown. Yes, sir.

Mr. Bailey. Do you have any idea as to how far they are behind with their work?

Mr. Brown. No. But I do not believe there is as heavy a case load there as there was when they had a board of three there. I believe they made far more progress in handling cases to a conclusion than the old Board with only three. It stands to reason that, when they subdivide the cases among the personnel of the Board, if they have five men working on the Board, they can do a better job than three in handling volume.

Mr. Bailey. And you approve the proposal to transfer these activities from their present status to the Labor Department?

Mr. Brown. Yes. That is, the Federal Mediation Board. In fact, we believe that this labor act should be under the Labor Department. It should be administered, and the personnel should be under the direction of the Labor Department.

Mr. Bailey. Mr. Jacobs, do you have any questions?

Mr. Jacobs. Yes, sir.

Mr. Brown, I was interested particularly in your testimony in regard to the provision in the bill on jurisdictional disputes.

Mr. Brown. Yes, sir.

Mr. Jacobs. Of course, I suppose it is well known that there had been a jurisdictional dispute between your organization and another organization for a great many years.

Mr. Brown. That is true.

Mr. Jacobs. And I believe it is true that the A. F. of L.——

Mr. Brown. Pardon me, Mr. Congressman. I would like to correct that answer. The dispute disappeared when a decision was arrived at. It is only now a matter of one organization refusing to conform to that decision.

Mr. Jacobs. From the history of it, I think that I can accept your answer as absolutely correct.

Mr. Brown. Yes, sir.

Mr. Jacobs. Now, I am leading up to another matter. I know a good many members of the other organization, and I think that their feeling is that the decision, which I believe was in 1914, was it not—was not 1914 the first decision?

Mr. Brown. Yes; in 1914 the American Federation of Labor made a decision which without question should have disposed of that particular issue.

Mr. Jacobs. As a matter of fact, I know a good many members of the other organizations which believe that that decision should have been complied with.

Mr. Brown. Yes, sir.

Mr. Jacobs. Now, I want to bring you up to 1947, when a delegate—I am wondering if you are familiar with it—a delegate to the American Federation of Labor, who was from Wichita, Kans.—he was a Kansas delegate at the American Federation of Labor convention—made a motion that that decision be complied with. And, to call a spade a spade, he happened to be a carpenter. He was the business agent of the carpenters' union out there.

Mr. Brown. I recall that.

Mr. Jacobs. Immediately upon his making that motion, which was really a mandate of the central labor union, he was ordered expelled from the position he held in the carpenters' union, Local 201, Wichita, Kans. Do you remember that? Or do you know about that?

Mr. Brown. I do not recall that.

Mr. Jacobs. Do you remember his making the motion?

Mr. Brown. Yes.

Mr. Jacobs. Well, he was immediately ordered by the general president of the carpenters' union to be relieved of his position as an officer in the local union. And that case was in the courts out in Kansas. It seems that his remedy at common law was rather ineffectual.

Now, that leads me up to the question I wanted to ask you. Do you think that it would be wholesome legislation to provide for democratic elections in unions and for protection for a member who follows out the mandate of his body?

Mr. Brown. Mr. Congressman, that has been the procedure in the International Association of Machinists ever since its inception.

Mr. Jacobs. Will you agree that it is not the procedure, though, in a few labor organizations?

Mr. Brown. I understand there are some unions that are not as democratic as the machinists' union in the matter of electing officers.

Mr. Jacobs. Or in the matter of permitting them to voice their opinions on matters where they might be in disagreement with their officers?

Mr. Brown. There have been some instances where I believe members of some unions did not have the freedom of action as is enjoyed by the members of the machinists' union.

Mr. Jacobs. Then, of course, any legislation of that kind would not affect the machinists' union, because they do operate democratically?

Mr. Brown. Yes, sir.

Mr. Jacobs. Do you think it would be wholesome legislation to make provisions so that we could assure to those members of those other organizations democratic action within their bodies?

Mr. Brown. I personally would oppose any kind of legislation that would interfere with the operations of trade-unions for this reason: Wherever there appears to be an absence of democratic action, or freedom of action, I would say that it is very apparent that that kind of practice meets with the approval of the majority, because if the majority wishes to change the policies of their union, regardless of what the structure of that union is, I contend the majority can find some way to make known their position and change the policies of the union if they so desire. There is a danger, a great danger, to the labor movement when the Government attempts by law to legislate, because, after all, it is not so much what kind of law you have; it depends on how it is administered. And I found in my short life that the administration of government sways from side to side, and there have been periods where I would be very happy if I was not subjected to the interpretations placed on law by those in power at the time.

Mr. Jacobs. Of course, it is true that any law might be misconstrued, misinterpreted, and thus used for a purpose for which it was not intended. And we must, of course, rely upon our administrative officers and our courts to come back to a true course; is that not correct?

Mr. Brown. Yes, sir.

Mr. Jacobs. As you depend on us to come back to the true course in revising labor legislation.

Mr. Brown. Yes.

Mr. Jacobs. I think we got off the beam 2 years ago in this legislation. But I wanted to suggest this to you, Mr. Brown. With respect to your difficulty in the Boeing plant, I know a little about it. I wonder if the members of the organization that were actually strikebreakers would really have wanted to do that if they had had complete democratic action in the union. What do you think about that?

Mr. Brown. I cannot believe that the majority of those whom you refer to were influenced by personal desires. I believe there was a pressure there somewhere that compelled them to do that which does not reflect credit upon the labor movement.

Mr. Jacobs. Nor the particular leaders.

Mr. Brown. I beg your pardon?

Mr. Jacobs. Nor the particular leader in that case, or leaders, whoever they were. Do you agree with me on that?

Mr. Brown. That is true.

Mr. Jacobs. For example, I have in mind a local organization that was denied the right to elect their officers for 16 years. I happened to be their attorney, and procured for them the right to elect their officers. And the next job was to bring about an equalization of wage scale with adjoining districts. They were working for 34 cents an hour less than the adjoining district.

Mr. Brown. I cannot conceive of a group of workers affiliated with a labor union that would submit to that kind of treatment.

Mr. Jacobs. Let me tell you further that petitions had gone forth to the international president asking the right to elect their officers—and it happened to be the first organization that we were talking about—it was ignored and denied. When they finally brought an action in court to assure their rights, he suspended the old members' pension benefits as a matter of pressure on the local, and eventually he tried to revoke their charter entirely, so as to deprive them of their union status. Now, that is a considerable pressure on those men, is it not? You and I will agree that that is a terrific pressure on those men?

Mr. Brown. Yes.

Mr. Jacobs. Now, may I go further and say that in order to implement the revocation of that charter, he put up a $700,000 bond and got a mandatory injunction against the newly elected officers in that local, the ones that had just been elected, and hired the best legal talent in the United States to try to revoke the charter and deprive them of their union status.

Do you not think that some legislation that simply required a democratic election would be a protection to the men who belonged to an organization of that kind?

Mr. Bailey. The gentleman has 2 minutes.

Mr. Jacobs. Thank you.

Mr. Brown. Mr. Congressman, I would say that rather than have the Government enact legislation that would apply to the entire labor movement, I would say that it would be far better for a local union to continue to suffer until the rank and file of that international union woke up. That is one of the unfortunate things in free competitive enterprise.

Mr. Jacobs. Now, just as the last point of information on that, when they held their international convention, there was a large caucus. About half of the delegates met and selected an opposition ticket to run against the incumbent. One man stood up to nominate a candidate to oppose the one favored by the general president. And when the delegation made his nomination of the candidate, the Chair said, "Does the Chair understand that you want to second the nomination of so-and-so?" who happened to be the incumbent. The delegate said, "No;" and the Chair said, "Then I will have to rule you out of order. Sit down."

And the nomination was not accepted.

Now, how can a group of men meet with that sort of power unless they have something in the labor legislation? That is what I would like to know. I am for those men. I want to know how they can cope with it.

Mr. Brown. Unfortunately, that one group must continue to suffer until the rank and file throughout the Nation speak up and select a delegation to the convention who have the courage of their convictions and will stand up like "he-men" and challenge the right of anyone who would dictate as you have described.

Mr. Jacobs. My time is up.

Mr. Bailey. The time of the gentleman has expired.

Mr. Burke?

Mr. Burke. Mr. Brown, I would like to address myself to the portion of your testimony, just very briefly, in regard to the provisions of the Taft-Hartley Act, which requires in a union-shop condition, that the employer must retain on his pay roll anyone who offers to pay dues to the union; is that not correct?

Mr. Brown. Yes, sir.

Mr. Burke. That is basically the meaning of the act, although that is not the wording, and so on? Is it not true that a situation could arise where an employee of a plant working under union-shop conditions, and who might have allegiance to some outside subversive group, could carry on a series of agitations for work stoppages against the wishes of both the employer and the union, and the union would be powerless to do anything about that?

Mr. Brown. Under that provision of the law an employer can have an individual candidate in the shop, and that individual may, in time, become elected as treasurer of that local union, and he may later be charged some times with misappropriating the funds of the association, and be found guilty, and be proven to be a thief; or it may be proven that he owes allegience to the high priest of Moscow, or there may be an individual is granted the power for the purpose of creating strife and turmoil, and found guilty, and expelled from the organization, and those individuals could go to the secretary and say, "We want to pay dues," and he could say, "We cannot accept them because you are no longer a member of the organization."

And then they can go back to the employer and say, "We had a controversy with the union," but the employer cannot discharge them on the basis of the information furnished by the shop committee as to the reasons why they were expelled from the organization.

Mr. Burke. That is my understanding of the provisions of the act, as it now stands.

Mr. Brown. Absolutely.

Mr. Burke. Thank you.

Mr. Bailey. Mr. Wier?

Mr. Wier. Mr. Brown, with a bit of interest I listened to the comment a minute ago by my colleague, Mr. Jacobs. That is the legal approach to some of our problems in labor. I assume that in that great big international union that you are general president of, from time to time you find a local unit that gets involved in a lot of unnecessary and illegal performances, in compliance with your constitution, where some forces move in and take over control of the union and use it for an experimental operation; you have had such an incident, have you not?

Mr. Brown. Yes.

Mr. Wier. And necessarily, in the interest of the membership of that unit, and on behalf of an appeal from many of the members of that unit, the international union, which is the parent body and is guided by the actions of a convention, necessarily has to take steps to clean up a very deplorable situation in that unit; is that not correct?

Mr. Brown. Yes, sir.

Mr. Wier. I think you have had some experiences in that?

Mr. Brown. Yes, sir.

Mr. Wier. During the 1930's, when unemployment was very large in many unions, some elements took over control of these unions, and it was rather difficult to remove them by democratic processes, but you faced the situation of either removing them and putting union on a footing in compliance with the international policy, or facing destruction of the union; is that correct?

Mr. Brown. That is correct.

Mr. Wier. The point that I want to bring out, and contrary to the thinking of my colleague, Mr. Jacobs, is that in his desire or in his thinking of the inclusion of a compulsory election every year, from a practical point of view, would you agree that in the American Federation of Labor it has been necessary sometimes for the international to step in to a local community where they have a very bad picture, and remove the officers compulsorily under charges, and install new officers, particularly in a large union, to run and direct the affairs of that union? You have done that, too, have you not?

Mr. Brown. Yes, sir.

Mr. Wier. And that is not always possible, is it, to make a change of policy by the international in a local union of three or four thousand and get recontrol of that union within the period of a year?

Mr. Brown. It is very difficult.

Mr. Wier. I say that because I know of three or four cases, Mr. Jacobs, where it took an international union 5 years, and they put it into receivership for 5 years, because within 2 or 3 years that leadership was so heavily imbedded in the union, and so strongly entrenched that they would have been returned to office, but over the period of 2 or 3 years they were finally able to convince the membership to get a more wholesome union by the elimination of these elements who were experimenting with the welfare of these workers, and making up this unit.

Have you had that experience?

Mr. Brown. Yes, sir; and usually in cases of that kind, those who lead that kind of a campaign against the policies and the laws of the organization, usually start out by building up a prejudice against the grand lodge and the officers of the grand lodge so that when the grand lodge, pursuant to its duties and responsibilities, has to step in to see that the unit conforms to the laws and rules of the organization, there is a tremendous prejudice against the representatives of the grand lodge and, hence, it takes so long a time to awaken the membership and get them to look on both sides of the fence until they finally cooperate to the end that the policies do conform to the practices of the international union.

Mr. Wier. Thank you.

Mr. Bailey. Mr. McConnell?

Mr. McConnell. I arrived a little late, Mr. Brown, so I missed your discussion of the Taft-Hartley act, and I am trying to catch up with what you said here.

Mr. Brown. Yes, sir.

Mr. McConnell. Would you mind explaining more in detail the provisions which interfere with free collective bargaining in the Taft-Hartley act, in your judgment?

Mr. Brown. Is there any particular phase of collective bargaining you may have in mind?

Mr. McConnell. I was just curious about the various provisions that have been mentioned from time to time which I understand are supposed to interfere with collective bargaining, and I would like to have them summarized, from your own experience.

Mr. Brown. Were you present when I answered that question?

Mr. McConnell. No, I was not.

Mr. Brown. As near as I can recall, I advised the committee that one of the reasons I do not believe that the membership of a union has freedom of action in the matter of collective bargaining is because the Taft-Hartley Act has brought about a condition where the local union becomes a haven for the Communists, the so-called industrial spy, or the individual planted there to disrupt the organization and to bring about a condition that reflects discredit upon the organization. It usually winds up with facts developing in the local union with the result that that local union does not operate as is intended, and it is next to impossible for the committee to represent the employees when bargaining collectively, and to express the views of the more conscientious members. It disrupts the entire operating machinery of the local union.

Mr. McConnell. What disrupts it?

Mr. Brown. Because the Taft-Hartley Act permits the employers under the phony union-shop clause to plant men in who are there for a purpose other than to make a helpful contribution to the progress of that union.

Mr. McConnell. You mentioned communism. I thought communism in unions had been lessening since the Taft-Hartley Act?

Mr. Brown. Yes, but you know a Communist thrives on deception. Our union, for more than 24 years, has had a policy where a Communist could not join, and where one was uncovered as being a Communist he was expelled. I am satisfied there still are a few in our union, but not having the evidence we cannot expel them, even though we know they are there.

Mr. McConnell. Under the Wagner Act you certainly could plant an industrial spy.

Mr. Brown. Under the Wagner Act you can have discipline in your union. When a member deviates from the policies of the union he is expelled. It is no more a question of going to the boss and saying, "I have had a controversy with the union, and they refused to accept the dues."

Mr. McConnell. The first, you say, would be the union shop that interferes with collective bargaining. Now, what else, under the Taft-Hartley Act?

Mr. Brown. Just at the moment I cannot recall any provision that does interfere with collective bargaining, if you mean by collective bargaining negotiating for improved working conditions.

Mr. McConnell. Arriving at a contract agreement, and so on; yes.

Mr. Brown. Excepting again the planting of these individuals within the union, employers can point their finger to the conduct of members, which may be the basis for a charge of unfair labor practice, and hold the union responsible for an individual's conduct, and that is a stay against collective bargaining.

Mr. McConnell. Are there any other provisions, in your judgment, in the Taft-Hartley Act that interfere with free collective bargaining?

Mr. Brown. I think that would be sufficient; I think that would serve the purpose of the authors of the act.

Mr. McConnell. I take it, from your statement, that you are opposed to the Government being very actively engaged in the field of labor-management relations; is that correct?

Mr. Brown. No; to the contrary, Mr. Congressman. I think the Government can make a definitely wonderful contribution in the field of labor-management relations, to have both parties become more conscious of their respective rights and responsibilities. What I do oppose is the Government enacting laws that interfere with the normal functioning of a union, and the rights of the membership.

Mr. McConnell. And there was normal functioning under the Wagner Act?

Mr. Brown. Yes.

Mr. McConnell. It would seem to me—if I correctly remember the statistics—we had the greatest amount of industrial strife in 1946 before the passage of the Taft-Hartley Act that we had ever known in the history of labor-management relations in the United States; that was my understanding.

Mr. Brown. That is not due to the fact that the workers for the first time had the protection of a law, the purpose of which was to prevent employers interfering with the rights of workers to work; but again I say we must always keep in mind why we had a Wagner Act.

Mr. McConnell. Of course, the passage of the Wagner Act and various other labor laws brought the Government more into labor-management relations, did it not?

Mr. Brown. It was the conditions preceding the National Industrial Recovery Act which caused Congress to recognize something must be done to prevent the interference with workers' rights and, if possible, to try to avoid a reoccurrence of what happened from 1929 until the early 1930's when we had from 15 to 16 million workers unemployed.

Mr. McConnell. Was it not a fact that various labor leaders at that time opposed the Wagner Act? In fact, they tried to amend it, did they not?

Mr. Brown. Just to the contrary, Mr. Congressman. If there were any opposed to it, I never heard of them.

Mr. McConnell. Was not the A. F. of L. quite active in its efforts to change the Wagner Act around 1940 and 1941, and amendments were brought in, and some of the members of the union, some of the top leaders, were opposed to the general idea of the passage of the Wagner Act or, at least, put it this way: They were opposed to the passage of the Wagner Act, and I believe, John L. Lewis was opposed?

Mr. Brown. My comments were with respect to the enactment of the Wagner Act. There may have been some proposed amendments, and I know there was, where the A. F. of L. did oppose some amendments.

Mr. McConnell. It was to the effect they did not want the Government coming into labor-management relations and, I think, they felt that labor and management should have freedom to bargain and work out their problems between themselves, rather than have the Government in the midst of labor-management relations and I think that is the real reason for the opposition.

Mr. Brown. I think you are in error. I do not believe the American Federation of Labor opposed the enactment or continuance of the Wagner Act.

Mr. McConnell. I did not say the American Federation of Labor; I said various leaders of the American Federation of Labor did.

Mr. Brown. Mr. Congressman, I do not know of an official affiliated with any union of the A. F. of L. who opposed the Wagner Act, although after the Wagner Act was established efforts were made to amend the act, and it is true that the American Federation of Labor did oppose certain amendments, but their opposition to certain proposed amendments did not reflect their position as to the fundamental purpose of the Wagner Act because, after all is said and done, the Wagner Act merely prevented employers, who believed they should have a monopoly in organization—it prevented them from interfering with the workers' right to choose their own union for collective-bargaining purposes.

Mr. McConnell. The thought I am groping for here, Mr. Brown, is this: To find out the degree to which the Government should come into the relationship between labor and management. I know we have the problem of protecting the public, and that has to be handled, and the Government is undoubtedly probably the main one in the position to protect the public in certain types of national emergency strikes, but I am wondering just how far we should go. Speaking of changing the Taft-Hartley Act, I am wondering just how far we should go in having the Government in these relationships. I am sure there are various labor leaders who are watchful of the encroachment of the Government into those relationships. I am sure I am correct on that.

Mr. Brown. I believe the Lesinski bill has the answer. I do not believe the Government should go beyond that, what is proposed in that bill, which is similar in principle to a provision in the Wagner Act, and that has worked successfully.

Mr. McConnell. We had an example of extension of Government restriction for a short period of time, when the administration proposed drafting the workers who were out on strike if they did not go back to work.

Mr. Brown. I believe it was about 48 hours; but why look for perfections in an imperfect world?

Mr. McConnell. Of course, that is a good generalization, and an easy way out.

Mr. Bailey. The gentleman has 2 minutes remaining.

Mr. McConnell. Regarding political contributions, I think you are of the opinion that corporations should be restricted, but labor unions not; is that correct?

Mr. Brown. With respect to what?

Mr. McConnell. With respect to political contributions.

Mr. Brown. Yes, I think there should be no parallel.

Mr. McConnell. You would not permit political contributions and expenditures to both of them, or would you exempt both of them; either way?

Mr. Brown. No, Mr. Congressman. In my opinion at the moment, I cannot put my finger on it. I am satisfied, though, that in some corporations they channel some of the funds that finally go into a campaign pot. If you say the individual worker is privileged to make the donation like an individual stockholder, how effective would any other machinery be in this great political arena in making a donation in a political contest?

Mr. McConnell. This provision about political contributions did not seem to deter a great deal of activity on the part of the unions in the past election.

Mr. Brown. When there is a will you will find a way, but why go about it that way? And I think we did a pretty good job.

Mr. McConnell. Maybe we had better leave it in there if it is that effective and helpful to you.

That is all.

Mr. BAILEY. Mr. Smith?

Mr. SMITH. You said in response to Mr. Wier's question that it took 5 years to show local unions there were two sides to the fence?

Mr. BROWN. I do not believe I said 5 years. In replying to Mr. Wier's question, I understood him to say there are times when it takes several years.

Mr. SMITH. It takes several years to show that there are two sides to the fence. Do you grant there are two sides to the matter you are testifying about, this matter?

Mr. BROWN. There are two sides to every question, every controversy.

Mr. SMITH. What union were you and Mr. Jacobs discussing here a while ago, the controversy between two unions?

Mr. BROWN. Referring to the situation at the Boeing aircraft plant?

Mr. SMITH. Yes.

Mr. BROWN. The teamsters' union.

Mr. SMITH. The teamsters' union; and what other union, your union?

Mr. BROWN. The teamsters' union interfering with the rights of the machinists' union.

Mr. SMITH. And what decision was it that was made where a dispute had been going on since 1914? Did I get that date correctly?

Mr. BROWN. Yes. He was referring to a decision by the American Federation of Labor which issued a public pronouncement with respect to the jurisdiction of the machinists' union over the making and installing and erecting of machinery, and another union was trespessing the union's jurisdictional rights.

Mr. SMITH. What union was it?

Mr. BROWN. The carpenters.

Mr. SMITH. In other words, I am to understand that since 1914 there has been that dispute between the machinists and the carpenters?

Mr. BROWN. Since 1914, with the exception of a short period intervening when the carpenters quite clearly had disregarded that action by the American Federation of Labor, and, Mr. Congressman, if you will permit this interference, let me make this suggestion: There have been negotiations between all organizations of the American Federation of Labor for some time, and unless it is absolutely necessary to inject the matter when we are discussing this bill before the committee, I would greatly appreciate it if we did not deal with it, because I do not believe it is going to help the committee in this particular case, and we may be able to find an answer to resolve our differences.

Mr. SMITH. It looks to me like you should have found an answer in 5 years. I was just trying to get facts and information for my own benefit.

You think the closed shop would keep out of the union those men that you objected to, those men the employer puts into a union shop in order to cause trouble within the union?

Mr. BROWN. No, I do not say they will keep them out, but I do say when they are uncovered you can expel them, and we are through with them, and the employer is privileged to fire them on the basis of the testimony that was developed at those trials of the men who were planted in the organization to disrupt the organization.

Mr. SMITH. If you had a closed shop would it give you better control over your members? That is what I am trying to get at.

Mr. BROWN. You can have more discipline over your membership, and you can do more to have that membership conform to the policies and laws of the organization, and in our organization laws and policies are made by the membership themselves. And, furthermore, the closed shop, as under the Wagner Act, I say it is an American institution, a patriotic institution, and I say nothing more than that can be referred to as being more patterned after our own Government and its operations than is the so-called closed shop.

Mr. SMITH. I have just a few brief questions, and you can answer them "Yes" or "No."

Do you think the Congress should legislate in the matter of jurisdictional disputes?

Mr. BROWN. I do not think they should.

Mr. SMITH. Do you think the Congress should legislate in the matter of jurisdictional strikes or secondary boycotts?

Mr. BROWN. There may be some types of secondary boycott, yes.

Mr. SMITH. Do you think Congress should do anything about featherbedding?

Mr. BROWN. It all depends on what you mean by featherbedding.

Mr. SMITH. Paying men for work that is not earned, or is not productive for the employer.

Mr. BROWN. No, I do not believe the union has a right to demand pay for services not rendered, but what can you expect in the trade-union movement when you experience that filisbuster in the United States Senate; I say that is featherbedding.

Mr. SMITH. You were filibustering over there in what you have been talking about with the gentleman on the right, about trying to work the will of the majority in the parent organization, the international union?

Mr. BROWN. That is not filibustering.

Mr. SMITH. In this dispute that you were talking about down there in the Boeing aircraft plant, was that not a filibuster by the local union as far as the international union was concerned?

Mr. BROWN. I do not follow you, Mr. Congressman. I want to be helpful.

Mr. SMITH. You referred to the filibustering over in the Senate as supporting a majority?

Mr. BROWN. I say so long as you are going to have such a disgraceful scene in the United States Senate, regardless of the issues, then I say we should not talk about featherbedding in industry.

Mr. NIXON. Will you yield?

Mr. SMITH. Yes.

Mr. NIXON. In other words, you would make both impossible by law?

Let me ask it this way: Would you control the filibuster of the Senate? Do you favor controlling the filibustering in the Senate?

Mr. BROWN. Yes.

Mr. NIXON. Do you favor controlling featherbedding in unions?

Mr. BROWN. If the international was opposed to claiming pay of members not earned.

Mr. NIXON. Both in the Senate and in unions, then, you believe the law should prohibit filibustering or featherbedding?

Mr. Brown. We should bring about an elimination of both, but I do not know that it is necessary to resort to law.

Mr. Nixon. In the Senate you think they should resort to law?

Mr. Brown. I think there should be something to keep a Senator from reading from a catalog or a telephone book.

Mr. Nixon. You agree the Senate should pass a law eliminating the filibuster?

Mr. Brown. Yes.

Mr. Nixon. Because, in effect, we are paying the Senators for work that is not being done.

Now, by the same token, if that rule is a good rule as applied to the Senate, do you not think it is a good one as applied to the unions?

Mr. Brown. Mr. Congressman, it is my understanding that every so-called featherbed rule in an agreement was mutually negotiated by management and the union; but, as time moved on, employers did not like a certain rule, and then they labeled it "featherbedding."

Mr. Nixon. I understand that, but as far as you have already indicated here, you think that, even though it ws agreed to, that a union should not insist on getting paid for work that is not done, just as the Senate should not insist on maintaining a rule allowing talk that is not productive?

Mr. Brown. I will agree with respect to getting pay, if you use the term "service." I say the union has no moral or legal right to claim pay for service not rendered.

Mr. Nixon. I want to say I agree with you in your recognition of the difficulty of defining the terms, and I also realize your union is not one of those that has been criticized as extensively in this field as have some other unions. I think the machinists have made an excellent record.

Mr. Bailey. Will the gentleman yield to the chair?

Mr. Nixon. Yes, as soon as I have finished my question.

Mr. Bailey. Are you speaking on your time or the time granted by Mr. Smith?

Mr. Nixon. I am speaking on his time. Is his time up?

Mr. Bailey. He has 1 minute.

Mr. Nixon. I will yield him 5 minutes of my time, if necessary.

As far as you are concerned, then, you do feel that, concerning a filibuster in the Senate, a rule should be passed against it, and that featherbedding, in the sense that you have described it, using your own definition, that a rule should be passed against that?

Mr. Brown. Yes.

Mr. Nixon. That is all.

Mr. Smith. Just one question: Do you think the Congress should legislate in the matter of strikes involving the public welfare and interest?

Mr. Brown. I believe this bill now before the committee has the answer. I would supplement that opinion with the further statement that too often, when there is a strike, we overlook the thousands of other instances where through peaceful negotiations contractual relationship was established without a stoppage of work. I make that statement because in our union we have an agreement with over 10,000 employers, and in less than 10 percent in those agreements was it necessary to resort to stoppage of work, and why should the machinists be criticized when less than 10 percent resorted to stoppage of work? And we secured agreements without interrupting work. Too often a spot light is pointed to one case, and then agitation starts to enact legislation and strait-jacket the entire movement because of what happened in one solitary case in one industry.

Mr. SMITH. Of course, it is an isolated case in this matter of strikes involving the public welfare and interest and, you say, that the bill before us is sufficient, in your opinion?

Mr. BROWN. Yes, I do.

Mr. SMITH. Of course, you will also agree it is just mere verbiage, is it not? Just a bunch of words?

Mr. BROWN. No, Mr. Congressman; it is patterned after the Wagner Labor Act, and it has worked wonderfully in the labor industry.

Mr. SMITH. That is all.

Mr. BAILEY. Mr. Nixon, do you care to use any more of your time? You have 4 minutes.

Mr. NIXON. Yes.

You have indicated you are opposed to all of the provisions of the Taft-Hartley Act other than those that are contained in the new Lesinski bill and, in your statement, I might say that I was impressed by the examples that you gave. For example, I think you made a good case against the provisions of the Taft-Hartley Act which denies economic strikers the right to vote in an election. You made a good case because you gave a specific example of how it affected one of your unions.

I also think you made a good case against the restriction of the Taft-Hartley Act on that type of secondary boycott in which, in effect, employees are required to act as strikebreakers by working on what would otherwise be struck work.

I want to see if you can give me specific examples on some of the other sections of the act.

Have you found that the provision in the Taft-Hartley Act which provides, in effect, for election procedure which guarantees craft unions a right to obtain representation as distinguished from the rule of the Wagner Act, which gave the balance of power in such elections to plant-wide unions? Do you oppose that provision in the Taft-Hartley Act?

Mr. BROWN. Whether it may be in the Taft-Hartley Act or the Wagner Act, after all, it is a matter of how the Board interprets it. The Board has discretionary authority to determine what type of union is set up, and whether a union has a right to cut out a craft, and whether they want to maintain an industrial form of organization, so it all depends on the administration of the law.

Mr. NIXON. But you believe, certainly, representing the machinists, that it is necessary that either the law or the interpretation of the law recognize the right of craft unions for representation in the plants?

Mr. BROWN. I believe the members of a craft want the union to be their bargaining agency.

Mr. NIXON. So you are not opposed to that provision of the Taft-Hartley Act?

Mr. BROWN. No.

Mr. NIXON. How about the provisions that both management and unions should bargain in good faith? Has that proved harmful to your organization?

Mr. Brown. No; because I could never understand why that was not placed in the act. If a union does not bargain in good faith it belies its existence.

Mr. Nixon. You spoke of transferring the Conciliation Service to the Department of Labor.

I would like to ask you whether or not the conciliators under Mr. Ching in the Conciliation Agency have acted in such a way as to be harmful to the interests of labor?

Mr. Brown. Up to the present time I have no particular criticism to offer against Mr. Ching. Our position is not as to the manner in which the present Administrator of that department is functioning, but we say that it should never have been removed from the Department of Labor.

Mr. Nixon. In other words, you have nothing specifically critical about the way it is operated under the Taft-Hartley Act?

Mr. Brown. No.

Mr. Nixon. Of course, if it went to the Department of Labor, that might be the same thing; is that not correct?

Mr. Brown. That is true.

Mr. Bailey. You have 1 minute, Mr. Nixon.

Mr. Nixon. On the matter of liability of contracts: You made a general reference on liabilty for contracts, the threats of damage suits against unions. Do I understand you oppose the provision in the Taft-Hartley Act which proposes the liabilty for contracts?

Mr. Brown. Yes.

Mr. Nixon. Mr. Jacobs, in questioning witnesses a couple of days ago, indicated that the liability of contracts—the contracts provision of the act—really was misleading in that unions were liable for their contracts even before the act was passed.

If that is the case, why would you oppose this provision?

Mr. Brown. Of course, I am not a lawyer, and I am not too familiar with State laws.

Mr. Nixon. Let me ask you this, then: In your opinion, then, unions were not liable for their contracts before the act was passed, and that is why you oppose the provision in the Taft-Hartley Act, which makes them liable?

Mr. Brown. Yes.

Mr. Nixon. That is all.

Mr. Bailey. Thank you, Mr. Brown. You have been very patient.

Mr. Brown. And thanks to the committee.

Mr. Bailey. At this time the committee will be pleased to hear Don Mahon, executive president, Confederated Unions of America, and president o fthe National Brotherhood of Packinghouse Workers.

TESTIMONY OF DON MAHON, EXECUTIVE VICE PRESIDENT, CONFEDERATED UNIONS OF AMERICA, DES MOINES, IOWA; ACCOMPANIED BY JOSEPH McKENNA, OF THE CENTRAL STATES PETROLEUM UNIONS; ADOLPH KARLO, OF THE AUTOMOTIVE WORKERS INDUSTRIAL UNION; AND EUGENE RAETZ, OF THE INDEPENDENT RADIONIC WORKERS OF AMERICA, CUA

Mr. Mahon. My name is Don Mahon. I am executive vice president of the Confederated Unions of America and president of the National

Brotherhood of Packinghouse Workers. My address is 518 East Grand Avenue, Des Moines, Iowa. I am appearing here before this committee hearing on H. R. 2032 in behalf of all independent unions, who in the final analysis represent a large percentage of American workers, and in particular those unions that are affiliated with our organization, the Confederated Unions of America, usually referred to as the CUA.

The unions we represent differ in many respects from the two major federations, and one of the principal differences is our determined and continued belief in freedom for each local to determine its policies free from the imposition of any one individual or group, whether national or international in scope. We know our livelihood is earned in our local communities; therefore, the policy of our locals must coincide with the welfare of these communities.

Figures made public by the Bureau of Labor Statistics of the United States Department of Labor, not long ago, indicated that there were more than 60,000,000 workers gainfully employed in this country. The major labor federations now claim some 15,000,000 of these workers as their members. The rest of us are either independent, affiliated or unaffiliated, and/or as yet unorganized.

There is a directory of labor unions in the United States Department of Labor, compiled by the Bureau of Labor Statistics. This directory shows the names of just those unions that are considered national or international in scope. It also includes the names of their head officers, the official address of these particular unions, the name of their official union publication, and similarly related information about these organizations.

This directory of labor unions is incomplete because it does not give the same information about the hundreds of smaller or unaffiliated unions. We have repeatedly requested that this information be made available in a similar manner with respect to these smaller unions, but as of this date it has not been forthcoming, although we now have hopes since Secretary of Labor Tobin promised, during our meeting with him several days ago, that this information would be obtained; however, there is no official catalog available at present regarding these independent unions, but it is common knowledge that there are hundreds of them and that they represent thousands of American workers.

The smaller unions are comparable to small business in some respects and any Federal law that is passed should give consideration to its rights or it will be absorbed by the large monopolies or federations. The unions we speak for originally were certified under section 7 of the National Labor Relations Act of 1935, better known as the Wagner Act. As you know, this act provides that: "Employees shall have the right to self-organization, to form, join, or assist labor organizations," et cetera. If administered to the letter and in the spirit in which we think the law was passed, it would give all unions an equal opportunity. However, under the original policy of the National Labor Relations Board a dual policy existed; one applied to large federations and the other applied to the smaller or independent unions and was detrimental to them. This discrimination was corrected in the Labor-Management Relations Act of 1947, commonly called the Taft-Hartley Act, which required that in deciding cases the same regulations and rules of decision shall apply irrespective of whether or not the labor organizations affected are affiliated with a labor organization national or international in scope.

Contrary to the propaganda issued by the A. F. of L., CIO, and their spokesmen, alleging independent unions are company unions, independent unions have earned their title the hard way. The best proof of our being bona fide is the fact that only unions certified by a law enacted by the Federal Government can become affiliated with the CUA. We can further attest to the fact of our worthiness by the fact that in spite of constant harassment by the two major federations we are here today. Is not our survival since the enactment of the Wagner Act conclusive proof to the legislators of this country that were we not bona fide in character and worthy of the name "union," we could not possibly have survived the past 14 years?

Therefore, we recommend that the new bill, when approved by the committee, will also provide for fair and equal treatment of independent unions which are an integral part of the American labor movement as distinguished from those forms of totalitarian government where every worker must belong to one big union under a supreme dictator. Such regimentation is contradictory to all democratic principles.

A policy of fair and equal treatment for all unions can be further guaranteed by the enactment of provisions for an Assistant Secretary in the Department of Labor who is familiar with and friendly to the problems of the smaller unions the same as the present Assistant Secretaries of Labor are familiar with the problems of the CIO and the A. F. of L. unions from whence they came.

Until such legislation is passed or this policy adopted and made effective, the Department of Labor will necessarily continue to remain largely a research and organizational bureau for the unions exclusively represented by its Assistant Secretaries.

The Confederated Unions of America, better known as the CUA, is a national confederation of independent unions who have banded together to protect their members' rights on a national scale, although retaining absolute local autonomy. The CUA membership is composed of workers in the following industries: Meat packing, food processing and distribution; oil refining and distribution; radio and electrical equipment manufacturing; automotive and Diesel workers; steel-mill workers; machine and tool industries; paper workers; aluminum workers; rayon workers; furnace workers; aircraft workers; shipyard workers; transportation workers; textile workers; tobacco and utility workers, as well as many salaried and white-collar employees, and others.

We do not pretend to speak for the large independent groups such as the mine workers, machinists, railroad brotherhoods, and others who are protected by their numerical strength or special labor legislation such as the Railway Labor Act which deals specifically with the related industry.

Officers of the CUA and its affiliates and cooperating unions are all workers in their own particular industry. Almost without exception top officials of the CUA receive no salary and are paid only for actual time lost from their jobs and expenses when representing their unions on official business. However, their personal contacts with their membership and direct knowledge of working conditions within their respective industries have made it possible for them to negotiate the best contracts with the highest wages in the country.

These facts are borne out through a survey conducted by the National War Labor Board during the war period. It proved that these independent unions had averaged higher increases than other unions coming under the jurisdiction of the Board. We are confident that a survey at this time, or any time, would show approximately similar conditions.

We have cited these facts because the independent unions have not been publicized in the past largely due to their local nature and the fact that most of their disputes are settled by methods which usually do not make the headlines such as strikes invariably do. Consequently, we are requesting attention and, unless we are given fair and equal treatment under the terms of the National Labor Relations Act of 1949, the very existence of bona fide independent labor organizations may be jeopardized, thereby leading to complete totalitarianism for labor in this country.

In referring to the section of the proposed bill dealing with jurisdictional disputes, it is our position, in order to settle questions of representation, that the employees involved should be given an opportunity to determine the type of union they desire, whether it be of the craft or industrial type, and regardless of whether it is independent or otherwise. Employees should be guaranteed the right to determine this question by a secret election conducted by agents of the National Labor Relations Board. Under past Board policies, however, employees were permitted to vote for only certain so-called craft unions when they indicated a desire to be in a unit separate from the one previously certified or recognized. In order to become workable and prevent constant strife, this section of the law must apply equally to all unions.

Title II of the proposed act is labeled "Mediation and Arbitration." This section is of great importance to many of our unions on arbitration as a final method for the settlement of all disputes in accordance with the terms of their contracts. We favor this method of settling disputes only when the parties involved have mutually agreed to use this method as a final solution. We are unalterably opposed to compulsory arbitration.

The matter of arbitration as currently practiced is inequitable to organized labor. Indirectly, the Government is now assuming the cost of arbitration in behalf of the companies within all of industry by permitting the use of "tax dollars" to meet this expense which is far in excess of the income of the average individual labor union representing employees of the aforesaid companies. Corporations using such "tax dollars" can arbitrate unions to death so long as the present arbitration procedures are continued, without relief to organized labor by the Federal Government. We believe that free arbitration should be available to all desiring such services in industry as defined in the act. Arbitrators so selected would be free from serving two masters, and such servitude can best be avoided by placing such arbitrators within the jurisdiction of the Department of Labor in a status similar to or within the protection of benefits afforded to governmental employees under the Civil Service Act.

With respect to labor-management advisory committees, as provided in the proposed bill, in the appointment of these labor-management committees from respective industries it is our recommendation that the law require equal representation for all unions involved in the industry, regardless of whether or not the union is local, national, or international in scope. Unless equal representation is compulsory, those who do gain representation are wont to use their position for organizational purposes among their competitors. This fact was clearly demonstrated when the petroleum panel was set up during the war and on which independent unions representing the vast majority of workers in their particular industry were denied representation on the panels established by the War Labor Board. Quite naturally the cases affecting the independent unions received little or no consideration except as a source of organizational propaganda by the union represented on this particular panel. We suggest that similar consideration be given to the independent unions in any industry involved when emergency boards are created as provided in the proposed bill.

In closing, let me call your attention to these facts. Independent unions, such as those affiliated with the Confederated Unions of America, are run from the bottom up by their working members and not from the top down by professional organizers. This probably accounts largely for the fact that your House Committee on Un-American Activities did not find a single instance of Communist infiltration, domination or even sympathy among CUA affiliates to our knowledge. The principal reason for this being that the average American worker knows that we, in the United States, have the best form of government on earth, and we want to keep it that way.

This independence and freedom, however, has its disadvantages because the very people who speak so vociferously of our great American form of government sometimes look with disdain upon labor organizations such as the CUA, which have adopted the very principles upon which our great democracy was founded.

Our CUA officers and members all work in the mills, factories, offices and plants, where their unions have the bargaining rights. It is a well-known fact that the Communist organizers are usually allergic to work of the manual type. They prefer worming into an executive or official capacity wherever they can work from within or under cover like the parasites they are known to be. So long as laws affecting labor protect the American workers' right in self-organization, to form, join, or assist labor organizations of their own choosing, our problems can be worked out in a democratic manner. In order to be workable, these labor laws must provide fair and equal treatment for all unions, whether independent or otherwise. We trust that your committee will take the action necessary to guarantee this fair and equal treatment.

I thank you.

I would like to introduce my colleagues here: Joseph McKenna, of the Central States Petroleum Unions, Whiting, Ind.; Adolph Karlo, of the Automotive Workers Industrial Union, Chicago, Ill.; and Eugene Raetz, of the Independent Radionic Workers of America, CUA, Chicago, Ill.

If you care to ask these gentlemen any questions, they will be pleased to answer them.

Mr. BAILEY. The chairman would like to inquire at this time if your associates who are present with you have any briefs they desire to file?

Mr. MAHON. We have no briefs to file, Mr. Chairman. They are open to questions, if there is anyone who cares to question them.

Mr. BAILEY. I would like to ask you, Mr. Mahon, how many unions are involved in this independent organization of yours?

Mr. MAHON. We have approximately 70 affiliates in the CUA. There are a good number of independent unions that cooperate with us in excess of that, but, of course, they are independent and are not directly affiliated; but they have always cooperated with us.

Mr. BAILEY. About what would be the total membership of the unions involved?

Mr. MAHON. Over 100,000 in the CUA. We have never yet been able to find out how many small independent unions there are, and we think the Department of Labor should provide that. We are sure their interests are common.

Mr. BAILEY. You are speaking now of the 70 affiliated groups?

Mr. MAHON. I am talking about the ones I said have always cooperated, in addition to the CUA affiliates.

Mr. BAILEY. That are purely in an independent status?

Mr. MAHON. Yes, sir.

Mr. BAILEY. Do you have a constitution and bylaws in your organization?

Mr. MAHON. Yes, sir; we do.

Mr. BAILEY. Do you have a copy?

Mr. MAHON. I do not have a copy available, but I can get one for you.

Mr. BAILEY. I think it would be advisable for you to file one.

Mr. MAHON. Yes. We will do that.

Mr. BAILEY. What is the attitude of your group toward communism?

Mr. MAHON. Our group is absolutely opposed to it; and, if there are any Communists in our unions, it is because the company hired them. We have no members except the members who work in the plants and factories.

Mr. BAILEY. If there were, could you get rid of them?

Mr. MAHON. Our constitution and bylaws will not allow them to hold office in our unions. We could not get rid of them in the plants, because under the present law that is not permitted.

Mr. BAILEY. What is the attitude of your group toward the present so-called Taft-Hartley Act?

Mr. MAHON. That is a big order. We are opposed to the Taft-Hartley Act in general. However, we understand the present Taft-Hartley Act includes a lot of the provisions of the Wagner Act, which we favor. You mentioned the Communist angle of it. We are not, as I say, opposed to that. We believe everyone should be willing to sign one of the affidavits, but we do not think it should be just the labor people. We think it puts a smear on us to have to sign an affidavit of that nature and sit across the table from the people we negotiate with who are not required to sign such affidavits.

Mr. BAILEY. I would like to inquire whether you think that that provision should not be made general and apply to all people rather than to be written into special legislation, say, legislation affecting labor relations?

Mr. MAHON. I do, and I think it should apply to all subversive elements.

Mr. BAILEY. Regardless of whether they are in a union organization or out of a union organization?

Mr. MAHON. Absolutely.

Mr. BAILEY. Do you feel that the imposition of this oath that is required tends to weaken the union organizations of the Nation, in that they are not able to clear their membership of these subversive elements?

Mr. MAHON. I cannot speak for the others. I am sure the independent unions we represent have no objection to the filing of the affidavits, other than it seems discriminatory to us, because the people with whom we are required to deal are not placed under the same obligation.

Mr. BAILEY. Do you think that the ban against the closed shop in the present act is fair and workable as compared to the set-up of a union shop?

What is the attitude of your groups on that?

Mr. MAHON. We feel, Congressman, that the closed shop is something that should be decided by the group of employees in the particular unit, especially if it has been certified under the law. We think if the people in that unit have indicated by a majority that they want that particular union to deal for them—under the law or policies of the Board, that certification is only good for a period of time, usually a year, or not more than 2 years—and we think they should elect a representative just like we elect a representative to Congress and during the time they are in office they should have the right to act freely, and if the closed shop is one of the things they negotiate, we believe they should have a right not to do it, or to do it, providing they can get the people they are dealing with to agree. We think it is a problem that involves the particular union and the company they are dealing with.

Mr. BAILEY. I believe you suggested here that the fieldmen, or the men attached to the National Labor Relations Board, should be brought under the provisions of the Civil Service Commission.

Mr. MAHON. I had reference only to arbitrators.

Mr. BAILEY. You are aware of the fact those fieldmen are under civil service?

Mr. MAHON. I understand they are. I was referring to arbitrators in the Department of Labor.

Mr. BAILEY. That is in the Conciliation Division; yes.

Mr. MAHON. Yes.

Mr. BAILEY. Mr. Jacobs?

Mr. JACOBS. I think what you meant, Mr. Mahon, in regard to arbitrators, was that they should be paid by the Government, as a public service and be on the Government pay roll?

Mr. MAHON. Yes, sir.

Mr. JACOBS. Do you have some membership in Lake County, Ind.?

Mr. MAHON. Yes; we do.

Mr. JACOBS. I think some of those people talked to me the other day about that point.

Mr. MAHON. We have a number of oil workers there.

Mr. JACOBS. In the oil industry?

Mr. MAHON. Yes, sir.

Mr. JACOBS. And they stated to me that since the arbitrators were not furnished by the Conciliation Service they had found their decisions were not firm like they had been in the past when they were in the Government employ.

Mr. MAHON. If it is permissible, I would like to have Mr. McKenna answer the question.

Mr. JACOBS. Yes.

Is the position I stated substantially correct?

Mr. MCKENNA. Practically that. We have records that will substantiate that, before the advent of the Taft-Hartley Act, where the Department of Labor furnished that service, provisions in our contract provided that in case of a stalemate, then with the company we had a right to appeal to the Department of Labor to send an arbitrator that would be paid by the Department of Labor.

Mr. JACOBS. That, of course, was by virtue of a contract?

Mr. MCKENNA. Yes, by contract.

Mr. JACOBS. I believe your association grew out of the old committee of the Standard Oil?

Mr. MCKENNA. That is correct.

Mr. JACOBS. And that came out of the fearful strike and difficulty back in 1917?

Mr. MCKENNA. That is correct.

Mr. JACOBS. And you evolved into this union you are the head of now?

Mr. MCKENNA. That is correct.

Mr. JACOBS. And during a great many of those years you had used the arbitration service, and both sides have found it satisfactory?

Mr. MCKENNA. We wrote that in our union contract. Our union is incorporated in the State of Indiana. Since 1937, up to the advent of the Taft-Hartley Act, that was very successful. After the enactment of the Taft-Hartley Act they stripped the Department of Labor and set up a Conciliation Department, and possibly during that time I represented more or less 500 issues before the Department of Labor over a period of years, and the record will show I had never complained about decisions, so I did not like——

Mr. JACOBS. That is always true.

Mr. MCKENNA. Yes, that is always true, but after that, when it was put under the Conciliation Department, under paid arbitration, where you set up men who had no responsibility to the Government or anybody else, they have rendered decisions where we had no recourse or appeal, but under the Taft-Hartley Act we can appeal those——

Mr. JACOBS. Under the Taft-Hartley Act?

Mr. MCKENNA. No. Prior to the Taft-Hartley Act we could appeal to the National Labor Relations Board, and if an arbitrator went beyond the stipulation they held the decision null and void. We have five of the decisions today that affect the industry, the men that we represent, and I personally represent 30,000 oil workers, and we have no recourse under the Taft-Hartley Act.

Mr. JACOBS. The substance of your position is that you think we will get fairer decisions, and your arbitrators are more prone to look at the facts when they are Government employees, than when they are private arbitrators who are selected and sent in?

Mr. McKenna. Yes, we always believe the Gvernment representative, whether he be a mailman or a Congressman or an arbitrator, usually performs his duties fairly and honestly.

Mr. Jacobs. I do not have any further time, Mr. Chairman.

Mr. Bailey. Mr. Wier?

Mr. Wier. Mr. Mahon, your set-up here is new to me. I do not think we have any unions in our State, but you make some reference to your membership. You said a minute ago you have 70,000 members?

Mr. Mahon. No, sir, I said we had 70 affiliated unions.

Mr. Wier. What does that membership amount to?

Mr. Mahon. We have over 100,000 members.

Mr. Wier. 100,000 members?

Mr. Mahon. Yes, sir.

Mr. Wier. What dues do you charge the units?

Mr. Mahon. Each local unit determines its own dues. They pay 3 cents per capita tax to the CUA. Is that what you had reference to?

Mr. Wier. Where is the CUA office?

Mr. Mahon. Here in Washington, D. C.

Mr. Wier. Are you three men here out of that office?

Mr. Mahon. No, sir.

We have counsel down here, and we send a man here whenever it is necessary. We came down here for this hearing.

Mr. Wier. How about your initiation fees? What do you charge for initiation fes?

Mr. Mahon. The CUA charters unions the same as all national affiliations. We charge $25 for initiation fee to an organization desiring to affiliate, and after that it is 3 cents per month per member.

Mr. Wier. Who sets the policy for the general direction of all of the 70 units?

Mr. Mahon. They handle that locally. They have local autonomy.

Mr. Wier. In other words, all of the local units are in some degree orphans?

How are they affiliated?

Mr. Mahon. We have meetings periodically, and each one of them has a representative on our national board.

Mr. Wier. And they pay a per capita tax to your central office?

Mr. Mahon. Yes, sir.

Mr. Wier. How much?

Mr. Mahon. Three cents per month per member.

Mr. Wier. Three cents per month per member?

Mr. Mahon. That is right.

Mr. Wier. Then you have no officials of that general organization, of the parent organization, do you?

Mr. Mahon. Oh, yes. We have a president and three vice presidents and a secretary.

Mr. Wier. You say you have 100,000 members scattered throughout the United States?

Mr. Mahon. Yes, sir.

Mr. Wier. You make some reference here to industries which you have organized?

Mr. Mahon. Yes, sir.

Mr. Wier. How many do you have in the meat-packing industry? You mentioned that.

Mr. Mahon. There are 19,000 in the meat-packing industry.

Mr. Wier. Nineteen thousand?

Mr. Mahon. Yes, sir.

Mr. Wier. Are they all in one firm, or are they scattered over various firms?

Mr. Mahon. Various firms.

Mr. Wier. How about food processing?

Mr. Mahon. Yes; we have some of those.

Mr. Wier. How many?

Mr. Mahon. They come under packinghouse workers. Packinghouse and distribution of foods; we include them together.

Mr. Wier. What would be the approximate number?

Mr. Mahon. They are all included in that lump sum there.

Mr. Wier. Nineteen thousand?

Mr. Mahon. Yes, sir. That includes all of those who handle food.

Mr. Wier. Radio and electrical equipment; how many do you have there?

Mr. Mahon. Nine thousand.

Mr. Wier. In one spot?

Mr. Mahon. We have four unions in the radio and electrical workers.

Mr. Wier. Four unions?

Mr. Mahon. Yes, sir.

Mr. Wier. Are they combined with the automotive and Diesel workers?

Mr. Mahon. No, sir.

Mr. Wier. How many do you have in that field?

Mr. Mahon. In the automotive and Diesel we have about 1,300 people.

Mr. Wier. Are they scattered around the country?

Mr. Mahon. In two or three localities.

Mr. Wier. How about steel mill workers?

Mr. Mahon. Twelve thousand.

Mr. Wier. You have 12,000 in the steel mills?

Mr. Mahon. Yes, sir; that we speak for.

Mr. Wier. Machinists and the tool industry?

Mr. Mahon. Five thousand.

Mr. Wier. Paper workers?

Mr. Mahon. About 2,700.

Mr. Wier. Aluminum workers?

Mr. Mahon. One thousand two hundred.

Mr. Wier. Rayon workers?

Mr. Mahon. One thousand five hundred.

Mr. Wier. Is that one plant, or are they scattered around the country?

Mr. Mahon. I would have to check on that.

Mr. Wier. That is all right. Furnace workers?

Mr. Mahon. There is one unit of 500 there.

Mr. Wier. Aircraft workers?

Mr. Mahon. One thousand.

Mr. Wier. I would like to see your constitution and bylaws. Shipyard workers; how many do you have there?

Mr. Mahon. I do not have the figure on that.

Mr. Wier. How about transportation workers?

Mr. Mahon. I do not have the figure right here on that. That is 500.

Mr. Wier. What do you call transportation workers?

Mr. Mahon. Taxicab drivers and truck drivers, and so forth.

Mr. Wier. How about textile workers?

Mr. Mahon. Five hundred.

Mr. Wier. Is that one plant?

Mr. Mahon. Yes, sir; that is a local union.

Mr. Wier. That is one local union. Tobacco workers?

Mr. Mahon. Two thousand.

Mr. Wier. And utility workers, or is utility combined——

Mr. Mahon. It must be combined, sir. As I say there are some 70 affiliates. I thought the question might come up, so we just raked off the general groups there. The large groups, of course, you can see, are the oil workers and the packinghouse workers, radio and electrical, and steel.

Mr. Wier. Is there anybody connected with the CUA that can officially set the policy by convention, or how does this unit over here work along with this unit over there?

Mr. Mahon. We have a regular convention, and the convention powers are delegated in accordance with the number of people represented.

Mr. Wier. I probably should have realized that, because you also say that you have no paid officials.

Mr. Mahon. I did not say that.

Mr. Wier. "Almost without exception, top officials of the CUA receive no salary, and are paid only for actual time"?

Mr. Mahon. They are paid for actual time, whatever amount of time it takes to handle the business.

Mr. Wier. So you do not have administrative time?

Mr. Mahon. Oh, yes; we have at least one man who works all the time at whatever time it takes to handle the business.

Mr. Wier. For 100,000 workers?

Mr. Mahon. Yes, sir.

Mr. Wier. How do you service them?

Mr. Mahon. The CUA is a national organization, and primarily its purpose is to give representation whenever it is needed, and to bring the people together. The locals have their own officers and handle their business locally, and the CUA maintains its office here, and we have necessary legal counsel when we have matters of policy to be determined, and they are determined in an annual convention or special convention or in regular board meetings.

Mr. Wier. How does your international organize workers with such limited administration?

Mr. Mahon. By sending notice to all the people in independent unions who are interested, and by permitting them to come to our conferences and conventions—unofficially, of course—and to participate in the activity that we carry on, to try to get equal representation for labor generally.

Mr. Wier. Who negotiates the contracts for all of these people?

Mr. Mahon. The CUA does not negotiate the local contracts, any more than the AFL negotiates its local contracts, or the CIO.

Mr. Wier. I see.

Mr. Mahon. Each local is certified in that particular plant under the terms of either the Wagner Act, or, since that, the Taft-Hartley Act, and the people in that particular unit negotiate their contract.

Mr. Wier. You recognize the difference between your national organization and the CIO and the AFL, who have paid officials to take care of not only their contracts, but their services?

Mr. Mahon. Their per capita tax is not as much different. I think it was recently raised. I think it was 5 cents in the CIO and I think, if I am not mistaken 3½ or 2½ cents in the AFL. The only difference is that they have more members.

Mr. Wier. But you have already admitted that you have officials around to service your membership. Your membership always has grievances, if you remember that.

Mr. Mahon. Congressman, every local has its officials, and whether they are paid or not, I am not going into that. I am talking about the CUA, this national organization.

Mr. Wier. Did the telephone workers ever belong to your group?

Mr. Mahon. No; they did not.

Mr. Wier. They have never belonged to it?

Mr. Mahon. No.

Mr. Wier. That is an independent union in many cases?

Mr. Mahon. Yes. They have cooperated. They have come down here with us as witnesses in meetings at various times, and they have cooperated. They believe they should have representation, too, I am sure, but we do not claim to speak for them.

Mr. Wier. One more question. I have only about 10 minutes.

Mr. Bailey. You have one more minute, Mr. Wier.

Mr. Jacobs. I yielded my time.

Mr. Wier. Let me ask you this one question. I am serious about this. You lay a lot of stress upon the fact that your group was one of the groups where there were no Communists found. Now, will you please tell me if you organized workers on any scale at all, how would you determine whether you had any Communists in your membership or not?

Mr. Mahon. Congressman, I said that your committee down here did not find any in our organization. I said if there were any there, it was not because we had brought them in; it was because they were employees hired by the company. I do not know if they are there or not. I said that all of our officers had signed non-Communist affidavits.

Mr. Wier. If you go over here to a packing plant and offer your unions to the service of the workers there, you take them all in, do you not?

Mr. Mahon. We surely do.

Mr. Wier. And there might be three or four Communists or "left wingers," or whatever you want to call them; is that possible?

Mr. Mahon. That is very possible.

Mr. Wier. Then you would not say that you have not any?

Mr. Mahon. I did not say that we did not have any. I said that our officers have all signed affidavits, and I said that if there were any Communists in there, they were people that the company had employed, and we did not bring them in there, and under the requirements of law, we have to represent them. We cannot do anything else about it under the Taft-Hartley law.

Mr. Wier. That is what I wondered, if you had a new formula for meeting that situation.

That is all, Mr. Chairman.

Mr. Bailey. Mr. Smith?

Mr. Smith. But the point that you made, Mr. Mahon, was that your unions are set up as a local organization, and as such, you probably have better control over them than some of the big national organizations. Is that the point that you are making?

Mr. Mahon. Yes, sir; we think that the local problems are the ones that the people on the job are interested in, and under both the Wagner Act and the Taft-Hartley Act, all unions are certified on a local basis. We have just carried on and let those people run their own business, sir.

Mr. Smith. Do I understand that you cannot get from the Secretary of Labor the number of men employed in the United States who are affiuiated with some local union?

Mr. Mahon. We cannot; that is right.

Mr. Smith. Does the Secretary of Labor have those figures?

Mr. Mahon. The Secretary of Labor should have them, or the National Labor Relations Board, because they handle all the elections. They require all the unions to register under the Taft-Hartley law. I do not know why they would not have them; that is, the ones that want to use the National Labor Relations Board since they are required to register. They should be over there.

Mr. Smith. Have you made written inquiry as well as talked to them about it?

Mr. Mahon. I surely have.

Mr. Smith. What was their answer?

Mr. Mahon. Well, 2 weeks ago I wrote to them, and they sent me back a book that has all the national and international unions in it. It did not have all the independents in there, though.

Mr. Smith. Do you have anybody down there at the Secretary of Labor?

Mr. Mahon. No, we do not. The CIO and the AFL both have an Assistant Secretary down there, but we are not represented in the Department. They are not too much concerned about getting information for us, apparently. We cannot seem to get it.

Mr. Smith. Do you have any opinion as to how many men there are in the United States that are in these local unions? Do you have any way of guessing as to how many men there are in the United States who are in them?

Mr. Mahon. No. It would be just a guess, Congressman, and I really do not know. We would like to know. We think that it is a function of the Department of Labor and the Bureau of Labor Statistics, to compile that information. We do not want to come down here and say we represent people that we do not, because they never authorized us to. But we think under the law or any law that all unions should get the same consideration and representation in the Department of Labor, whether large, small, or in between, whether independent or affiliated, so long as they are in compliance with the law.

Mr. Smith. I am surprised and shocked, because I thought that they knew down at the Department of Labor and the Bureau of Labor

Statistics down there even the number of clothespins that were made last year in the United States.

Mr. MAHON. You are writing a law that will affect all of us, and we are certainly affected by any law that results, and like other good citizens we expect to go along with it. But we certainly feel entitled to consideration. We may be considered a minority, but it is our understanding that the policy is to give minorites at least the right to be heard and to have representation.

Mr. SMITH. Now, this is a rather direct question. Has the Taft-Hartley Labor Act, passed 2 years ago, interfered in any way with your union?

Mr. MAHON. It definitely has interfered. Would you care——

Mr. SMITH. I mean, as far as your own local membership is concerned and the activities that you are engaged in at the local level.

Mr. MAHON. Yes, it has, Congressman, placed us at a disadvantage in many respects.

Mr. SMITH. If it has, what would you like to see this present Congress do to help you and your organization?

Mr. MAHON. According to the things that I outlined there in my statement, we think that a good labor law should more or less act as an umpire to keep all the parties involved going according to its rules, and that the rules should not be loaded one way or the other. We think it should be right down the middle with the Government acting as an umpire, and giving the same consideration and equal consideration to all of us involved, whether they are unions or the people with whom we have to bargain.

Mr. SMITH. Do you feel that the Taft-Hartley Labor Act gave the CIO and the AFL advantages over your union?

Mr. MAHON. I can say this, that since the Taft-Hartley law was passed, one provision of it requires the Labor Board to give the same consideration to unions regardless of whether they are national or international in scope, and the CIO and AFL, of course, have gained in some respects.

Mr. SMITH. I will ask you whether or not the CIO or the AFL could interfere with your men working in some of the plants over the country.

Mr. MAHON. Do you have reference to any particular example?

Mr. SMITH. Well, take the packinghouse strike in Kansas City.

Mr. MAHON. In Kansas City, during 1946, I happened to be the president of the National Brotherhood of Packinghouse Workers, and the President of the United States sent us a telegram at that time, when there was a dispute existing with the companies over wages, and asked us to continue working due to the boys overseas, and so forth, and saying that he would appoint a fact-finding board to investigate the merits of the dispute, and if we would stay on the job, which he asked us to do, it would be thoroughly investigated. Our unions—as the one you mentioned, the local in Kansas City—conducted an election among its membership there. The election was conducted by three local ministers, as I remember it, and the people in that plant voted on the proposition, Should we continue operations while the President looked into the meat packing situation? These people voted, as I recall, about two to one to authorize us to continue negotiations and to wait for the report of the President's fact-finding board.

The CIO people did not see fit to go along with President Truman's recommendation, and they struck the plants on either side of the plant where we represented the workers. They also formed mass picket lines and prevented our members from going back and forth to work, which they voted to do.

Now, I think what you have reference to is this. In 1948, a year ago tomorrow, the CIO saw fit to take similar action. The AFL and our union had been able to negotiate a contract that was agreeable to our membership with the big packers. The AFL and our union people were working, and the CIO struck the same two plants again, and as I remember it, under the Taft-Hartley law, there was no interference with our people whatever. That was, I believe, the situation that did occur before and after the enactment of the Taft-Hartley law.

Mr. SMITH. How many strikes have the affiliates of your union been engaged in in the last year; do you know?

Mr. MAHON. In the last year, only one or two that I know of right now.

Mr. SMITH. Were they of long duration?

Mr. MAHON. No: short duration.

Mr. SMITH. I believe that is all, Mr. Chairman. Thank you very much.

Mr. JACOBS. Do I have any time left, Mr. Chairman? I reserved any time I had left. Was there any left?

Mr. PERKINS. Not my time.

Mr. JACOBS. Will you yield me 2 minutes?

Mr. PERKINS. Yes.

Mr. JACOBS. Prior to the passage of the Taft-Hartley Act, your unions were certified, were they not, by the Labor Board?

Mr. MAHON. Yes, sir; in nearly all cases that I know of. There may have been some that were not, but as far as I know, they were all certified.

Mr. JACOBS. That is all. Thank you.

Mr. BAILEY. Thank you, gentlemen.

At this time, the committee will be pleased to hear Mr. Carl Brown, president of the Foreman's Association of America.

Will you state your name and affiliation, Mr. Brown?

TESTIMONY OF CARL BROWN, PRESIDENT, FOREMAN'S ASSOCIATION OF AMERICA, DETROIT, MICH.

Mr. BROWN. I am Carl Brown, of Detroit, Mich., president of the Foreman's Association of America, representing the traffic cops of industry.

Mr. Chairman, I would like to introduce Mr. Gerhard Van Arkel, who was general counsel of the National Labor Relations Board at the time that Board was processing our case.

Mr. JACOBS. Mr. Chairman, I am sorry; I cannot hear the gentleman.

Mr. BROWN. And any questions you may have about how the Board handled the foremen's cases. I am sure he can answer.

Mr. McNally, on my right, is a foreman from the Murray Corp. of Detroit, who is here to reply to a statement made by a foreman at the Murray Corp.

Mr. Phillips, on my left here, is the vice president of the Foreman's Association.

Mr. Bailey. You may proceed, Mr. Brown.

Mr. Brown. Our organization and other supervisory employee groups were on the receiving end of the hardest blows delivered by the Taft-Hartley Act; therefore, we aline ourselves with other organizations advocating repeal of the Taft-Hartley Act and the enactment of the Thomas bill, S. 249.

We are interested in the over-all labor legislative program, but as an organization we are mainly interested in one point, and that is to obtain for supervisory employees the same opportunities, privileges, and protection by law in our legitimate union activities as will be granted to other groups of employees under Federal labor laws.

Prior to the enactment of the Wagner Act in 1935, supervisory employees were on an equal basis with other employees in respect to dealing with their employers on matters pertaining to their own conditions of employment either individually or collectively.

Under the Wagner Act it was finally determined by Supreme Court decision upholding a prior decision by the National Labor Relations Board that supervisory employees represented by the Foreman's Association of America were employees within the meaning of the act, and as such were entitled to the same privileges and protection granted by that act to other groups of employees.

During the last few years under the Wagner Act, organized foremen made considerable progress by their collective efforts to improve their own conditions of employment. Foremen were successful in obtaining recognition from several employers and were able to negotiate contracts with their employers establishing practices beneficial to both parties.

With the enactment of the Taft-Hartley Act the equality of bargaining power between employer and foreman was destroyed, giving all of the advantages to the employer and leaving none to the foreman. By sanction of the Taft-Hartley Act employers have wiped out most of the gains made by foremen under the Wagner Act, and most employers in mass-production industries are now imposing similar unreasonable conditions of employment upon their foremen as were imposed upon other groups of employees prior to enactment of the Wagner Act in 1935.

Foremen employed by 95 percent of employers, subject to the provisions of the Taft-Hartley Act, can no longer enjoy full freedom of voluntary association for the purpose of improving their own economic welfare on the penalty of discharge or other discriminatory acts by employers. However, few of the more liberal-minded employers recognize our association as collective-bargaining agent for their foremen, and our relationship with those employers is considered good.

Mr. Jacobs. Pardon me, Mr. Chairman.

You did not read from your text, did you?

Mr. Brown. No. I read from this additional statement that I have here, of which I have additional copies.

Mr. Bailey. The witness will proceed.

Mr. Brown. I have finished with the statement I just read.

It was not a new thing when foremen organized themselves into a strictly independent union and sought to be certified as bargaining units under the provisions of the National Labor Relations Act. The National Labor Relations Board developed a policy that clearly recognized foremen as employees under the meaning of the act; and this policy was finally sustained by a decision of the United States Supreme Court on March 10, 1947, in the Packard case.

Possibly because organization among foremen was growing and expanding among diverse industries, various employer-agencies apparently exerted influence upon the Eightieth Congress with a view to depriving supervisory employees of the protection of this country's labor laws in the exercise of their right to organize. This was skillfully accomplished in the enactment of the Labor-Management Relations Act of 1947, commonly referred to as the Taft-Hartley law. This act, while reiterating the right of foremen to organize, effectively granted the employer the right to discriminate against foremen who dared to exercise this right.

The foremost arguments presented to the National Labor Relations Board, Federal courts, and the Eightieth Congress by representatives of employers against the lawful right of foremen to maintain equal opportunities and protection as other groups of employees in their collective efforts to better their own conditions of employment are as follows:

Foremen are part of management: There is a great distinction between being management or a part of management and being the supervisory employee who acts as the agent of management. As an agent of management the supervisory employee carries out a predetermined program of translating the plans of management through the activities of those he supervises in producing the goods and products that management ultimately sells or markets.

Second among their reasons why foremen cannot have bargaining rights is that foremen cannot serve two masters.

This is strictly an implication of divided loyalties. Followed to its ultimate conclusion, once a man becomes a supervisory employee, he can have no other loyalty but to his immediate employer. This in effect would deny him the right to join a lodge, church, a labor organization, or even to show loyalty to the interests of his own family, or, in the final analysis, loyalty to his country.

Following quotations were taken from the United States Supreme Court decision dated March 10, 1947, in the *Packard Motor Car Company* v. *National Labor Relations Board* case:

> The company's argument is really addressed to the undesirability of permitting foremen to organize. It wants selfless representatives of its interests. It fears that if foremen combine to bargain advantages for themselves, they will sometimes be governed by interests of their own or of their fellow foreman, rather than by the company's interest. There is nothing new in this argument. It is rooted in the misconception that because the employer has the right to wholehearted loyalty in the performance of the contract of employment, the employee does not have the right to protect his independent and adverse interest in the terms of the contract itself and the conditions of work.
>
> Even those who act for the employer in some matters, including the service of standing between management and manual labor, still have interests of their own as employees. Though the foreman is the faithful representative of the employer in maintaining a production schedule, his interest properly may be adverse to that of the employer when it comes to fixing his own wages, hours, seniority rights or working conditions. He does not lose his right to serve himself in these respects because he serves his master in others.

The third reason offered by employers why foremen should not have the rights and privileges of the act is that foremen act in the interest of the employer. It is our claim that all employees act in the interest of the employer. The Supreme Court decision in the Packard case of March 10, 1947, quotes in part:

> Every employee from the very fact of employment in the master's business is required to act in his interest. He owes to the employer faithful performance of service in his interests, the protection of the employer's property in his custody or control, and all the employees may as to third parties act in the interests of the employer to such an extent that he is liable for their wrongful acts.

No. 4 among the items presented by the employers to deny foremen rights is that if foremen are granted the same rights, privileges and protection as other groups of employees, the result would be industrial chaos.

This time-worn statement has been overworked for decades. Its been used against practically all proposals offered to aid the workingman. And no combination of words in the English language can be composed based upon fact to sustain the charge. It is common practice in several industries for foremen to be recognized as a group appropriate for the purpose of collective bargaining, and the owners of those industries make no claim that chaos results from such recognition.

The Railway Labor Act enacted in 1926 extends to supervisory employees the same privileges and protection in their collective efforts as it does to other groups of railway employees, and no claim is made that chaos reigns by reason of such privileges and protection by the operators of that very large business.

Likewise, operators of water-borne vessels make no charge that chaos flourishes in the shipping industry as a result of recognizing mates and engineers for the purpose of collective bargaining. The job duties of licensed officers aboard vessels are comparable to those of foremen employed in land industries.

Several liberal-minded employers recognize the Foreman's Association of America as collective bargaining agent for their supervisory employees. And those same employers make no claim of reduced efficiency of operations because of bargaining privileges of their foremen.

The assertion is so weak that it can best be answered in one terse expression supplied by Gen. Anthony Clement McAuliffe in reply to German demands during the battle of Bastogne: "Nuts!"

The next sections I would like to omit, and have them appear in the record, in order to save time.

Mr. Bailey. Very well.

(The material referred to is as follows:)

NEED FOR COLLECTIVE BARGAINING

From the early days of mass production by power machinery to the present decade the foreman was considered either as the channel through which the desires of ownership and management were conveyed to and made effective among the body of workers, or as the representative of ownership and management in the shop. Just before the opening of the present decade the organization of the body of workers into plant- and industry-wide unions demanding the exclusive right of representation for collective bargaining purposes, dealing with employers or groups of employers in organizations that have existed for years, has greatly changed the real status of the foreman.

In the particulars of the day's production the foreman is yet the channel for making effective policies and directions of management as applied to production, but he is a part of neither organized ownership and management on the one hand nor of organized labor on the other hand. The foreman fits between two enormous powers: ownership and management on top; and labor unions, with enormous numbers, on the bottom. The foreman has reason to feel that in the ceaseless struggle between ownership and wage labor the foreman will become a victim unless all foremen are organized to protect individuals and interests common and essential to the position of foremen in modern mass power production.

WHY SUPERVISORY EMPLOYEES ARE ENTITLED TO PRIVILEGES AND PROTECTION BY LAW IN THEIR COLLECTIVE BARGAINING ENDEAVORS.

The Labor-Management Relations Act of 1947 placed the supervisory employees of this Nation in the same unreasonable position all other mass production employees were in prior to the enactment of the National Labor Relations Act of 1935. Under the new Federal labor law many employers are imposing the same unsatisfactory conditions of employment upon foremen as were imposed upon other groups of employees prior to 1935.

The general public welfare, most social gains, and improved conditions of employment have been attained through the medium of group discussions, considerations and decisions; but the denial to supervisory employees protection by law in their collective union endeavors has furnished employers with an effective method of preventing foremen from exercising their right to free or voluntary association on the penalty of discharge or other discriminatory acts.

No attempt has been made to include in this statement all that could be said favoring the question of supervision. However, pertinent points are mentioned for the committee's information, and we respectfully request that the committee favorably consider the proposition of extending to supervisory employees the same opportunities, privileges and protection in their union activities as will be extended to other groups of employees in the enactment of new Federal labor legislation.

Mr. BROWN. Mr. Chairman, at this time I would like to submit for the record a list of cases that we had pending before the National Labor Relations Board that were dismissed because of the passage of the Taft-Hartley Act. This list includes representation cases and unfair-labor-practices cases.

Mr. BAILEY. If there are no objections, the list will be accepted for inclusion in the record.

Mr. BROWN. I will supply each member of the committee with a copy also.

(The list referred to is as follows:)

CHAPTERS THAT HAD REPRESENTATION CASES PENDING BEFORE THE NATIONAL LABOR RELATIONS BOARD AT TIME OF LABOR-MANAGEMENT RELATIONS ACT (TAFT-HARTLEY ACT) [1]

	Case No.
Briggs Manufacturing Chapter No. 2	7-R-2487.
Chrysler Chapter No. 3	7-R-2502.
Chrysler Chapter No. 3	7-R-2505.
Gar Wood Industries No. 7	7-R-2309.
International Detrola No. 9-R	7-R-2545.
Timken Axle No. 10	7-R-2072.
Carnegie-Illinois Steel No. 42	13-R-3063.
Spicer Manufacturing No. 75	4-R-2270.
International Harvester No. 107	13-R-3076.
Houdaille Hershey No. 108	13-R-3984.
Wilson & Co. No. 115	13-R-3077.
Westinghouse Electric No. 141	2-R-7405.
Mack Manufacturing Co. No. 146	4-R-1761.
Mack Manufacturing Co. No. 146	4-R-2102.
Wright Aeronautical Corp. No. 147	2-R-7220.
Cleveland-Cliffs Iron Co. No. 159	8-R-2639.
United States Rubber No. 196	21-R-3484.
Bowen Products No. 200	7-R-2695.
Westinghouse Electric No. 215	1-R-3091.

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[1] All of these cases were dismissed under Taft-Hartley Act.

Chapters That Had Representation Cases Pending Before the National Labor Relations Board at Time of Labor-Management Relations Act (Taft-Hartley Act)[1]—Continued

	Case No.
Westinghouse Electric No. 215	1–R–3089.
Colgate-Palmolive Peet Co. No. 218	91–R–1332.
Plankington Packing Co. No. 219	13–R–3562.
Wagner-Electric Corp. No. 237	14–R–1472.
Globe Steel Tubes Co. No. 242	13–R–3893.
Emerson Electric Manufacturing No. 249	14–R–1556.
Cudahy Packing Co., No. 253	18–R–1556.
Aluminum Co. of America, No. 254	([2]).
Monroe Paper Products, No. 316	7–R–2605.
The Lionel Corp., No. 319	2–R–7792.
Publix Metal Products, No. 324	2–R–7814.

[1] All of these cases were dismissed under Taft-Hartley Act.
[2] Not designated.

Chapters That Had Refusal-to-Bargain Cases Pending Before the National Labor Relations Board at Time of Labor-Management Relations Act[1]

	Case No.
Chrysler Chapter, No. 3	7–C–1707.
Hudson Motor, No. 6	7–C–1644.
United States Rubber, No. 8	7–C–1695.
Youngstown Sheet & Tube, No. 39	([2]).
Simmons Co., No. 54	2–C–6244.
B. F. Goodrich Co., No. 98	8–C–1916.
White Motor Co., No. 102	8–C–2031.
Midland Steel Products, No. 105	8–C–1963.
Auto-Lite Battery Corp., No. 117	([2]).
L. A. Young Spring & Wire, No. 155	21–C–2716.
American Brakeblok, No. 174	7–C–1653.
Federal Motor Truck Co., No. 187	7–C–1576.
Westinghouse Electric Corp., No. 215	1–C–2489.
Aluminum Co. of America, No. 254	2–C–6506.
Firestone Tire & Rubber Co., No. 255	15–M–C–1.

[1] All of these cases were dismissed under Taft-Hartley Act.
[2] Not designated.

Chapters That Had Unfair-Labor-Practice-Charge Cases Other Than Refusal to Bargain Pending Before the National Labor Relations Board at Time of Labor Management Relations Act[1]

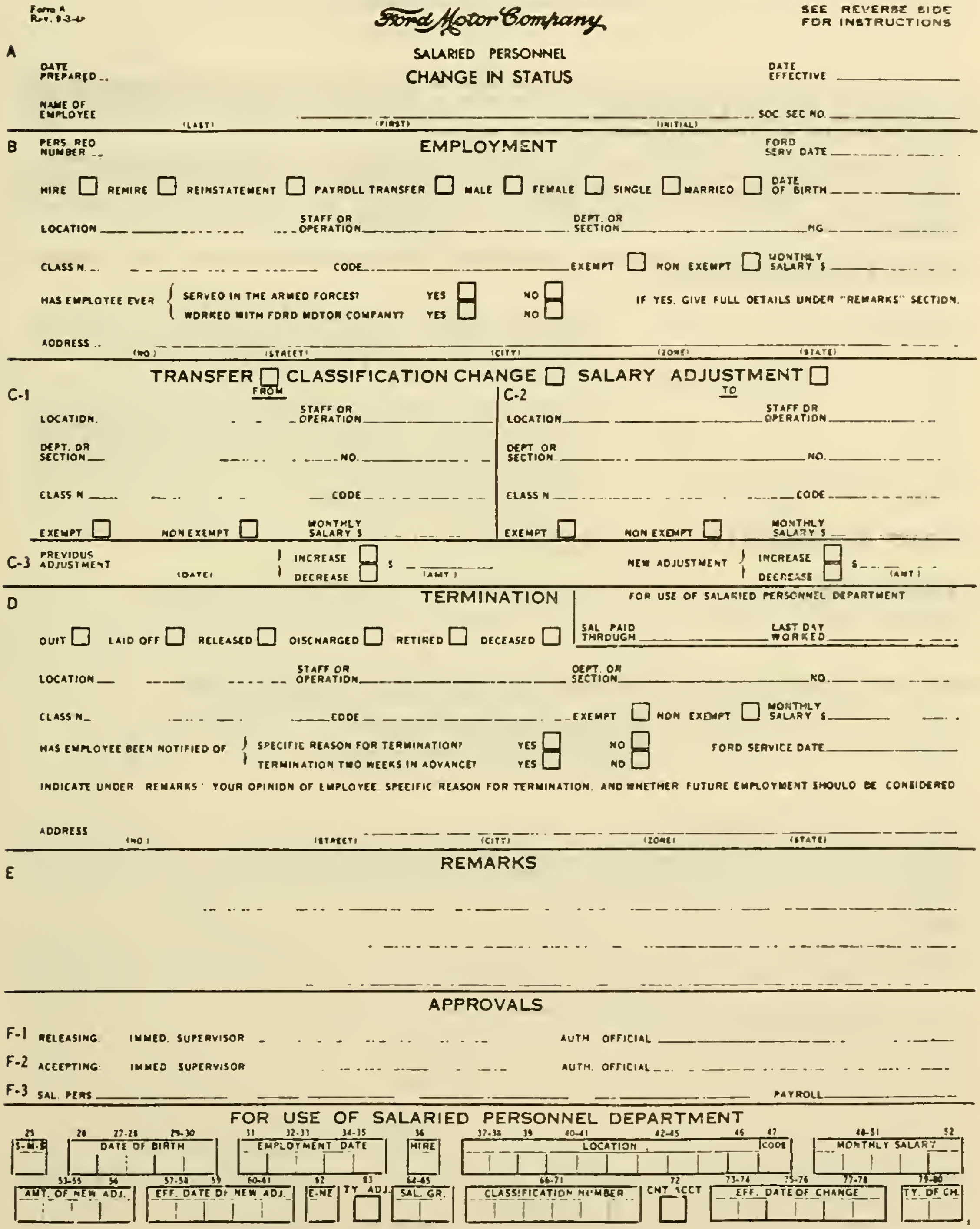
	Case No.
Briggs Manufacturing Co., No. 2	7–C–1339.
Bohn Aluminum, No. 30	7–C–1646.
Republic Steel Corp., No. 43	8–C–1569.
Carnegie-Illinois Steel Corp, No. 44	13–C–2799.
Carnegie-Illinois Steel Corp., No. 44	13–C–3048.
American Steel Foundries, No. 57	13–C–2283.
Bohn Aluminum Corp., No. 66	7–C–1264.
Budd Mfg. Co., No. 77–R	7–C–1305.
Pullman Standard Manufacturing, No. 92	13–C–2415.
Pullman Standard Manufacturing, No. 92	13–C–2439.
Allied Steel Castings Corp., No. 96	13–C–2885.
E. A. Laboratories, Inc., No. 104	2–C–6259.
Midland Steel Products, No. 105	8–C–2161.
Midland Steel Products, No. 105	([2]).
Lakey Foundry & Machine Co., No. 136	7–C–1384.
National Malleable Steel Castings, No. 143	6–C–1038.
Wilson Foundry & Machine Co., No. 211	7–C–1440.
Globe Wernicke Co., No. 228	([2]).
Jones & Laughlin Steel Corp., No. 272	6–C–1039.
General Fire & Rubber Co., No. 293	8–C–1944.
Republic Steel Corp., No. 296	8–C–1941.

[1] Most of these cases were dismissed under Taft-Hartley Act, and all cases filed since.
[2] Not designated.

(The following additional citations were received for the record on March 16 and ordered by the chairman to be inserted as part of Mr. Brown's testimony:)

The following additional cases of discrimination against supervisors since removal from protection under the Wagner Act are submitted:

Attached hereto is photostatic copy of Ford Motor Co. Form No. 6, Rev. 9–3–1948, entitled, "Salaried personnel change in status."



Form 6
Rev. 9-3-48

Ford Motor Company

SEE REVERSE SIDE FOR INSTRUCTIONS

SALARIED PERSONNEL
CHANGE IN STATUS

A

DATE PREPARED ____ DATE EFFECTIVE ____

NAME OF EMPLOYEE ____ (LAST) ____ (FIRST) ____ (INITIAL) ____ SOC SEC NO. ____

B EMPLOYMENT

PERS REC NUMBER ____ FORD SERV DATE ____

HIRE ☐ REHIRE ☐ REINSTATEMENT ☐ PAYROLL TRANSFER ☐ MALE ☐ FEMALE ☐ SINGLE ☐ MARRIED ☐ DATE OF BIRTH ____

LOCATION ____ STAFF OR OPERATION ____ DEPT. OR SECTION ____ NO ____

CLASS N. ____ CODE ____ EXEMPT ☐ NON EXEMPT ☐ MONTHLY SALARY $ ____

HAS EMPLOYEE EVER { SERVED IN THE ARMED FORCES? YES ☐ NO ☐
WORKED WITH FORD MOTOR COMPANY? YES ☐ NO ☐
IF YES, GIVE FULL DETAILS UNDER "REMARKS" SECTION.

ADDRESS ____ (NO.) ____ (STREET) ____ (CITY) ____ (ZONE) ____ (STATE)

TRANSFER ☐ CLASSIFICATION CHANGE ☐ SALARY ADJUSTMENT ☐

C-1 FROM

LOCATION ____ STAFF OR OPERATION ____

DEPT. OR SECTION ____ NO. ____

CLASS N ____ CODE ____

EXEMPT ☐ NON EXEMPT ☐ MONTHLY SALARY $ ____

C-2 TO

LOCATION ____ STAFF OR OPERATION ____

DEPT. OR SECTION ____ NO. ____

CLASS N ____ CODE ____

EXEMPT ☐ NON EXEMPT ☐ MONTHLY SALARY $ ____

C-3 PREVIOUS ADJUSTMENT ____ (DATE) { INCREASE ☐ DECREASE ☐ $ ____ (AMT.)

NEW ADJUSTMENT { INCREASE ☐ DECREASE ☐ $ ____ (AMT.)

D TERMINATION

FOR USE OF SALARIED PERSONNEL DEPARTMENT

SAL. PAID THROUGH ____ LAST DAY WORKED ____

QUIT ☐ LAID OFF ☐ RELEASED ☐ DISCHARGED ☐ RETIRED ☐ DECEASED ☐

LOCATION ____ STAFF OR OPERATION ____ DEPT. OR SECTION ____ NO. ____

CLASS N ____ CODE ____ EXEMPT ☐ NON EXEMPT ☐ MONTHLY SALARY $ ____

HAS EMPLOYEE BEEN NOTIFIED OF { SPECIFIC REASON FOR TERMINATION? YES ☐ NO ☐
TERMINATION TWO WEEKS IN ADVANCE? YES ☐ NO ☐
FORD SERVICE DATE ____

INDICATE UNDER "REMARKS" YOUR OPINION OF EMPLOYEE, SPECIFIC REASON FOR TERMINATION, AND WHETHER FUTURE EMPLOYMENT SHOULD BE CONSIDERED

ADDRESS ____ (NO.) ____ (STREET) ____ (CITY) ____ (ZONE) ____ (STATE)

E REMARKS

APPROVALS

F-1 RELEASING: IMMED. SUPERVISOR ____ AUTH. OFFICIAL ____

F-2 ACCEPTING: IMMED. SUPERVISOR ____ AUTH. OFFICIAL ____

F-3 SAL. PERS. ____ PAYROLL ____

FOR USE OF SALARIED PERSONNEL DEPARTMENT

25 S-M-F
26, 27-28, 29-30 DATE OF BIRTH
31, 32-33, 34-35 EMPLOYMENT DATE
36 HIRE
37-38, 39, 40-41, 42-45, 46 LOCATION
47 CODE
48-51, 52 MONTHLY SALARY
53-55, 56 AMT. OF NEW ADJ.
57-58, 59 EFF. DATE OF NEW ADJ.
60-61 E-NE
62 TY. ADJ.
64-65 SAL. GR.
66-71 CLASSIFICATION NUMBER
72 CNT. ACCT.
73-74, 75-76, 77-78 EFF. DATE OF CHANGE
79-80 TY. OF CH.

INSTRUCTIONS

The Placement Section of the Salaried Personnel Department or the agency responsible for handling personnel transactions should initiate this form on Employment

EMPLOYMENT:	Initiate one (1) copy, completing Sections A, B, and appropriate section of F-3.

The immediate supervisor should initiate this form on Transfer, Classification Change, Salary Adjustment, and Termination. Any combination of Transfer, Classification Change, or Salary Adjustment may be initiated in one transaction. It is important to check the type (or types) of action in the appropriate box (or boxes) when Section C is used.

Personnel transactions involving Transfer, Classification Change or Salary Adjustment should be submitted to the Salaried Personnel Department ten (10) days prior to the effective date for the Lower Peninsula of Michigan; twenty (20) days prior to the effective date in locations outside the Lower Peninsula of Michigan. The effective date on Transfer, Classification Change and Salary Adjustment should be on either the first or sixteenth of the month

The specific reasons for all personnel transactions should be explained in detail under the "Remarks" section of this form.

TRANSFER:	Initiate two (2) copies completing Sections A, C-1, C-2, E, F-1, and F-2. (When transferring to the hourly payroll initiate two (2) copies completing Sections A, C-1, C-2 (Location only), E, and F-1.) Note: When transferring to a new geographical location, complete Section C-1 and "Location" only under C-2; the Placement Section of the Salaried Personnel Department or the agency responsible for handling personnel transactions in that location will complete Section B.
CLASSIFICATION CHANGE:	Initiate one (1) copy, completing Sections A, C-1, C-2, E, and F-2.
SALARY ADJUSTMENT:	Initiate one (1) copy completing Sections A, C-1, C-2, C-3, E, and F-2
TERMINATION:	Initiate one (1) copy, completing Sections A, D, E ~~and~~ F-1

FOR USE OF SALARIED PERSONNEL DEPARTMENT

EMPLOYMENT STATEMENT

I hereby authorize Ford Motor Company to deduct from any moneys due or owing me the sum of $3.00 for each Identification Pass, 50¢ for each Tool Check, 25¢ for each Locker Key, and the cost of any other equipment received by me while in its employ, which is lost or damaged, or, which I fail to return in good condition (except for ordinary wear and tear in the course of business) upon demand.

I understand that my employment is not for any definite term, and may be terminated at any time, without advance notice, by either myself or Ford Motor Company; that my employment is subject to such rules, regulations, and personnel practices and policies, and changes therein, as Ford Motor Company may from time to time adopt; and that my employment shall be subject to such lay-offs, and my compensation to such adjustments, as Ford Motor Company may from time to time determine.

I understand that medical information disclosed to the Company's examining physician is not for treatment as a patient and is not privileged.

I elect to become subject to the provisions of the Workman's Compensation Laws of the State of

____

____
(Employee's Signature)

At the bottom of the reverse side of the form, the section entitled "Employment statement" reads, in part, as follows:

"I understand that my employment is not for any definite term, and may be terminated at any time without advance notice, by either myself or Ford Motor Co.; that my employment is subject to such rules, regulations, and personnel practices and policies, and changes therein, as Ford Motor Co. may from time to time adopt; and that my employment shall be subject to such lay-offs and my compensation to such adjustments as Ford Motor Co. may from time to time determine."

Ford Motor Co. foremen are convinced that the adoption of the above conditions of employment by the company was for the purpose of discouraging membership and activity in the Foreman's Association of America and therefore consider it to be a "yellow-dog" contract.

FOREMEN DISCHARGED AT THE AGE OF 65 YEARS

Since the enactment of the Taft-Hartley Act the Ford Motor Co. has adopted a policy of discharging foremen upon reaching the age of 65 years, regardless of physical fitness, but no such rule applies to the rank-and-file workers who do manual labor under the foreman's supervision.

THE CASE OF CYRIL M'GUIRE

Mr. McGuire has been president of the Foreman's Association of America, chapter No. 239, Youngstown Sheet & Tube Co., Youngstown, Ohio, since its formation in 1944.

During the last 3 years, McGuire's associate foremen, doing the same or similar work, have received three increases in their salary, but McGuire has received no increase.

While no official of the company has told McGuire that the reason no increase in salary was granted was due to his membership and activity in the association, many foremen have told McGuire that officials of the company openly assert that his activity in the Foreman's Association is the reason why no increase was given to him.

EMPLOYER DISCHARGES 22 OF 25 FOREMEN EMPLOYED BY HIM

The Gerity-Michigan Die Castings Co., of Detroit, Mich., employed 25 foremen. All were members of chapter No. 295, Foreman's Association of America, and the association was recognized as the bargaining agent prior to the enactment of the Taft-Hartley Act.

In December 1947, the company discharged Carl Wilhelm, who was president of chapter No. 295, without any explanation—and within 3 months 21 of the remaining 24 members were discharged, and their jobs were taken over by new foremen who were not members of our association.

THE CASE OF ELMER GAYDOSH

Elmer Gaydosh was employed for many years as a foreman by the Republic Steel Corp. of Youngstown, Ohio, and he was president of chapter No. 266, Foreman's Association of America, where other foremen employed by the Republic Steel in Youngstown are members.

About the middle of 1948 Gaydosh was discharged by the Republic Steel Corp. No reason was given by the corporation for the discharge. However, at a chapter meeting shortly after Gaydosh was discharged, the foremen present were unanimous in the opinion that he was discharged because of his activity in the chapter.

Mr. Brown. I would also like submit for the record a statement by Donald E. Wray, entitled "Marginal Men of Industry: The Foremen." This article appeared in the Journal of Sociology, volume LIV, No. 4, January 1949, reproduced with permission by the Foreman's Association of America.

Mr. McConnell. May I ask, who is Mr. Wray?

Mr. Brown. He is connected with the University of Illinois.

Mr. McConnell. Does he teach sociology there?

Mr. Brown. Industrial relations.

Mr. McConnell. Thank you.

Mr. Bailey. If there is no objection, the article will be accepted for insertion in the record.

(The article referred to is as follows:)

Marginal Men of Industry: the Foremen

(By Donald E. Wray)

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The industrial foreman today does not not share in the decision-making process which is the core of managerial functions. He is instead a transmitter of decisions which have been made by his superiors, yet the tradition definition of the foreman's position and the current stated norms are based on the assumption that he has decision-making power. The disparity between expectation and experience produces personal conflict and disruption of managerial organization. The size of industrial units seems of less importance in producing this marginal situation than does the concentration of decision-making in top management and the imposition on foremen of rules made jointly by top management and worker unions.

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In the voluminous literature on first-line supervision in industry, there are two major concepts which have been used repeatedly in sociological writing in the technical literature of personnel and business administration. The first is that the supervisor or foreman as the first point in a clear-cut line of authority extending from the worker to the highest executive, thus playing the part of the key men of management, the firing line in union-management relations, and the most important link between management and the worker. This concept, variously expressed, rests on the assumption of a unitary system of control and two-way communication; it is at once an ideal and an assumed norm of industrial organization. It minimizes or ignores the impact of managerial specialization and worker unionization.

A second concept, arising from interest in deviations from the normative line concept, views the first-line supervisor as the man in the middle. Emphasis is placed on the fact that first-level management is subject to two sets of demands which are frequently in conflict; the foreman must satisfy both top management and his work force, which is usually organized. The man-in-the-middle interpretation is historical in that it stresses the progressive limitations placed on foremen through the growth of managerial specialization and the increasing pressure of worker unions. Supervision is considered as still within the traditional line organization but operating under severe restrictions.

It is the purpose of this paper to reexamine these interpretations and to suggest an alternative formulation of the position of industrial foremen. Neither concept seems to describe the functions and informal interpretations of supervision which the writer has observed in a number of factories. A few circumstances appear to be of major importance in understanding the role of first-line supervisors; the locus of the decision-making or managerial function; the focal points of union-management and employer-employee relations; the significance of size and complexity in management organization. The last-named has often been used to explain the decline in importance of the foreman in large-scale manufacturing enterprise. Many levels of supervision and the presence of many specialized staff departments restrict the power and authority of the foreman; they also tend to make relationships impersonal and indirect. The converse of this theory would be that foremen in smaller, less formal structures retain their broad powers over shop affairs and therefore are of considerable importance in managerial activity and in worker-management relations.

Unionization of the rank an file is commonly regarded as further limiting the supervisor's freedom of action and as setting up a type of relation between worker and management which parallels, and often conflicts with, the relationship established through the "line." Top management generally takes the position that, in the presence of a union, the foreman is still the primary representative of management, especially with reference to management policy and grievance procedure.

The role of foremen in managerial activity has been the subject of much discussion in recent years. Top management holds that the foreman plays an important part in decision-making, while the Foremen's Association of America states that foremen are mere representatives of management and have no power to make decisions. Restated, the question is whether foremen are active participants in managerial decision-making activity or are simply transmitters of these decisions. Here again the size of a given organization has been considered important, on the assumption that, with increased numbers of persons and a lengthened "line" organization, the share of foremen in decisions will be made smaller. Here, too, the converse would seem to be that, the smaller the organization, the greater the degree of integration of supervisors with active management.

Two cases are presented which afford comparison between a formalized plant with staff specialization and a small factory with a minimum of departmentalization. They are representative of many other factories and are not unusual in the degree of management specialization, efficiency, or disorganization, nor are they instances of exaggerated union-management cooperation or conflict.

Both cases were observed in their day-to-day operations over several months to ascertain the actual patterns of behavior of supervisors, union officials, and top management.

The first is a plant which is part of a network of factories operated by a single company. While it had only 600 employees, it was highly formalized, and staff functions were well developed, so that it possessed the organizational characteristics of larger factories. There were five levels of supervision: general manager, department manager, department superintendent, foreman, and assistant foreman. Operations were highly mechanized, and the flow of materials between departments required good coordination. Consequently the work schedules and techniques demanded planning and engineering.

The rank-and-file union had a company-wide contract with local supplementary agreements. Daily contact between union and management occurred through the grievance process and through a union-management committee which met every 2 weeks. Grievances supposedly started with the foreman and passed to higher levels. In practice, the foreman usually sent a grievance directly to his department superintendent, since "there is no point in bothering with something you can't do anything about." The foremen did handle requests for information, requisitions for equipment, and some personal matters.

Grievances which required technical or policy statements were passed on by department superintendents to department managers and then to the union-management committee. This body included department managers, the personnel director, and occasionally another staff head, and the union stewards and officials. In the committee, grievances were settled and plant policies and plans were developed and interpreted. All union representatives had first-hand knowledge of committee decisions and were active participants; no foreman had ever attended, and department superintendents came only rarely.

The foremen entered into hiring and firing only through the reports they made of worker performance; the power lay in the department superintendent and the personnel department. The supervisors kept records on productions and worker assignment and had little other function.

The second example is a small factory of 75 employees, run by an owner-manager who personified the functions of management. Rudimentary staff activities were performed by a small clerical force which had no real specialized authority. Supervision below the manager was vetsed in a shop manager and first-line supervisors. Organization, policies, and communication were less formalized than in the first case, though the line concept was present. The concentration of management functions in one person not only eliminate staff departments but reduced the amount of authority delegated to the line.

The union-management relation was defined in an industry-wide contract written by the international union and a manufacturer's association, with local supplements. Grievances and policy discussions were taken up by stewards and officers of the union with the owner-manager and occasionally with the shop manager. The supervisors were not included in any negotiations and were considered unimportant by both parties. The workers and their representatives looked on supervisors as either well-meaning people who had no power or as troublemakers who could be "straightened out" by consultation with top management.

The supervisors were limited to training, checking on work flow, reporting operating procedures, and keeping the necessary records. Hiring and firing and disciplinary problems were handled by the shop manager.

Comparing these two cases, it seems that in neither instance did the first-line supervisors enter into decision-making. In the larger factory, managerial activity was vested in the higher levels of supervision in combination with the heads of various staff units. In the small factory, the concentration of authority in one person led naturally to the exclusion of the supervisors. In both cases the foremen were reduced to the role of transmitter or interpreter to the rank and file. The significance of specialization as an element in reducing the power of supervisors has been fully recognized, but the concentrated authority of the owner-manager in small organizations has not been sufficiently emphasized. This tendency appears to counteract the relative absence of staff controls and is just as effective in relegating supervisors to a nonmanagerial position. The locus of decision making lies either in the owner-manager (in the small enterprise) or in a group of higher-level supervisors in the large organizations.

In each case the contribution of the foreman to union-management relations appears to be a passive one. The real issues are settled between union representatives and higher management, and the foreman is expected simply to conform to the joint decisions of these representatives. In both cases, the foreman is subject to pressure from either union or management; but, ultimately, when agreement is reached, he must follow the joint decision. Action by an individual foreman, which is rejected by workers is viewed, not as a threat to union-management relations, but as a problem to be settled by joint deliberation of union and management representatives—unless it is taken up to illustrate a general issue. The foreman must be viewed as the recipient of union-management agreement or conflict rather than as a positive contributor to union-management relations. This passivity differs sharply from the traditional assumption that the foreman is an active force in determining this relation.

In both these instances the workers were organized. It is likely that, in cases where the rank and file are not organized, the foreman can play a more important role in employer-employee affairs. In the absence of a union, the relation between worker and management resembles the personnel relation, and the foreman can implement personnel policies with considerable freedom. Under these circumstances, first-line supervision can be of great importance in deciding employer-employee relations. Where unionization has occurred, however, the foreman cannot exert much influence on the bargaining relation, though he may implement some personnel policies. Here he is usually limited by the direct activitiy of the personnel department.

Since the general pattern of union-management relations and in many cases the day-to-day differences are settled by top management without the inclusion of first-line supervisors, it seems that it is entirely erroneous to view the foreman as the key man in this relation. He is rather a person who enters secondarily as the implementor of policies which have already been decided, and his success or failure depends on his ability to act on them, instead of on his own positive actions. Any deviation from union-management decisions will bring forth censure from one or both sides, but in no case can the supervisor himself enter into the formulation of the rules under which he works. This activity is vested in the union officials and higher management. The supervisor gets criticism from both management and union, but he is pushed aside when decisions are to be made.

It is also important to note that in larger organizations the decision-making function tends to reside, not in any line supervisor but in a group of persons representing the various specialized functions of management. In many cases this entire group meets when union-management negotiations are to take place. The simple unitary line breaks down and is replaced by a committee type of organization. This same tendency has been noted at the foreman level and was deliberately arranged by Fayol in his famous experiment with "functional foremen." First-level supervision still in most cases requires the coordination of several functions; this is more effectively and efficiently accomplished by one person than by several. However, it is questionable whether the functions which are so correlated are any more important than those which might be delegated to any minor staff employee. In many instances it seems that the lowest line supervisor is of no greater importance than many staff members; in other words, the first level of supervision is no longer a position of special importance.

This discussion suggests that neither the conception of the foreman which insists that he is an integral part of the "line" nor the suggestive phrase "the man in the middle" indicates accurately the nature of the difficulties of his position. The foreman, as is shown in these two instances, is less than a full member of the management lines; he shares with those higher up the responsibility for carrying out policies but does not share in the making of them. Furthermore, his position differs from theirs in that those higher up give orders to people who are identified with management, while the essence of the foreman's job is that he must transmit them to people who are clearly not of management. In short, the position of foreman has some of the characteristics of management positions but lacks other crucial ones. Such marginal positions are common in society, and there is reason to believe that they are especially difficult to occupy effectively and with peace of mind. With respect to management, the foreman's position is peripheral rather than in the middle. The poor fellow is in the middle, of course, in the sense that a person may be the middle one of three in bed; he gets it from both sides.

It is characteristic of such marginal positions that the people who occupy them consider that they are special victims of the disparity between social norms and social reality. Foremen express this in the phrase "They say we are part of management, but they don't treat us that way." The implication is that they feel pressed to live up to the role of members of management, without being given the reward of full participation. This is a common feeling of people in minority or marginal positions. It presents them with a dilemma which results in a good deal of personal conflict. Sometimes they attempt to solve the conflict, individually or collectively, by defiantly adopting an alternative role; in the case of the foreman, that of the worker who may organize a union for bargaining with management. In at least one instance known to me, the presentation to foremen of a training course was an important factor in precipitating the organization of a foremen's union. The course emphasized their importance to and identification with management, thereby sharpening the foremen's consciousness of the cleavage between the expected norm held before them and the realities of their experience.

Mr. BROWN. Mr. Chairman, most employer organizations and individual employers appearing before this committee have pleaded for the retention of that part of the Taft-Hartley Act which would deny the supervisors of this Nation access to the National Labor Relations Board. The Foremen's League for Education, through Mr. Jeffrey, appeared here last week and stated that it represented approximately 250 industrial concerns. Now, his statement does not differ materially from that advanced by most employers in opposition to the different foremen's plans.

I would like to make a comparison, if I may, of the position of the Foreman's Association as against that proposed by the employers. Mr. Jeffrey, in his statement, and I quote in part, said:

> The league is a nonprofit organization organized for the purpose of promoting educational work among the foremen and supervisors.

On page 268 in his testimony[1] he states that his organization is supported by 250 industrial concerns—

> and each industry which subscribes for membership is entitled to remain a member on the basis of $100 per year per member.

And on page 271 of his testimony he said:

> Each company may name its president; it may name its vice president or its director of personnel. We make no claim, Mr. Congressman, that the Foremen's League has no members who are not foremen. That is not true.

Now, from this statement, we find that her is an organization composed of presidents, vice presidents, and personnel directors of these industrial concerns, coming before this committee and purporting to represent them, and in the interests of foremen. And, in the name of education, they claim that foremen are not entitled to the privilege of the act.

On page 267 of his statement, he said:

> The Foremen's League takes no interest in any single question other than the compulsory recognition by management of foremen's unions.

We claim that this organization is just a front for the employers in opposition to the lifting of the ban on the right of foremen to have access to the National Labor Relations Board, and they have no right to speak for foremen at all, because foremen are not members of that organization.

I would also like to compare the position of foremen in industry with that of the professional workers, who have the same privileges as other employees before the National Labor Relations Board. Representatives of the Professional Engineering Societies appeared before this committee on March 10. In their statements, they used the language of the Taft-Hartley Act defining the term "professional employee." Section 2 (12) of the Taft-Hartley Act says that the term "professional employee" means:

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[1] Page numbers refer to original transcripts.

> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
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> (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as designed in paragraph (a).

No such high qualifications as that are required of the foreman.

Among the professional employees are such titles as chemists, architects, design engineers, and scientists, and lawyers. And those professionally trained and professional-minded employees come within the coverage of the labor laws.

Now, it is common knowledge throughout industry that professional engineers, architects, and scientists are most appropriately a part of the management team than our supervisors. Their conditions of employment are not regimented like that of supervisors. Their rate of pay is higher than that of foremen prone to union organization—yet foremen are denied coverage of the labor laws.

The sixth paragraph on page 2 of the brief reads as follows:

> A fundamental difficulty with the Wagner Act, as it affected professional employees, was that no distinction was made between professional and nonprofessional employees in spite of the fact that their viewpoints and abilities are inherently different and that their conditions of employment cannot be made subject to a common standard.

We agree with this statement; however, foremen's jobs are standardized, yet they are denied the same protection professional employees have under the Taft-Hartley Act. The last paragraph on page 2 reads as follows:

> Professional service, even though rendered by an employee, is predominantly intellectual and varied in character. Constant demand exists for originality and creative thought in the solution of problems presented with each new undertaking. Technical skill is only a part of the equipment of a professional person. There is no yardstick by which creative ability can be measured. Individual talents vary and every person possessing a professional attitude constantly strives to expand his knowledge and improve his abilities in his chosen field to the end of personal excellence, personal advancement, and the betterment of his profession. Strict regimentation of professional employees is incompatible with the maintenance of true professional standards.

The Foreman's Association says that it is in complete agreement with this statement for strict regimentation of professional employees is incompatible with the maintenance of true professional standards. Therefore, the position of most professional employees is on a higher level than that of foremen whose job duties are to a great degree standardized.

Paragraph 2 on page 3 of the brief reads as follows:

> To attempt application of the same standard of measurement for services of professional men and nonprofessional men is not in the public interest. The

output of professional employees cannot be standardized as can that of manual and skilled labor. It cannot be measured in terms such as the number of brick a man should lay in a given number of hours, the number of cubic yards of dirt that should be moved, the square yards of painting, the amount of type to be set, bolts to be placed, feet of conduit to be laid, or in terms of any other similar unit.

This clearly shows that the professional employees enjoy a greater latitude of discretion and prerogatives in respect to hours worked and shop privileges than the foreman whose area of discretion is blueprinted and latitude confined to his division or department.

Paragraph 3 on page 3 of the brief reads as follows:

> The productive output of the professional man is largely that of his mind, while that of the nonprofessional depends largely on his manual skill and dexterity. No law by which professional employees and those engaged in routine, mental, mechanical and physical work must conform to the same regulatory pattern is a just law. It is unjust alike to the laborer, to the nonprofessional white-collar worker, to the professional man, to their employers, and to society.

This statement again points out that professional employees' work is not regimented like that of the foremen—yet foremen are denied the protection under labor laws granted to professional employees.

The succeeding paragraph on page 3 reads as follows:

> In spite of all this, prior to enactment of the present law, professional employees often were included against their will in heterogeneous groups and compelled to accept representation which they did not desire in collective bargaining procedure. The results were most unsatisfactory. There was serious effect on the morale of the professional employees and generally poor relationships developed between those employees and labor unions and employers."

Even professional-employee groups recognize the regulatory pattern of the nonprofessional worker and the foreman.

The sixth paragraph on page 3 reads as follows:

> We accept the principle of collective bargaining as a right of employees, professional and nonprofessional, but we firmly believe that there should not be any submergence of the desires and interests of professional employees. The background, education, training, and work interests of professional employees and nonprofessional employees are inherently divergent. It is futile to expect that a forced grouping of the professional and nonprofessional employees in any plant or organizaion could possibly form an "appropriate bargaining unit." Under the old law and its administration, such plainly inappropriate groupings were made and, by fiat, were declared appropriate. We do not consider that to have been the intent of Congress.

The background, education, training, and work interest of professional employees and nonprofessional employees are inherently divergent. This statement is self-evident, and points up the high qualifications a professional employee must have in order to qualify as such. No such high qualifications are required of the foreman.

Paragraph 1 on page 4 reads as follows:

> One of the first cases decided by the NLRB was Matter of Chrysler Corporation (1 N. L. R. B. 164) wherein, in referring to design engineers, the Board said: "It is true that this work requires a considerable degree of skill and more or less imagination. There is nothing, however, peculiarly personal in the relationship between the company and its many hundreds of engineers. They are in no sense executives. The engineers have need of organized strength in common with all wage earners."

This paragraph refers to design engineers, and the National Labor Relations Board found that those engineers have need of organized strength in common with wage earners, and found that they are in no sense executives. Yet it is common knowledge in the industrial field that working conditions of design engineers are at least on a par and generally above those of foremen, and are more closely related to the management team than our supervisors. The rate of pay for design engineers is higher than that paid to foremen.

Paragraph 3 on page 4 reads as follows:

> In Black & Decker Electric Company (47 N. L. R. B. 726) the following unit was prescribed: "Employees in the accounting, cashiers, pay roll, cost, sales, service, production, material control, purchasing, personnel, stores, receiving, shipping, experimental, mechanical engineering, and tool and processing engineering departments."

The mechanical engineer in most industries is not prone to unionization, and in many plants foremen work under the jurisdiction of the mechanical engineer—yet the engineer is considered a professional employee and as such is entitled to the benefits and protection of the present labor law, and the tool processor's job duties and rate of pay and general working conditions are on a par with that of a foreman, but the foreman is denied protection under the act.

The eighth paragraph on page 4 of the brief reads as follows:

> The early cases also illustrate the difficulty which confronted the Board in attempting to apply standards for classifying professional employees. The original act contained nothing in the way of definition and the various concepts of professionalism naturally had no firm basis. Without a statutory guide, the application of standards for determining professional status wavered according to the individual concepts of the Board member or the examiner and left the professional public in a constant state of uncertainty.

This paragraph illustrates the difficulty which confronted the Board in applying the Wagner Act to professional employees. The same is true with respect to supervisory employees until the Supreme Court decision in the Packard case in March of 1947 which upheld the Board's decision in applying the act to supervisors.

Paragraph 5 on page 5 of the brief reads as follows:

> Any misapprehension that the professional sections would be used to deny collective bargaining rights to professional employees was dispelled by the Board in the Lumberman's Mutual Casualty Co. of Chicago case (75 N. L. R. B. 1132) wherein the Board rejected the argument of the employer that a number of attorneys involved were not employees within the meaning of the act because they were professional employees. The Board's opinion clearly stated the opposition principle to be true, stating: "We are of the opinion, therefore, that the mere fact that the attorneys are professional personnel does not preclude them from being employees within the meaning of the act, and entitled to its benefits, and we reject the employer's contention in this respect." Later in the opinion the Board stated: "That the attorneys have a statutory right to self-organization cannot be denied. If doubt ever existed, it has been removed by the * * * act * * * which defines 'professional employees.'"

This paragraph clearly shows that even attorneys are professional employees and as such have a statutory right to self-organization. It is our contention that foremen are in a greater need of a statutory right to self-organization than attorneys. There are approximately 531 Members of Congress in both Houses; of the 531 there are, I believe, 371 attorneys who in the opinion of the citizens of the United States were best qualified to represent them in the Nation's Capital. Now is it conceivable that the 371 attorneys, prior to their election of last November, were in a greater need of a statutory right to self-organization than shop foremen. It is our contention they were not.

On page 6, paragraphs 1 and 2, read as follows:

> To the same effect in Worthing Pump & Machinery Corp. case (75 N. L. R. B. 80) in which the Board states: "* * * the statute itself refutes the respon-

dents contention that employees like the ones in question are to be deprived of employee status because of the nature of their duties. * * *"

> These cases effectively dispose of any contention that the collective bargaining rights of professional employees will be destroyed or diminished. In fact, the Board now has ample statutory authority to confirm its position. Likewise disposed of is the misconception that the provisions will operate to the undue advantage of employers. The above cases clearly indicate that although the employers opposed collective bargaining rights for the professional employees, the Board had no difficulty in applying the act to support such rights.

These statements should refute the misconception about applying the labor laws to foremen.

On page 7, paragraph 5 reads as follows:

> The professional provisions have not operated to the advantage of the employer or to the disadvantage of nonprofessional labor organizations. The rights of the professional employees have been fully protected and their actual bargaining strength greatly enhanced. As distinguished from "splinterization," the professional sections have instituted a proper and workable solution to the problem posed by employee organizations containing divergent elements.

The rights of professional employees have been fully protected—their actual bargaining strength enhanced. The same statement is applicable to supervisors without operating to the advantage or disadvantage of the employer.

Mr. Chairman, at this time I would like for Mr. McNally, a former foreman of the Murray Corp., to make a statement about the Murray foremen.

Mr. Bailey. The Chair would like to ask you at this time to hurry along with your presentation, because there may be questions that some of the members of the committee would like to ask. So be as brief as possible.

TESTIMONY OF WALTER McNALLY, WYANDOTTE, MICH., FORMER FOREMAN, MURRAY CORP. OF AMERICA

Mr. McNally. Mr. Chairman and members of the congressional committee, my name is Walter McNally. I am from Wyandotte, Mich. I was a supervisory employee for the Murray Corp. of America from 1935 to 1943. Today I am a shoe retailer. I know whereof I speak, because I am constantly informed of the happenings at Murray by members of management, supervisors and labor and present employees who are my friends.

Last week a man testified before this committee that the supervisory employees of the Murray Corp. of America had nothing to gain through membership in a foremen's union. The person who so testified has presented a completely false account of conditions at the Murray Corp. of America, and I am asking that his testimony be regarded by you for what it is: The words of Murray management presented to you by one of its "Charlie McCarthys"; a man who cannot call his soul his own; a little man, living in a fool's paradise of false security.

I am here because no Murray foreman would dare sit here and tell you the honest facts. Any foreman so doing would be signing his own "pink slip." A foreman daring to tell the truth would be fired immediately. I know this personally, because it happened to me in 1943, after testifying before the House Committee on Military Affairs regarding Howard Smith's bill which would have outlawed foremen's unions.

Please understand that the problem of salary is not to be argued. Murray foremen are among the highest paid in industry today. The salary problem was solved for all Murray foremen, in all of the corporation's plants, when the supervisory employees of the Ecorse, Mich., plant of the Murray Corp. of America successfully organized in 1942.

The problems today of Murray foremen other than salary are the same as those that caused their organizing efforts in 1942—at least as bad—perhaps worse. But the good foremen at Murray today can not successfully organize to correct the existing bad conditions because of limitations put on foremen's unions by the Taft-Hartley Act and the methodical firing of all foremen who potentially could lead such a union.

Many of my friends, well qualified in their particular line of work, have been fired—fired unjustly and replaced by men who would be the humble servants of Murray management, such as the little fellow who testified last week. Here is a partial list of able foremen who have been fired or demoted, solely for the reason that they favored unionization:

Frank Balcom, a very fine supervisor and so regarded by the company until he succeeeded me as president of the foremen's union; Harry Futrell, another able production foreman who was fired after succeeding Balcom as president of the foremen's union; and then systematically the Murray management fired Kenneth Jacobson, Gerald McIntyre, Andrew Archibald, Gobel Hubbard, Harry Hrdlicka, William Allen, Jack Scherer, LeRoy Listan, Vincent Crooks, George Kesler, and others whom I cannot recall at this time. Many of these served the company well.

Mr. Bailey. May I, for the benefit of the committee, explain that under the rules of the House, this committee cannot continue to function while the House is in session in the Committee of the Whole considering legislation. We will have to discontinue the hearing. We have a roll call. It is necessary that the members of the committee go to the floor. So the committee will stand in recess until 2:15. If the gentleman cares to present the rest of his statement for inclusion in the record, we will accept it.

Mr. McNally. You will resume at 2:15, then?

Mr. Bailey. We are resuming at 2:15.

Now, may the Chair inquire whether there are any other presentations from your group, other than Mr. McNally's?

Mr. Brown. Yes. Mr. Phillips has a statement to make.

Mr. Phillips. It will take 6 minutes.

Mr. McNally. Mine will take only about two more minutes.

Mr. Bailey. We will resume the hearing, then, at 2:15 p. m. The committee will stand in recess until that time.

(Whereupon, at 12:25 p. m., the subcommittee recessed until 2:15 p. m. of the same day.)

AFTERNOON SESSION

(Pursuant to recess, the subcommittee reconvened at 2:30 p. m.)

Mr. Bailey. The subcommittee will be in order.

At this time the committee will resume hearing Carl Brown, president of the Foreman's Association of America and his associates.

I believe one of the gentlemen was reading from a manuscript when the committee recessed.

TESTIMONY OF WALTER McNALLY—Continued

Mr. McNally. I will take up where I left off, Mr. Chairman.

Mr. Bailey. You may proceed.

Mr. McNally. I had just finished giving the names, individually, of the men who were fired by the Murray management, and there were others whom I cannot recall at this time.

Many of these had served the company well for over 20 years.

There were only 65 of us in 1942; not many of those top-flight supervisors are left now at Murray-Ecorse. The cruel ruthless Murray management has pretty well taken care of them. These fired foremen were invariably replaced by men from the outside—none of whom had any previous experience or knowledge in the manufacture of automobile frames. Murray hasn't fired all of the foremen who were members of our organization, but I do predict they will all be let go just as rapidly as the outsiders can be trained to run their jobs.

Why is Murray firing the old foremen and replacing them with inexperienced, inefficient help? The answer is that Murray, along with other parts suppliers and auto manufacturers, generally have set down a policy that they will have nothing to do with a foreman's union. These old foremen are union-minded.

When the Murray-Ecorse Supervisors' Association was accepted by the corporation as the bargaining agent for its foremen in all matters pertaining to rates of pay and working conditions harmonious relationships were enjoyed universally throughout the plant.

Foremen who prior to unionization had not been cooperative became helpful to one another; the workers under the foremen took a completely different attitude toward us, and became trusting, rather than distrustful and suspicious; management, too, assumed a new attitude; and wholly the atmosphere was cleansed of the treachery and political intrigue which had existed and been the prime factors in determining promotions, demotions, and firings. These are the facts, contrary to the mouthings of the Murray management and its spokesmen.

The Taft-Hartley Act made it possible for the foremen's union to be smashed, and now the corporation has returned to the old system of political alliance in determining who shall and who shall not be given honest, proper demotion or promotion. As an illustration, one of the general foremen states—

> Now I've got seven new foremen under me, each backbiting and stabbing the other in the back; my department record is bad; I could have complete efficiency if I only had two of my old foremen back.

The Murray mouthpiece who appeared last week before you asked how he could maintain discipline and production standards if he was in the same union with his subforemen. Let me answer by saying I had many more foremen working under me than he has, and we had efficiency, we had discipline, we had everything that makes job performance easy; knowledge, ability, and cooperation. He will never get that under the system he so weakly has subscribed to. He said he manages his department. Why, that poor fellow has no more knowledge of dollar distribution than the lowest laborer under him.

Gentlemen, I could continue a long time on the fallacies of management's proposal that foremen should not be given the same rights granted all Americans under the Constitution, but time is short and time is valuable. I honestly urge you, you who have the power to change the laws and give these foremen their freedom, free them from fear of their jobs; give them the same rights allowed any other group. The past Congress took these rights away by passage of the unfair Taft-Hartley Act. You can correct the injustice which the Eightieth Congress performed.

Thank you.

Mr. BAILEY. I believe one of the other gentlemen has a presentation?

Mr. PHILLIPS. Mr. Chairman, I would like to preface my remarks by saying the only reason I am here is because Mr. Herman L. Weckler, vice president and director of the Chrysler Corp., has recently broadcast a statement in which he claims to have submitted to both the Senate and House Labor Committees.

My membership insisted that I come down in my own humble way and endeavor to answer the statement of Mr. Weckler as to what the true position of foremen is in industry today.

TESTIMONY OF GEORGE C. PHILLIPS, FOREMAN, CHRYSLER CORP., DETROIT, MICH.

Mr. PHILLIPS. Mr. Chairman, my name is George C. Phillips; I am a foreman in the Dodge Division of Chrysler Corp., located in the Detroit metropolitan area, and am first vice president of the Foreman's Association of America.

I left my work in the shop last Friday in order to appear here on behalf of organized foremen, and hope to be able to return to the plant on Tuesday. I have worked in factories since I was 12 years old, and have been with my present employer since 1924, and have been a supervisor since 1933.

Foremen at Dodge Main do not hire their own help—the help is brought in by the employment department. The rate of pay the new employee will receive is determined by the classification in which he is hired. The number of employees assigned to a group is determined by the amount of money allocated by the time study department for the production or assembly of a given number of pieces. The equipment to be used in manufacturing or assembling the product is determined by plant engineering. The tools to be used are specified by the master mechanics' department. Quality standards are controlled by the inspection department. The final interpretation of the contract between the employer and employees, other than supervisors, is the function of the labor relations department.

It will be readily seen from the foregoing that the foreman in carrying out his numerous responsibilities is compelled to meet many conditions which he has little, if any, part in setting up. He may not hire the men or women needed but he is responsible for their training and behavior. He may after a reasonable trial recommend that they are unsuited for the type of work in his group or department. He does not have any part in setting up schedules but he must meet them. He does not set the wages of the worker or the price allowed for making or assembling the product, but he is responsible for reconciling the two factors in terms of efficiency. In other words though, wages and salaries are fixed quantities. The mass-production foreman is practically operating on a piecework basis.

The foreman must endeavor at all times to keep his people satisfied under, or should I say despite, conditions which he had no hand in setting up. He must report equipment failures and tool wear, check his working area for air, steam, or water leaks, keep absentee records of his people, keep a daily absentee chart, make a daily efficiency report and a weekly absentee report. He may discipline his people in a manner prescribed by others, usually the labor relations department.

Though the foreman does not control quality standards, he must maintain them. As an agent of management, the foreman fulfills his many responsibilities and through cooperation with other foremen usually meets most, if not all, of the varied requirements of management. In a large mass-production plant, cooperation is essential to the success of the undertaking, and it is my experience that since Dodge foremen have been organized, cooperation has increased greatly and benefited both foremen and management.

Much has been made of what is done for foremen by management. Allow me to make a comparison: The rank-and-file workers have access to group insurance and hospitalization at their own expense; they have six paid holidays per year; if they work on a holiday they receive an additional day's pay; they receive 2 weeks' pay in lieu of vacation and may take a vacation if they so desire; they do not receive sick pay and are replaced during their absence, and they have no retirement plan.

Foremen have access to group insurance and hospitalization at their own expense; they have six paid holidays a year; if they work on a holiday they do not receive any additional pay; they receive limited sick pay and are not replaced during their absence—thus after the limited sick pay expires the company is saving their salary. Foremen receive 2 weeks' vacation with pay; they are not replaced while absent—their task is covered in some fashion by other foremen.

Rank-and-file workers receive time and one-half for all overtime, double time for Sunday; foremen are not paid for overtime except Saturday for which day they receive the equivalent of 30 percent of a week's salary, roughly, time and one-half. Foremen do not receive any pay for working Sunday, but are told they may take a day off later on.

Foremen do have a retirement plan to which they subscribe a small amount of the cost; the amount each foreman may receive on retirement varies. In my particular case, if I live to the retirement age of 65 years, I will have been with the corporation 37 years and expect to receive $10 per month.

Much has been said about the prestige and dignity of the foreman's position. These qualities are not conferred by the position, they are inherent in the person and are at times impaired by some unfortunate act of management such as occurred in 1948, when the rank and file were out on strike and foremen were put to work emptying trash from wagons and shoveling it into the incinerator. Incidents of this nature do not help the foremen to command the needed respect of the people who work under them.

Under the Taft-Hartley law foremen have the right to organize, but are denied protection of that right under the law when they attempt to exercise it. I am convinced that foremen must have protection under the law in their efforts to organize in order to take them from under the dark shadow of economic insecurity which ever hangs over them as they go about their daily tasks, knowing deep down in their hearts that should their very livelihood be threatened by the action of management there is no available grievance machinery through which they can seek relief, nor is there any proper court to which they may appeal for redress against any improper action of management.

I will conclude by saying that during my 16 years as a supervisor I have never had reason to believe that I am a part of management—I am an agent thereof. I am convinced that foremen, if given protection under the law for their right to organize in a boni fide foreman's union and bargain collectively with their employers, or matters relating to their own well-being, will prove to employers that organized foremen are a boon to industry, and definitely will not create the chaos so fearfully predicted by the manufacturers' representatives.

I thank you.

Mr. BAILEY. Mr. Brown, the chairman would like to inquire of you at this time, in view of your position as president of the Foreman's Association of America, do you or your foreman's group desire and need collective bargaining?

Mr. BROWN. That is true, Mr. Chairman.

Mr. BAILEY. To what extent do you have collective bargaining?

Mr. BROWN. It is not widespread, but in spite of the Taft-Hartley Act most of those employers have recognized the association prior to the enactment of the Taft-Hartley Act and do recognize it today; and, I think, there is a significant point there inasmuch as no employer recognizing the association as the collective bargaining for their foremen, has appeared before this committee in opposition to lifting the ban on supervisors' right to organize and bargain.

Mr. BAILEY. The opposition to your foremen's union appears to be coming from the large corporations; is that true, in the main?

Mr. BROWN. It is coming from large corporations and from individual employers. However, Kaiser-Frazer Corp. is considered a large corporation, and they recognize us as bargaining agent for their foremen. In fact, if I may, I would like to cite for the record the testimony offered by Mr. Harry Morton, industrial relations counsel for the Kaiser-Frazer Corp., before the Senate Labor Committee last month. It reads as follows:

> I am industrial relations counsel for Mr. Kaiser and for all of the companies which he controls or manages, among them being the Kaiser-Frazer Corp.
>
> I came here at the request of Mr. Carl Brown, president of the Foreman's Association of America, and not as a prophet, a teacher, or to give you any advice, but solely to tell you in an honest manner just what the relations of our company and his association have been.
>
> I think the Foreman's Association is entitled to it, and I appear here as a representative of the Kaiser-Frazer Corp. in that respect.
>
> I have not prepared any statement. Unionized foremen are nothing new to us. We are engaged in quite a varied number of enterprises. One of our earliest was construction, the construction of large dams and bridges. During the war we operated a number of shipyards, aircraft factories, and so on. We still have a lot of various plants in operation. In construction all of our foremen are members of unions, members of particular unions in which the workers were members. During the war in our shipyards, the foremen—that is, the first-line supervision, the lead men—belonged to the union, and the foreman immediately above them likewise belonged to the union. I think it is a well-known fact that during the war we had around 250,000 people in the yards, and we had neither any work stoppage or labor conflicts. The only work

stoppage that took place at all was the stoppage which lasted no longer than about an hour, and it was a jurisdictional dispute where a group of employees undertook to organize another union, and it failed.

The first experience we had with the Foreman's Association of America was at the aircraft factory known as Kaiser Fleetwings at Bristol, Pa. The Foreman's Association was certified by the Board.

We contested before the Board the inclusion of general foremen in the certification. The Board did certify general foremen, as well as foremen. We have never formalized a contract with Kaiser Fleetwings. We have gone along from the time of the certification until now on an exchange of letters of understanding. We have never had a dispute, and we have never had a difference of opinion.

The next experience that we had with the Foreman's Association was when the National Labor Relations Board on October 14, 1948, certified the association as the representative of foremen and general foremen at the Willow Run plant. At Willow Run at peak, we had 500 foremen—540 foremen, and general foremen, and we have now 375, the balance being temporarily laid off. We negotiated our first contract on December 2, 1946. That contract does not contain——

Mr. Bailey. I would like to say to the gentleman at this time that you are talking on my time, now, you know.

Mr. Brown. I am sorry.

Mr. Bailey. I have one more question to ask you, and my time is just about up.

Mr. Brown. I am sorry. I did not realize that.

Mr. Bailey. Can unions composed solely of foremen be effective in dealing with their employers?

Mr. Brown. Yes, that has been our experience, Mr. Chairman. It has been said that unions of solely foremen cannot be effective without the aid of other unions. That has not been our experience. We are an independent association composed solely of supervisors, and are in no way affiliated with any other union, and we have been able to negotiate equitable working conditions with the employers who recognize our association.

Mr. Bailey. Your trouble appears to be that you do not have any recognition, or do not get any recognition from the National Labor Relations Board; is that true?

Mr. Brown. The Board is prohibited under the Taft-Hartley Act from handling any of our complaints, either representation cases or unfair labor practices.

Mr. Bailey. I believe that is all.

Mr. Jacobs?

Mr. Jacobs. I will yield you some time, Mr. Chairman, if you want it.

Mr. Bailey. Go ahead, if you have some questions.

Mr. Jacobs. I do not know whether I understood the gentleman correctly, or not.

What did you say your pension would be after you had worked for what? 37 years?

Mr. Phillips. I expect to receive $10 per month. That is the language of my statement.

Mr. Jacobs. What company do you work for?

Mr. Phillips. Chrysler Corp.

Mr. Jacobs. How many foremen are there in Chrysler Co.?

Mr. Phillips. I would say they have 3,000 foremen in the country, and in the plant in which I work there are over 700.

Mr. Jacobs. When did this pension arrangement first obtain?

Mr. PHILLIPS. It has been going on for some time and, I believe, historically was established after the death of Walter P. Chrysler, who left in trust a certain sum of money to be devoted for that purpose.

Mr. JACOBS. Did you bargain on that?

Mr. PHILLIPS. No.

Mr. JACOBS. When did you hire to Chrysler?

Mr. PHILLIPS. 1924.

Mr. JACOBS. Was anything said about a pension at that time?

Mr. PHILLIPS. No. I hired as a worker at that time. I was placed on supervision in 1933.

Mr. JACOBS. Was there anything said about a pension at that time?

Mr. PHILLIPS. No, sir.

Mr. JACOBS. Has Chrysler ever recognized the Foreman's Association?

Mr. PHILLIPS. Only by remote control.

Mr. JACOBS. What is the relative pay of your highest 10 percent production workers, as compared with your lowest 10 percent of foremen?

Mr. PHILLIPS. The Chrysler formula establishing the pay of the lowest level of supervision, according to Mr. Herman Weckler, was that they shall receive not less than 25 percent more per hour than the lowest of the group which he supervises; not the highest man.

In my group it is $1.56 an hour.

Mr. JACOBS. So you get 25 percent more than $1.56?

Mr. PHILLIPS. That is straight time; yes. Pardon me, mine is not straight time; it is on a salary basis, but if you are absent for any other reason except an excused reason then they break it down on an hourly basis of 2,080 hours per year.

Mr. JACOBS. Mr. Brown, do you know how many foremen there are in General Electric?

Mr. BROWN. I do not know the exact figure, but in the plants that are organized, in which we are familiar with the ratio of foremen to employees supervised by the foremen, is about 1 to 20 and, I think, that the figure for General Electric would run perhaps around 7,000, because of the fact they employ about 20,000 more employees than the Ford Motor Car Co. does, and they have 6,500 foremen.

Mr. JACOBS. The reason I asked is because the General Electric has a questionnaire out, and I wrote and asked them a number of questions, and among the questions I asked them was how many foremen they had, and the answer I got stated, "It is true that in some of our plants there are a large number of foremen."

That is the only answer I got. I just thought you could give me some information.

Mr. BROWN. I believe 7,000 would be a fair figure.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Velde?

Mr. VELDE. I am sorry I was not here to hear your testimony, Mr. Brown.

How many members are there in your association?

Mr. BROWN. In good standing, today, I would say there are 20,000 members. I do not have it up to date, or I do not have the up-to-date report, but I believe that would be within a few hundred either way, of 20,000.

Mr. VELDE. Are those all foremen at the present time, and hold jobs as foremen?

Mr. Brown. Yes.

Mr. Velde. Do you know how many there are, the total number of foremen in the country?

Mr. Brown. I would say there are in excess of 2,000,000 that are not part of management.

Mr. Velde. When you say they are not part of management, do you mean that in your organization they are the only ones that are not part of management?

Mr. Brown. Not our organization, no; maybe I do not understand your question.

Mr. Velde. You claim to be a part of management?

Mr. Brown. I mean this, that the supervisors that we represent, and who belong to union organization, are supervisors whose jobs are blueprinted for them, and they have no job in formulating policy. They act the same as a traffic cop does, just carrying out the rules.

Mr. Velde. But there are some—and I think you said chiefly in the smaller plants—who are actually a part of management?

Mr. Brown. If they are, they are not eligible for membership in our organization.

Mr. Velde. How do you distinguish those who are eligible and those who are not eligible?

Mr. Brown. Because any supervisor who has the authority to assist in formulating the employer policy is not eligible for membership in our organization.

Mr. Velde. You mentioned the Taft-Hartley Act prevents the organization of foremen. You are in favor of lifting that preventive measure so that foremen could organize and become subject to collective bargaining?

Mr. Brown. Yes, with the same access to the National Labor Relations Board as other groups of employees.

Mr. Velde. Do any of you gentlemen hold a card with either the CIO or the AFL unions?

Mr. Brown. I do not, and I do not know any member of the association who does. At one time I was a member of the UAW-CIO, and when I was promoted to supervision I immediately took a withdrawal card.

Mr. Velde. What are your wages as compared to the highest union man in your plant?

Mr. Brown. I do not happen to be working in the plant. I work for the association, but our records——

Mr. Velde. I do not mean to ask you particularly. Any of the other gentlemen could answer.

Mr. Phillips. I can only give you the figures for my own plant. I would not undertake to give you the figures as to what Ford Motor Car pays. The Chrysler formula of the lowest level of supervision is they shall be paid not less than 25 percent more than the weighted average of the group, as I explained to Mr. Jacobs.

In other words, we have a range from $1.55 to $1.65, within the structure of my particular group.

Mr. Velde. Is that on an hourly basis?

Mr. Phillips. That is on an hourly basis. Of course, I am paid on salary, but that is the way my differential between the hourly rates and my salary is computed.

Mr. Velde. Would you have any purpose in mind of organizing to get higher wages, or what would be your purpose in desiring to organize?

Mr. Phillips. That would be one reason, and one reason only. The chief reason in my mind, and at my age, is that I would like to have some feeling of security in my position.

Mr. Velde. We cannot blame you for that. We all want that. But you would not be able to retain any of the rights of management and become a part of management.

Mr. Phillips. No, I would not.

Mr. Velde. I think that is all.

Mr. Brown. Mr. Chairman, if I may, just to enlarge a little bit on the question you asked about the differential in pay received by the lowest level of supervision, and the people that they supervise:

Our records show that the Chrysler's first level of supervision receives a much higher differential than the average is for other foremen in other industries in other plants. In some cases where overtime is worked, while the foremen work the same amount of hours as the people they supervise, because of the overtime paid to the people that the foremen supervise they receive more take-home pay than the foremen do.

Mr. Velde. Is that true in very many cases?

Mr. Brown. That is true in several cases, yes, that we know of.

Mr. Velde. Do you have any specific examples?

Mr. Brown. Yes, one happens to be the Midland Steel Corp. of Detroit. Up until about 2 months ago the foremen there were on hourly rates, the same as the people they supervised, and they got anywhere from 10 to 25 cents an hour more than the people they supervised, but recently they have been placed on a salary.

Now, when they work Saturdays and Sundays the foremen get no extra pay, but the people they are supervising get the overtime pay, which makes the take-home pay at the end of the week much greater than the foremen.

Mr. Velde. I think that is all.

Mr. Bailey. Mr. McConnell?

Mr. McConnell. I wanted to ask just one question.

I notice you say here:

> By sanction of the Taft-Hartley Act employers have wiped out most of the gains made by foremen under the Wagner Act, and most employers in mass-production industries are now imposing similar unreasonable conditions of employment upon their foremen as were imposed upon other groups of employees prior to enactment of the Wagner Act in 1935.

Would you mind enumerating those conditions?

Mr. Brown. One of them I mentioned here is that foremen are now being required to work overtime through the week, on Saturdays and on Sundays, and at no additional pay. They get the same salary as if they were working the straight 5-day week, and another thing, employers are discriminating——

Mr. McConnell. The Wagner Act corrected the condition you are speaking of?

Mr. Brown. In this respect, that foremen under that act had the right to organize and bargain with their employer, and under the Taft-Hartley Act foremen do not have any access to the National

Labor Relations Board, either on representation cases or on unfair labor practices.

Section 14 (a) of the act—while it has been quoted time and time again—at least part of that section, which says:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization—

but they stop here, and it says:

> but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

That has been determined by the courts. That was the intent of Congress, that the employers discriminate against foremen because of exercising their right to become members of a labor organization, and that happened in the Edward G. Budd Manufacturing Co. case before the Sixth Circuit Court of Appeals (169 H–22 571), and I quote, in part:

> We believe it is clear that Congress intended by the enactment of the Labor-Management Relations Act that employers be free in the future to discharge supervisors for joining a union, and to interfere with their union activities.

And since that time employers have stepped up their activities in demoting or discharging or otherwise committing adverse acts affecting supervisors because of their membership and activity in our association.

Mr. McConnell. They are the conditions you refer to here?

Mr. Brown. That is right.

Mr. McConnell. Thank you.

Mr. Bailey. Thank you, gentlemen.

Mr. Joseph A. Beirne, president of the Communications Workers of America.

You may state your name and affiliation for the record.

TESTIMONY OF JOSEPH A. BEIRNE, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

Mr. Beirne. The name is Joseph A. Beirne, president of the Communications Workers of America.

In conformity with the committee's rules I have submitted a statement which I do not intend to read, but which I will summarize for the committee.

The Communications Workers of America is the dominant labor union in the communications field, having a membership of 175,000 members, and representing telephone workers to the extent of some 230,000.

Our membership is scattered all over the United States, and I dare say in the communities from which all of you gentlemen come there are telephone workers who, in whole or in part, belong to the CWA. We represent all branches of the telephone industry.

We understand that this hearing is for the purpose of securing testimony and comment on H. R. 2032, and we specifically limited the prepared statement presented to the committee to endorsing the approach and the method employed in H. R. 2032 to restore this Nation's policy in labor-management relations to the philosophy of the Wagner Act, to comment regarding the closed-shop issue, to suggesting additional language to provide equal treatment for independent union organizations in the application of the Labor-Relations Act, and to strengthen the authority and powers of the emergency board created under section 302 of the bill before the committee so as to allow the summoning as additional parties to its proceedings before that Board any company, corporation, labor organization, or individual, which appears to control directly or indirectly, or to be responsible, in whole or in part, for the policies, activities and decisions of any of the parties to the dispute through ownership, stock ownership, stock control, membership, association, affiliation, or any other similar devices or agreements.

I would like to spend most of my time commenting upon the improvement we suggest as to the authority of the Emergency Board created in section 302.

Although we would like to see the Congress adopt what has been called by the press "the administration's proposal," we fear, as the result of having read the newspapers, that it would be rather difficult to expect such a bill to be passed as written. We are hopeful about it being passed as written, but are practical enough to suggest strongly to this committee that if it is not passed in Congress as written that more than passing consideration be given to our proposal to strengthen the Emergency Board.

Sorrowfully, we are led to believe as the result of reading the newspapers, that the Republicans—who have demonstrated in past Congresses what I consider to be the foe of the American people—are able to put across at least in the public press the kind of ideas which we have found out as the result of a survey of our own membership; and is being more than passingly considered by the average citizen, and we feel that the folks who won the election last year have not been as active or as persuasive in getting across the facts surrounding the Labor-Management Relations Act to the public.

We recommend strongly if the proposal before Congress is not adopted as written that you consider our proposal, and we will point out a few statistics to this committee which we think are rather impressive, and which we think give us the opportunity to have a pretty fair idea of what the average thoughtful American citizen believes in. And the statistics I would like to quote for the benefit of the committee is that 1 out of every 90 United States employed citizen-worker is employed by the Bell system, and if you exclude Government and agricultural workers, 1 out of every 52 United States workers is employed in the Bell system, and we feel that 1 out of 52 workers is a pretty persuasive number of people.

We feel further that with the turn-over we have in the industry that you cannot turn around very often in these United States without meeting a telephone worker.

Impressive also is the fact that the Bell system is a $10,000,000,000 organization, and has a labor-relations practice of a $10,000,000,000 corporation.

We mention their wealth only to impress upon the committee the fact that the views of the telephone workers, based as they are on actual experience in the industry, should receive more than passing consideration.

I might add also that the particular industry in which our members work is interlocked through corporation directorship with such organizations as the first national bank, the General Electric Co., the Westinghouse Electric Co., the United States Steel Corp., the Chase National Bank, the Metropolitan Life Insurance Co.

The influence of a company such as the Bell system permeates our agricultural and economic life here in the United States. We feel that the Taft-Hartley Act has produced a state of uncertainty in the labor relations field, and the scope of collective bargaining has been limited by it.

It is our opinion some of the important reasons why the Taft-Hartley Act should be repealed—and we are not one of those who feel that the act should be repealed just because it has the names of Taft and Tartley—is that it places unreasonable restraint on many phases of collective bargaining. The check-off, for example, has been hedged with unnecessary procedural requirements and penalties to the detriment of harmony between labor and management. The law removed the subject of welfare funds from collective bargaining and surrounded it with rigid rules, limiting purposes and administration under penalties including the use of the injunction to prevent violations.

The principles of equity law and the laws of the various States are sufficient to protect such trust funds and the administration thereof without the necessity of the additional limitations imposed by the Taft-Hartley Act.

The Taft-Hartley Act diluted the collective-bargaining power of unions whose contracts provided for reopening on wages during a contract period, by prohibiting strikes for 60 days following the notice of reopening or—and I quote—"until the expiration of such contract, whichever occurs later."

The result of this particular provision in our industry where we have long-term contracts was to expose the telephone workers to negotiating with the gigantic Bell system—as I believe I explained before—without being able to suggest that if a worth-while contract is not forthcoming the workers may wish to exercise their privilege to withdraw their labor, and the result of the application of that law in our industry just last year was to make it necessary for our union to negotiate for more than a 10-month period, and finally accept wages which I am sure the workers would not have accepted had they been able to let the companies properly know their dissatisfaction with the terms the company was able to impose because it had a law to help it.

Following the brief description I gave of the Bell system before, I want to emphasize that that particular organization then needs no law to give it equality and it needs no law to help it in negotiations. I can assure you, after having more than 22 years of service in the industry, that they are big enough and wealthy enough, intelligent enough, ruthless enough in their dealings with their employees, to require no aid from the Congress of the United States.

The Taft-Hartley Act also revived the evils of the labor injunction as an instrument to settle labor disputes. The abuses incident to the use of this legal device have been recognized in the past by Congress and outlawed in the Norris-LaGuardia Act.

The use of the injunction by the Board is made mandatory under the act against unions in unfair labor practice cases involving secondary boycotts, even where the object of the workers is considered to be socially and economically desirable.

The relations between employer and employees are kept in an unsettled and confused condition by the numerous elections provided under the act, and are, namely, representing elections, union-shop elections, and the last offer of the employer. The result is bound to be confusion instead of a condition of stability and confidence which is so necessary to free collective bargaining.

Under the Taft-Hartley Act the employer, even though not faced with conflicting claims for recognition, may petition for an election at a time most advantageous to himself and on the strength of a no-union vote obtain a year's freedom from union organization.

Also, the Taft-Hartley Act denies the right of reinstatement to striking workers, and the right to vote in representation elections, while granting a vote to strikebreakers, to break the strike and oust a union by hiring sufficient nonunion strikebreakers. Such a procedure can never produce stability and free collective bargaining.

The secondary boycott provisions in the Taft-Hartley Act are so broad and extensive as to prohibit activities which are regarded as justifiable for the purpose of protecting the standards of union members in the industry.

These and other objections which might be detailed have the effect of weakening collective bargaining, if not to destroy it altogether in some situations. Situations which, incidentally, the CWA ran into within the last 12 months, a situation which caused one of the divisions to go out of business as a result of management applying provisions of the Taft-Hartley Act.

The CWA is of the opinion that the present ban on the closed shop should be removed, and that the necessity for conducting elections among employees to secure authorization to enter into a union-shop contract, should be eliminated.

In order that there may be no misunderstanding, the attention of the committee is directed to the union security conditions existing in the telephone industry. There are no closed-shop agreements, insofar as we know, but there are a few union-shop agreements with independent companies, but only one, however, with the Bell companies.

There have been a substantial number of contracts providing for maintenance of union dues. The greater portion of the contracts, however, provide only for voluntary dues-deduction systems upon presentation of a proper authorization or assignment by the union member to management.

The provisions of section 8 (a) (3) of the Taft-Hartley Act prohibiting closed shop, and permitting a diluted form of union shop under narrow conditions, go far toward eliminating or denying the union security concept on which labor has to some extent relied for the maintenance of union conditions.

There have been conducted union-shop elections under the Taft-Hartley Act among several divisions of CWA. In some of these elections the union failed to secure the necessary majority vote of all the eligible employees, but did receive in every case more than a majority of the votes cast. This situation points up a curious result under the law, namely, that the requirement for union-shop authorization—meaning a majority of the employees eligible to vote—is stricter than the requirement for designation as bargaining representatives, which only calls for a majority of the votes cast.

The union is authorized to be the bargaining representative, but cannot fully bargain on all matters affecting the terms and conditions of employment, such as a union shop, because of this requirement of authorization by a majority of all the eligible workers in the bargaining unit.

I might say here that within the last year the CWA has had 12 elections on the union-shop question, and 4 of them were lost as a result of the law's requirement; yet, as I mentioned, in the vote—in the 4 which were lost—the great majority of the people who voted, voted in favor of the union shop provision.

We would like to mention, or emphasize to this committee that if changes are made in what is called the administration's proposal, that some thought be given to a continuation of that part of the Taft-Hartley law which provides for equality of treatment of independent unions with AFL and CIO unions.

We respectfully suggest that section 9 and section 10, paragraph (c), of the Taft-Hartley law, be continued in any new proposal that might be made.

Much has been said and written with respect to the merits and objections to industry-wide bargaining. We do not propose at this time to add generally to this picture, but believe that the committee should be informed with respect to the bargaining situation which exists in the telephone industry.

When the expression "the telephone industry" is used, the public immediately thinks of the Bell system or the group of companies associated with the American Telephone & Telegraph Co. The Bell system operates in every State of the Union and enjoys a monopolistic place in the industry. In fact, some 90 percent of the telephone business of the country is enjoyed by the Bell system, leaving the balance of 10 percent to be divided among more than 6,000 small companies unaffiliated with the American Telephone & Telegraph Co.

In the Bell system the basic wages, hours of employment, conditions of employment, pension rights, sickness, disability, and death benefits, operating practices and methods are all controlled by the American Telephone & Telegraph Co. through agreements, stock control, ownership, interlocking directorates, and other monopolistic corporate devices.

The National Telephone Panel, which was established by the War Labor Board and became the National Telephone Commission, had this to say about the Bell system:

> The over-all wage structure of the Bell system reflects the centralized policies of the A. T. & T. Co. The unifying influence of the A. T. & T. appears in the close similarity of most nonrate aspects of the way structures of the various associated Bell companies. Each Bell company, for example, has the same four major operating departments. Further, these same four departments in all companies carry almost identical job or task titles, and task routines. This same unifying influence is evident also in the existing interrelation of Bell system wage rates, not only among departments and specific jobs of each company but, likewise, among the total wage-rate structures of the companies themselves.

I might say that this particular agency of the Government was made up of two representatives of labor, two representatives of industry, one of whom was a vice president in an associated company in the Bell system, and two representatives of the public. The quotation which I have hereinbefore read was unanimously agreed to by the six members of the Telephone Commission.

Even in such local matters as union recognition and union dues deduction authorizations, the control of the A. T. & T. Co. over the Bell system companies is apparent. When the Communications Workers of America succeeded the National Federation of Telephone Workers in 1947, the autonomous local unions affiliated with the national federation became chartered divisions of CWA. It should be explained that the CWA was sponsored by NFTW, its constitution was developed over a period of years by NFTW committees and conventions and it was approved through membership meetings and referenda among the members of the unions affiliated with the NFTW.

The Bell system companies under the direction of the A. T. & T. Co. uniformly refused to recognize the CWA divisions, after the formation of the CWA, as the bargaining representatives of their members and refused to disburse to such divisions the moneys covering dues of their members, which the companies continued to deduct from the wages of the employees under the terms of dues deduction authorizations and assignments of the individual workers pursuant to collective bargaining contracts, until the divisions secured new membership cards or new dues deduction cards. The CWA believed that the position of the Bell companies was erroneous. It was a question of whether to engage in time consuming litigation or to comply with the demand of the Bell companies. Confusion was rampant. Charges and countercharges appeared on every hand. It is a tribute to the telephone workers that they did not succumb to such union-destroying activities, but at great financial cost, sacrifice of personal time and energy, the new cards were obtained. The whole process proved nothing insofar as union representation was concerned and was merely another example of the control of A. T. & T. Co. over the Bell system companies and its paternalistic attitude toward its employees.

This control, however, is not of such character as to divest the individual companies of the Bell system of their corporated identities or of their characters as employers. Each company is recognized in the eyes of the law as an employer even though the discretion of the management of that company is controlled by the parent corporation.

Collective bargaining between our divisions and individual companies of the Bell system has produced the expected results, namely, that no basic change in wages, hours and working conditions are made without the sanction and approval of the company. This condition has resulted in the need for bargaining on a Bell system basis between our union and the American Telephone & Telegraph Co. with respect to matters designated by the local member unions as items for national bargaining.

In 1946, after our local affiliates were unable to secure agreements with the local companies of the Bell System and a Nation-wide strike appeared imminent, national bargaining produced an acceptable agreement and work stoppages were thus prevented.

A few words about the Bell system plan for employees' pension, disability and death benefits will further demonstrate the need for bargaining on a Bell system rather than on a local basis. Each company of the Bell system has its separate plan for employees' pension, disability and death benefits. The provisions and benefits of these several plans are exactly alike and by agreement with the American Telephone & Telegraph Co. must conform with the plan established by the American company.

This means that the individual telephone company cannot change its plan for employees' pension, disability and death benefits unless the change first is made in the plan of the American Telephone & Telegraph Co. Local bargaining under such circumstances is futile and productive of industrial unrest.

Local bargaining will produce local disagreements and local work stoppages. In some industries local work stoppages may be insulated· from the national or industry picture, but this is not true in the telephone industry. Each community is so inextricably bound up by the wires of the telephone system with other communities that the effect of local work stoppages cannot be confined to any given local area. It is safe to predict that so far as the telephone industry may be concerned, any requirement of law that bargaining must be local will produce less industrial peace and will provoke more service interruptions than industry-wide or national bargaining.

In March 1947, the National Federation of Telephone Workers which was succeeded by the CWA in June 1947, sought to coordinate the bargaining activities of its affiliates under a voluntary policy committee arrangement in an effort to secure some uniformity of wages, hours of employment and other conditions of employment. It was immediately accused of attempting to bargain on a Bell System basis by the American Telephone & Telegraph Co. and the companies associated with the Bell system. No bargaining consequently resulted at either local or national levels. It was necessary for the affiliates of the NFTW and other telephone unions bargaining with companies associated with the A. T. & T. Co. in the Bell system to conduct a strike for a period of some 42 days before new contracts were negotiated.

In 1948 the CWA made no attempt to bargain on a national or system-wide basis. For nearly 10 months its divisions were required to bargain for new contracts. Some divisions succeeded after these many months in reaching agreements, but others have not been successful. The pattern of each conference is the same. The arguments, proposals and stalling tactics reveal the direction and instruction of the centralized management policies of the A. T. & T. Co. A proposal by the management of one company is parroted within 24 hours by the managements of all other companies within the system.

How can there be any real collective bargaining under these conditions unless the unions join together and bargain with the parent company? But the A. T. & T. Co. protests that it is not the employer and bargaining should be carried out at the local company level. How long will the puppet master continue its activities beyond the veil of corporate entities. These are not the cries of a frustrated union, but represent conclusions which are supported by an abundance of factual evidence.

To forbid collective bargaining by law by a labor union on an industry, national, or system basis, or to forbid a labor organization from coordinating, cooperating, or unifying its demands with respect to more than one employer is to perpetuate the corporate control with which we are faced in the Bell system.

The American Telephone & Telegraph Co. will continue to control the discretion of the local telephone companies associated with the Bell system while refusing to bargain on a system basis on national items. Such a situation cannot produce industrial peace, but only chaos or servitude unless the law requires, or at least promotes, national bargaining for integrated industries, such as the Bell system.

We are not at this time attempting to persuade this committee that it should amend the law to provide for industry-wide bargaining, even though we believe it would be desirable in the Bell system, but have stated our experiences as a background for a suggested amendment to the powers granted to the emergency boards created under title III of the bill which is before the committee under "national emergencies."

It is our belief that similar situations with respect to collective bargaining exist in other industrial empires in in this nation and that it would materially aid and assist in the settlement of disputes which are found by the President to constitute a threatened national emergency if the "emergency board" was empowered by law to summon as additional parties to its proceedings those parties, corporations, etc., which control directly or indirectly the policies, activities and decisions of the principal parties to the dispute.

We, therefore, recommend that section 303 of H. R. 2032 be amended by adding thereto subsection (b) which shall provide, as follows:

> Any emergency board appointed under this section, on its own motion or at the request of one of the parties to the dispute, shall summon as additional parties to its proceedings any company, corporation, labor organization or individual which appears to the Board to control, directly or indirectly, or to be responsible, in whole or in part, for the policies, activities and decisions of any of the parties to the dispute through ownership, stock ownership, stock control, membership, association, affiliation, or other similar devices or agreements.

It is our opinion that inclusion of the powers contained in our proposed amendment will better enable an emergency board to find an area of settlement in disputes involving the industrial empires of our Nation.

Further, in connection with the powers of the emergency boards, we endorse the policy which provides that such boards shall not only investigate the dispute, but that they shall explore the area of settlement and give the parties the benefit of their considered disinterested judgment by suggestions for settling the controversy. Such assistance will produce a result based upon free collective bargaining.

We urge that the committee give consideration to our proposal to strengthen the emergency section of H. R. 2032. We say offhand that if the bill as written is not amended or if the amendments are not considered for it, would forego urging the committee to adopt our proposal. However, if amendments are to be contemplated by this committee or other committees or by the House, then we sincerely urge that the committee give full consideration to the proposal we make which would strengthen the act, and which would provide a better area, or field, for collective bargaining.

On behalf of the CWA, I wish to thank this committee for giving us the opportunity to testify.

That concludes my statement.

Mr. Bailey. Mr. Irving?

Mr. Irving. Mr. Beirne, I am not going to attempt to question you on all of the things that you covered in your statement. One thing that intrigues me, and one with which you perhaps have had some experience, is that portion that deals with the "last offer." We had some testimony here from employers previously that they had taken polls or sent out sample ballots on the "last offer." One of them I remember particularly. I think it was 6 weeks or more after the cessation of work. They had rather gratifying results, and the employees, by about 11 to 1, were supposedly anxious to go back to the "last offer."

I want to cite an example that I know about. An employers' association of 400 or 500 members figured in this. A Nation-wide strike, or lock-out, occurred and the employers declined to make any offer. They held to that position for a number of weeks until, through the statements in the press, they were accused of bargaining in bad faith, or not in good faith, and public sentiment, I think, agreed with that. Yet the merchants and people who were losing hundreds of thousands of dollars in sales because these thousands of employees had no purchasing power from wages. Their chamber of commerce or some other trade organization prevailed upon their organization to start bargaining in good faith, so they made an offer of 2½ cents an hour for the unskilled people and 5 cents an hour for the skilled mechanics. And they stuck to their position about 5 days, I believe, and finally the strike, or lock-out, was settled on the basis of 15 cents an hour, which is quite a far cry from their first position of no offer and quite a different situation from their first and last offer, apparently, of 2½ cents and 5 cents an hour.

Their position all through the 50-some days was that after they had finally made the offer of 2½ cents and 5 cents an hour, that was their last offer. The employees were without funds to continue the strike, and I presume if they had sent out such a ballot, or such a poll, that many, many of them would have been forced to accept that last offer of 2½ cents or 5 cents an hour.

However, as I have stated, the thing was settled on the basis of 15 cents an hour. So it seems to me that I remember the position of the telephone workers and the telephone company in their strike 2 years ago, I think it was, where the company stuck pretty consistently to a "last offer" position.

Do you care to enlarge on that?

Mr. Beirne. In the strike that took place, it was in 1947, the general facts you just outlined could apply to the telephone industry. The strike was started on April 7. On April 6, in spite of the good efforts of the Conciliation Service and other interested agencies, every telephone company in the Bell system maintained the position that we were entitled to no increase whatsoever. And everyone of them went one step further and proposed arbitration. Every telephone company throughout the United States advertised in the newspapers their arbitration offer.

We were not reluctant to arbitrate, but we were faced with 26 different arbitration proposals, each one of which came out from a different Bell company and was geared to the various State rate commisions. They wanted to make the State, either through the governor or through the rate commission, a party to the arbitration on wages, a device, which we accused them—and we still sincerely think that they had it in mind, even though they may protest—a device to help them get additional revenues by having their rates increased, and making the State a party to the increase that we would get in wages.

On April 6, the day before we went on strike, they still maintained we were entitled to no wage increase. And 42 days later, the last of the strike in our industry was settled with a 9.5 average increase, with increases that ranged in dollars—the average hourly rate in our industry is not too good a base, because of the hours involved and the different kinds of shifts we have, being a 24-hour-a-day industry. The increases in dollars amounted from $2 to $5 a week.

As you pointed out—and I thoroughly concur in that—after the workers had spent weeks and weeks on strike, the union and the members want to get back and earn a week's pay. To begin with, no worker wants to go on strike. No union wants to go on strike. And after the strike was on for weeks and weeks and weeks, there is a natural reduction, let us say, in the amount of stick-to-itiveness that a worker has. There is a gradual weakening on their part to accept, and after 42 days, if we had not reached the kind of agreement we did reach, which we considered at the time satisfactory, in view of all circumstances, I dare say a company offer of, rather than an average of 9½ cents, an average of 5 cents, might be taken by the workers. To me it would be an unfair approach to the settlement of an industrial problem, because when it comes to establishing a rate of pay, things become either fair or unfair. And in these "last offer" votes that might be sought, you can expect a company, just as with a certification election, to wait until things are ripe for them to make proposals of the kind we are talking about and thereby, I think, deny workers what they are justifiably entitled to as a result of their labor.

Mr. IRVING. In other words, a company with the resources of the company you are talking about can economically stand a strike a whole lot longer than the employees, who may or may not have enough savings to keep them going for weeks and months. It is an easy way to break the strike under those conditions, and yet what is indicated by some to be a fair way. They send out and ask members if they want to go back to work on this "last offer," over the better judgment of the union officials who are holding them out against their will—that is the way it would appear. Sometimes dictatorial union leaders do hold the employees off the job when the employees want to go back to work. Those cases are rare however.

Mr. BEIRNE. I might hasten to say that I still have to find, and I have been in the business of representing workers for 12 consecutive years—that dictatorial labor leader of which you speak. I have heard him mentioned. I have been profoundly impressed with the accusations that I have heard, of the dictatorial power of a labor leader. I still have to meet the first one who has such power. Maybe they do exist. Maybe I did not meet them. I know it is not true in our organization. It is not true in the organizations of men who have jobs like myself that I have had the pleasure of meeting in the last 12 years.

Dictatorial policies and dictatorial practices, so that everyone can get his sights set straight, are on the side of the employer and not on the side of the union. That I can say from experience to be an honest, true, and factual statement.

Mr. IRVING. What I was saying was that that was the reason advocated for putting that "last offer" provision in the present labor law, as I understood it.

Mr. BEIRNE. That is right. It is an improper premise, and therefore the conclusion cannot be anything but improper.

Mr. IRVING. Do I have any more time?

Mr. BAILEY I will extend you 5 minutes of the time that was reserved, if you care to ask additional questions.

Mr. IRVING. I want to say that the example that I cited was a factual proposition. It was not theoretical or hypothetical. It actually occurred. I want to make that point clear, and I think yours is clear, too. If I remember correctly, you had an offer of $3 a week, or such a matter, and they did not budge from it for a long time, particularly in my district.

Do you have any specific examples of the attitude toward free speech?

Mr. BEIRNE. Yes. I was asked that question by the Senate committee, and I took the time right after testifying before the committee to dig into some of our files, and not get too far away from home, in case there should be some skeptics who would want to check the facts.

Let me make the general statement that when the Wagner Act was amended by the Taft-Hartley Act for the purpose of giving free speech to employers, it was made the kind of issue that no one who would be fair-minded could find any fault with, because everyone wants everyone else in America to have free speech. And I just repeat that a $10,000,000,000 corporation, scattered out as it is throughout the United States, having the kind of impact that it does on our way of life, as you can well see from the statistics I quoted as to its extensiveness, does not need the kind of free speech that permits it to break unions. And I went into our files and found one right here in this territory.

On the occasion of this particular letter that I have in front of me—a letter from the general traffic manager of the Chesapeake & Potomac Telephone Co. of Baltimore which operates in Maryland—was occasioned by the decision of the union which represented the operators to become a part of the CIO, or a part of the CWA. An NLRB election was scheduled to determine the wishes of the employees in the matter. Shortly before that NLRB election, the general traffic manager, who by virtue of his position has influence in the company, sent out a letter in which he said, among other things—I could read the whole letter if you want, but the nub of his exercise of free speech for the destruction of unions is found in this one sentence, which I will read. This is addressed to all employees. He says:

> I hope that all of you will vote, because I believe the majority of the employees in the traffic department—

and that was the only department voting—

> would prefer to have a local union rather than a national union.

Now, in that sentence, of course, he is, to begin with, their boss. And he is telling them, in no uncertain terms, that they should vote for neither the CIO nor the CWA, but keep a nice, chummy local union in existence.

Mr. BAILEY. The gentleman's time has expired.

Mr. IRVING. I have one more point.

Mr. BAILEY. I will yield you two more minutes of my time. I just want to ask the gentleman one question. You may have two more minutes.

Mr. IRVING. In presenting the example that I stated, I overlooked to say that the employers formed sort of a closed shop before they came out with this offer of nothing. They got all the members of the association to agree that if anyone violated or broke down, they would forfeit $2,000 apiece. And then they went further than that. They got some of the other companies that were not members of that association to agree to the same thing. Well, they actually had themselves over a barrel, and it was very much of a problem for the employees or the unions representing the employees, because no one wanted to forfeit $2,000 to that group. Nobody wanted to break down, for they did have a closed shop amongst members of their own association, and others from various industries in the territory that were not members of this proposition. That also was exposed through the columns of the newspapers, rather hesitantly, or unwillingly. It took quite a little while to get those facts into the press.

Then, of course, public opinion and the fact that other employers were losing a great deal of money because they could not sell any goods to the people who were not working finally brought about this settlement at 15 cents an hour, which was actually far above the "last offer." The other had been a phoney "last offer." I think that is the case in most of the "last offers."

It seems rather ironical to me that an industry can pay 15 cents an hour finally after first claiming inability to pay anything, only to admit later it is able to pay only 2½ cents an hour. It just seems a whole lot better the other way. I think myself that the strike could have been settled for 9½ cents an hour, or maybe 10 cents an hour, if that had been their offer on the second offer, and the men would have lost very little time, possibly 2 or 3 days. But losing so much time, they could not very well settle for less than what they got, and then perhaps they did not get the amount of loss for a period of a year.

That is all, Mr. Chairman. Thank you.

Mr. BAILEY. Mr. Jacobs?

Mr. JACOBS. Mr. Beirne, I was quite interested in the statement you made a moment ago. Were you here this morning when I questioned Mr. Brown?

Mr. BEIRNE. No.

Mr. JACOBS. I was interested in the statement that you made a moment ago that you had never known of a labor union leader who you thought was dictatorial. You live in Baltimore, do you not?

Mr. BEIRNE. No; Chevy Chase, right outside of Washington.

Mr. JACOBS. Chevy Chase. Are you familiar with the difficulties that the carpenters' union had in Baltimore 2 or 3 years ago?

Mr. BEIRNE. I remember reading about it in the newspapers.

Mr. JACOBS. Would you say that where an international union had denied a local union the right to elect officers for a period of 16 years, where the local had frequently petitioned for the right to elect, and where the terms of the contract had never been submitted to the membership vote, but the administrator appointed by the International President made a contract, would you say that was rather high-handed tactics?

Mr. Beirne. I would say unqualifiedly, that would be high-handed tactics.

Mr. Jacobs. I happen to be a person who has represented labor quite a bit, and I have run into a number of instances of that kind.

Your organization, I take it, elects its officers.

Mr. Beirne. Every 2 years.

Mr. Jacobs. Then after organization, would you have any objection to a provision in the labor law that required the election of officers? It would not affect you any, would it?

Mr. Beirne. It would not affect us any. But what I hasten to point out to you is the thought embodied in such an approach would be something like this Communist affidavit. It would be in general about the same kind of thought you now get thrown at you, thinking that anything the administration comes up with will be prolabor, and therefore anticompany.

Mr. Jacobs. Let us look at it this way. I think I can——

Mr. Irving. Will the gentleman yield?

Mr. Jacobs. I will yield to a question.

Mr. Irving. I wanted to explain when I referred to the dictatorial powers of unions that that was the comment that was made by another witness.

Mr. Jacobs. By another witness.

Mr. Irving. In regard to this "last offer" proposition. It had nothing to do with elections.

Mr. Jacobs. I understand.

But let us look at it this way. I understand that, in general, the employer has more economic power than the unions. I think we have about 51 companies in this country that have over $1,000,000,000 in assets, the smallest of which is four times the assets of the 32 largest international treasuries of the labor unions. But we do know that an organization of men in a labor union does acquire power that is much greater than that of the individual members. We know that, do we not?

Mr. Beirne. Yes. That is usually spelled out in the Constitution.

Mr. Jacobs. All right. The Constitution, under the law, is a contract. Do you not think that if elections are denied local unions, when the Constitution provides for such elections, that then there should be some simple remedy for a local union to get an election and have its own officers rather than to have the head of the national union appoint someone to remain with them, let us say, for a period of 15 to 20 years? Where would that hurt anyone?

Mr. Beirne. I can only speculate.

Mr. Jacobs. You have not had experience with those?

Mr. Beirne. No, never. Never have I experienced that, and in my speculation it would be hard for me to conceive of a group of workers who were together in a union not being able to get an election of their own officers.

Mr. Jacobs. I think probably with the government of your organization, it would be hard, but yet you may take it from me that those things have occurred. I have litigated those questions myself, and I know that they have occurred. And it seems to me that those unions which operate democratically would certainly have no objections to a provision that the officers should be elected. At least, that is the way it seems to me.

Now, I will go to another subject. You have not had any experience along those lines; so I suppose we cannot develop much that is helpful.

Mr. Beirne. My only thought is, sir, that you take a look at the other side of the picture, because putting into the law that the unions must elect their officers is leading to the inference that these unions are the racketeering sort of outfits that do not have democracy in their set-up. And on the other side of the picture, we find, in the Bell system, for example, that at the last stockholders' meeting—now, $10,000,000,000 is a lot of money, and that is your money and my money. If you belong to the Metropolitan Life Insurance Co., the Equitable Life, or the Sun Life, part of your money is supporting the Bell system. And there is a lot of American people's money tied up in that. At the last stockholders' meeting, 12,607,000 votes were cast. There were 12,603,000 which were by proxy. That is the one fellow going into his vest pocket and pulling out all the votes that the ward-heeler tells you he has in his vest pocket. He actually pulls them out at the stockholders' meeting. And yet that is all right in our way of doing things, and we do not want to regulate corporations in how they should conduct their elections.

Yet it seems to be all right to suggest that we should have regulations on the elections in a union, whereas in my belief, the functioning of a union in matters of this kind should be left to the members.

Mr. Jacobs. I think we could agree upon this, could we not, that if there are abuses in any type of organization whereby the individual cannot protect his own individual rights, it is all right to regulate them? Do we agree on that, whether it be a corporation or whether it be a union?

Mr. Beirne. Yes; we can agree on that very readily, provided we do not get into the field where in order to wipe out a few abuses we put the monkey on the back of the majority, or we put the burden of guilt, I might say, on everybody else's shoulder.

Mr. Jacobs. It is not a question of trying to put the burden of guilt on anyone at all. I think you agreed a moment ago that it would not affect your union, because you do it, anyway; is that not right?

Mr. Beirne. That is right.

Mr. Jacobs. Now, then, if there are organizations where they do not elect their officers, why would your union object to a provision requiring that they do elect officers?

Mr. Beirne. For the same reason that we objected to the requirement for signing a non-Communist affidavit. We were about the first union in the United States to sign that affidavit. From our standpoint, we did not care. We could stand up publicly and say that we are not only not Communists, but will ferret them out and, in a democratic process, try to put them across the barrel so that they wind up where they belong, in the cellar. But we objected to being forced by law to sign that thing. And our objection was based on what actually has happened. The law has planted a seed in the minds of the people of the United States, or some of them, at least, that unions are infiltrated with Communists, and planting that seed was wrong, even though we jumped right in and signed the non-Communist affidavit.

Mr. Jacobs. Do you not think that the worst thing about your anti-Communist affidavit was that for those unions where all officers did not sign and possibly where they could not all sign, the net effect of it was that they immunized the employer from his unfair labor practices? Do you not think that was the real substantial thing?

Mr. BEIRNE. That was one thing that caused a hardship on workers.

Mr. JACOBS. Yes.

Mr. BEIRNE. That is, officers taking a position on principle, which I admire them for having taken.

Mr. JACOBS. Now, then, we get back to the matter of democratic elections. You say that there were 4 union security elections lost out of 12, I believe, if I am correct.

Mr. BEIRNE. That is right.

Mr. JACOBS. And that was because all the votes that were not cast were cast against the unions during the election, or counted against them.

Mr. BEIRNE. That is right.

Mr. JACOBS. But you would have won those four if it had been on a majority of those that voted?

Mr. BEIRNE. Right.

Mr. JACOBS. In that respect, you think it is rather undemocratic?

Mr. BEIRNE. Well, it sets up two standards right within the one law.

Mr. JACOBS. I might not be here today if all the people in my district who did not vote had voted for my opponent.

Mr. BEIRNE. That is right. It is not according to our system. I might say that in Indiana——

Mr. BAILEY. The gentleman has one minute of his time left.

Mr. BEIRNE. I might say that Indiana is one of the places where we lost an election, although 58 percent of the people who voted, voted for the union shop.

Mr. JACOBS. Was that in Indianapolis?

Mr. BEIRNE. That was the whole State. We represent all the telephone workers in the State.

Mr. JACOBS. You folks invoked the so-called compulsory arbitration law in Indiana on a couple of occasions?

Mr. BEIRNE. Yes. We invoked it just this year.

Mr. JACOBS. You did not like it?

Mr. BEIRNE. That is a sad experiment for the previous administration of Indiana.

Mr. JACOBS. I understand that it has been used quite a bit as propaganda that you did invoke it, but I understood the reason that you did was that you had no other remedy; is that correct?

Mr. BEIRNE. That is correct.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Burke?

Mr. BURKE. Mr. Beirne, you have been dealing with the Bell system for a good many years; so I think you could say that as a corporate organizational structure, it is probably the most complicated in the world, is it not?

Mr. BEIRNE. I do not know too much about other corporations, but I know that the Bell system is terribly complex.

Mr. BURKE. I take it from their national advertising, such as the Saturday Evening Post, Life magazine, and so on, though, that it is pretty closely knit, even though it is a pretty complicated organization. I remember on one page it showed pictures of the presidents of the various subsidiary corporations, all on one page, or in one spread, and intended to point up that within this Bell system, this complicated organizational structure, things were pretty rosy as far as advancement was concerned. So the $10,000,000,000 that you speak of can be pretty well charged up as wealth of one corporation, generally; is that not true?

Mr. BEIRNE. It is one corporation: I might point out, I have in front of me a listing of all the companies in the Bell system, and most of the companies are 100 percent owned by the A. T. & T.

Mr. BURKE. I was pretty sure that that was the condition.

Last week, we had some testimony here that, using wealth in number of dollars as a measuring stick for power pointed out that some 32 unions in this country possessed somewhere in excess of $200,000,000, probably, in round figures, we will say, a quarter of a billion dollars. Now, those 32 unions were of all affiliations. And generally you would say there was no financial connection between the independents and the AFL and the CIO, and between the AFL and the CIO itself, or between any of those groups generally. They are not intertwined in a corporate set-up, but are 32 unions. Those are international unions, by the way. And you understand union organization generally. International unions are autonomous so far as the running of their own affairs and setting up of their own treasury are concerned.

This one corporation, then, is in possession of wealth which, if used as the measuring stick of power, as it was used in this testimony last week, is in excess of 40 times the amount of 32 national and international unions put together. That would seem to indicate that the corporate power is still pretty much overbalanced as far as the quality of power between unions and corporations is concerned. Would you not thinks so?

Mr. BEIRNE. If the measuring stick is $1,000,000,000, I would say it would be academic, almost, to argue that they are not in control of anything that might be looked at as being a possible balance. I mean, there is so much control in the corporation that you cannot say there is even a possibility of balance if the dollar sign is the measurement of the control.

Mr. BURKE. The dollar sign was used as the measure of control in this testimony.

Mr. BEIRNE. I can assure this committee that we do not have anything that represents anywhere near a healthy fraction of $10,000,000,000.

Mr. BURKE. Either $10,000,000,000 or $10,000,000?

Mr. BEIRNE. Yes.

Mr. BURKE. Thank you very much.

Mr. BAILEY. Mr. Werdel?

Mr. WERDEL. No questions.

Mr. BAILEY. Mr. Velde?

Mr. VELDE. Mr. Beirne, you made a very interesting statement. At least, I thought you did, and I wanted to find out for sure that you did make the statement that the Republican Party is the foe of the American people. Is that substantially the statement you made?

Mr. BEIRNE. I believe you will find that is my opinion.

Mr. VELDE. Oh, yes.

Mr. BEIRNE. An opinion that has been borne out. That is an opinion that I have based upon observing the activities of the Republican Party for a number of years.

Mr. Velde. I presume you are referring chiefly to the voting on the Taft-Hartley Act. I did not vote for the Taft-Hartley Act myself. I was not a Member of the House.

Mr. Beirne. No. My measuring stick is not the Taft-Hartley Act at all. I have no single measuring stick. There are many things which affect us as citizens and by which you folks in Congress, by your actions, may affect us. The philosophy I hold to, is the long-talked-of and much-talked-of human rights, contrary to that which the Republican Party somehow or other always seems to stand for, namely, property rights.

Mr. Velde. You must be a Democrat, I presume.

Mr. Beirne. I do not know what you would call me. I am not registered at the moment. I voted for President Truman, however, and the Democrats in my district.

Mr. Velde. I would assume so.

Mr. Beirne. I say that without feeling that it is any violation of my right as a citizen to a secret ballot.

Mr. Velde. If you say that the Republican Party is the foe of the American people, I think there are quite a few people who do not know that. I think it is your duty to warn them of the fact, because there were at least 22,000,000 who do not know anything about that, and probably it would be a good idea to come out in the open and tell all the people that the Republican Party is the foe of the American people.

Mr. Beirne. I tried to make my contribution to that.

Mr. Velde. Another statement you made is that the Communist clause in the Taft-Hartley Act planted the seed in the minds of the American people that the labor unions were infiltrated with Communists. Do you know, as a matter of fact, that they are not infiltrated with Communists?

Mr. Beirne. I know the CWA is not.

Mr. Velde. What about the rest of the unions?

Mr. Beirne. I will be an expert witness for the committee on the CWA. Now, I have read, just the same as, most likely, you have read, and I may have had a little better privilege being closer to some of the labor people, and I know that a lot of this guff about unions being infiltrated with Communists is getting too big a play, bigger than the number of Communists in this country or in the labor unions would warrant. And as far as the CWA is concerned, I could make a statement which I think is factually correct, that there is not one officer who is a Communist or who sympathizes in the direction of anything that the Communist Party stands for.

Mr. Velde. Do you happen to know Mr. J. Edgar Hoover?

Mr. Beirne. No. I have heard of him. I do not known him.

Mr. Velde. Do you think he knows what he is talking about?

Mr. Beirne. Yes. I have great respect and admiration for the gentleman.

Mr. Velde. When he said that the chief method which the Communists use to gain power in this country is by infiltration in the labor unions, do you think he is telling the truth? Or is Mr. Hoover giving us a bill of goods?

Mr. Beirne. Are you making a direct statement? Is it that he said they endeavored to get their power by trying to infiltrate in labor unions?

Mr. **Velde**. Perhaps I should be a little fair with you. Up to 3 years ago, I was a member of the FBI, and a special agent investigating the Communist situation.

Mr. **Beirne**. I would say that the Communists tried to get into the labor unions, which only points out the democratic set-up of labor unions.

Mr. **Velde**. And you think that they do get into the labor unions?

Mr. **Beirne**. Surely, they get in as members.

Mr. **Velde**. Do you think that they do not get into positions of power, as the president and secretary and business agents?

Mr. **Beirne**. I assume they would try.

Mr. **Velde**. Mr. Beirne, if you think that, you are absolutely wrong, because I know better, and so does Mr. Hoover.

Mr. **Beirne**. I know they are not in the CWA.

Mr. **Velde**. That is all.

Mr. **Bailey**. Mr. Beirne, you made in your extensive statement there reference to the fact that section 303 of the pending bill H. R. 2032 should be amended by the addition of a subsection. Did the committee understand you to say there that the emergency board as proposed under section 303 is limited in its power to subpena witnesses? Is that the impression you meant to give?

Mr. **Beirne**. No. It is not the power of subpenaing witnesses. Our proposal is to make interests which do control that a party to the procedure.

Mr. **Bailey**. As you read section 303, is it faulty in that this emergency board would not have the authority, for instance, to call in for questioning these affiliates of your telephone company? You mentioned the First National Bank of New York and the Chase National Bank and the Metropolitan Life Insurance Co. and the A. T. & T. itself, for instance, if it was the case of the Bell Telephone pending before the emergency board. But you mean they would not have authority to go into the ramifications of this?

Mr. **Beirne**. No. They could summons them as witnesses, but could not make them an actual, participating party to the negotiatons.

Mr. **Bailey**. Is that why you were suggesting that this should be amended, so that they could be made a party?

Mr. **Beirne**. That is correct. That is our strengthening proposal: In other words, we say this: The local management with whom we deal and who therefore would be the party to a dispute when this board comes in to mediate—and it is set up, first, to mediate—is not the representatives of the company who can make decisions or who can make recommendations for decisions that will stick, but rather, if the dispute took place, let us say, in Illinois, the real negotiator is in New York City, in the A. T. & T., and nobody can get to him. Now, the emergency board, we say, should have its hand strengthened by this amendment that we propose, by being able to make the real policy makers of the company come in to the actual negotiations when we try to mediate.

Mr. **Bailey**. Now, I think I understand your proposal.

Do the parties appearing with you have any briefs to file?

Mr. **Beirne**. No. They are associates of mine.

Mr. **Bailey**. Thank you very much for your appearance. The committee was pleased to have you come.

Mr. **Beirne**. Thank you.

Mr. BAILEY. The committee at this time will be pleased to hear Mr. John M. Brumbaugh, representing the eastern conference committee of the Independent Engineering Organizations.

TESTIMONY OF JOHN M. BRUMBAUGH, SPECIAL REPRESENTATIVE, EASTERN CONFERENCE COMMITTEE OF INDEPENDENT ENGINEERING ORGANIZATIONS

Mr. BRUMBAUGH. Mr. Chairman and members of the committee——

Mr. JACOBS. Mr. Chairman, before you commence, I have an answer that I received from the General Electric Co. to the letter that I put in the record the other day. And in fairness, I would like to put their answer in the record.

Mr. BAILEY. Since we have already started the appearance of this witness, would you object if it was entered in the record at the close of this hearing?

Mr. JACOBS. No.

Mr. BAILEY. Very well.

You may proceed, Mr. Brumbaugh.

Mr. BRUMBAUGH. My name is John M. Brumbaugh. I live at Lansdowne, Pa. I am an electronics engineer, and I am employed by the Radio Corporation of America, Camden, N. J. My expenses and time in connection with this appearance are paid for by the groups which I represent.

I am the past president of one of the 14 engineers' unions which I am now representing in this testimony. I would like the committee's permission, if I may, to digress from the writen statement which I presented, and I would also like their permission to submit a revised and corrected printed statement from the one I presented before, because since that time a number of other groups have joined us in this request.

Mr. BAILEY. If there is no objection, we will accept it at the proper time.

Mr. BRUMBAUGH. Thank you, sir.

Mr. BAILEY. You may proceed with your statement.

Mr. BRUMBAUGH. I am here specifically to request and to recommend that sections 2 (12) and 9 (b) (1) of the Taft-Hartley Act be carried over into the new National Labor Relations Act of 1949. I am not authorized by the groups I represent to speak on any of the other proposals of this legislation.

I have in my possession for examination by the committee official representation authorizations from 14 independent, certified engineers' union covering more than 7,300 engineers employed in industry. All of these groups have considered this matter very carefully, and they decided that it was of such vital interest to themselves and to their colleagues in industry and to the public that they should send one of their members to speak for these provisions.

I will not burden this committee with the organizations' names. They are listed in the printed testimony. Suffice it to say that these organizations are widespread over our country. There are six in the far West, two in the central part of the country, and six here in the Northeast. 7,300 may not sound like a very impressive number, but it is a good percentage of the engineers in industry, and we believe that it is a good majority of the organized engineers in industry; and we believe that it is the group who can really speak with the least prejudice for the large group of unorganized and therefore inarticulate engineers in industry.

Therefore, in addition to these groups which I represent directly, I would like permission to mention others who, as a matter of record, are known to concur with us in this appeal.

Several other bargaining units with about 400 engineers have requested similar representation but have not supplied their official authorization. There are at least nine other independent bargaining units with at least 3,000 engineers, all of which are known by us to share our views on this issue, because of their membership bulletins and other contacts that we have had. This makes at least 10,000 engineers in existing independent bargaining units, and we know of at least 2,500 others who expect to be certified in the future and who also concur with us.

In addition to these collective-bargaining groups, we know of at least 6,000 engineers in industry in noncertified bargaining groups, or in independent organizations, who are also in accord with us in this appeal. Among these are about 2,500 engineers in the Bell Telephone laboratories and at least 1,500 in several engineers' associations in the General Electric Co., 200 at the Humble Oil Co. at Baytown, Tex., and a number of others.

This makes a total of at least 18,000 engineers in industry, of which more than 10,000 are in certified-bargaining units, in groups which are known to favor strongly the carrying-over of sections 2 (12) and 9 (b) (1) of the Taft-Hartley Act to the new Labor Relations Act.

There are also some tens of thousands of unorganized engineers in industry who have no real representative because they have not even joined their technical societies, that is, their professional societies of engineers. However, we believe that the views of these groups on this issue have been rather well expressed by the technical societies in the testimony which have been given by Mr. E. Lawrence Chandler of the Engineers' Joint Committee, and they also advocate retention of these sections.

As you doubtless remember, section 2 (12) explains what is meant by professional personnel as that designation is used in the stipulations concerning the appropriate grouping of employees into collective bargaining units.

Section 9 (b) (1) provides that no group of such professional employees, or professional personnel, shall be included in a proposed mixed bargaining unit unless a majority of that professional group so chooses.

To the groups which I represent, these sections give the following very vital provisions. Engineers and scientists in industry, who, as a naturally distinct group in any company, may find it advantageous to form a bargaining unit of their own, are guaranteed the right, first, to form such an independent unit; secondly, as a second alternative, to form a second unit and affiliate with an established labor union; as a third possibility, to go into a mixed unit with labor organizations; fourthly, to refrain from bargaining activity.

We believe that the right to those choices is essential to the furtherance of proper and advantageous collective bargaining among all engineering groups in industry and among all other industrial groups.

We believe that such proper bargaining is essential in the public interest, so that our economic order may be preserved and improved.

Testimony favoring these same sections, 2 (12) and 9 (b) (1) has been presented by Mr. Chandler, as we have mentioned before. It has been charged in previous testimony and in previous hearings that these societies are primarily technical in their function and their officials are drawn largely from the top management personnel of large corporations, and that they should not, therefore, speak for employee engineers.

We agree that there is some basis for questioning the appropriateness of any representative of these groups as a spokesman on economic matters for engineers in industry. However, many engineers in our groups are members of these societies, and it so happens that we do agree with Mr. Chandler on retention of these sections, as we do in many other noneconomic issues.

Moreover, we believe we have some good reasons in addition to those of Mr. Chandler for retention of these sections. On the other hand, in fairness to our groups and to many other engineers in industry, we cannot avoid stating that the only engineering representatives whom we expect to speak for omitting these sections from the act must be considered as authorized by only a small minority of the engineers in American industry. In a study made in 1947 for the Industrial Relations Counselors, by Prof. Herbert R. Northrup, who is professor of industrial relations at the New York School of Social Work, the following was reported:

The International Federation of Technical Engineers, Architects, and Draftsmen, which is an A. F. of L. affiliate, was founded in 1918, and in 1947 it had 6,200 members, 8.5 percent to 10 percent of whom were engineers, or a maximum of 620 engineers.

Now, we are rather sure that they could not have more than twice that many today, or a probable maximum of about 1,200 bona fide engineers. The same study by Professor Northrup said that the United Office and Professional Workers, a CIO affiliate, had about 10,000 workers at that time, with approximately 10 percent, or 1,000 engineers. Here again, we are rather sure that the number has probably not doubled to the present date, and this would give a probable maximum of 3,200 engineers in these two groups who are probably the major proponents of dropping the section in question from the act.

We cannot avoid contrasting this probable 3,200 with the 18,000 cited above.

We also point out that the sections in question do not detract in any way from the rights or from the bargaining efficacy of these affiliated groups. On the contrary, we find that they make for more satisfactory and effective bargaining units generally, since groups are thereby free to form into whatever type of mixed or homogeneous units they may find desirable and efficacious.

The groups which I represent do not wish to testify against the interests of the large labor unions. On the contrary, some of our groups share with the progressive leaders of the labor movement, as well as with an increasing number of respected citizens, such analytical thinking. We share with these a good deal of apprehension over the future course of our democratic free enterprise unless reforms are made within that system which will promote the development of the individual worker as an individual, as a citizen.

Our groups are, therefore, not antilabor. We hold that collective bargaining by engineers is in the long-term interest of these large labor unions, and that a free choice of appropriate units, as provided by the sections which we advocate, is the only basis upon which most engineering groups have actively participated in the bargaining activity, and we petition the Congress they do not create obstacles to this free choice and thereby hinder the development of proper collective bargaining in our economic system.

Most of the engineers in our groups believe that labor organizations are just as essential for the proper operations of our economic system as are corporate organizations, but they believe that in our interest and in the public interest the engineer should have the choice of maintaining an independent status within the labor movement. As established bargaining units most of our concern is for the large groups of our colleagues in industry who are as yet unorganized, and thus have no duly authorized spokesman on such matters, and our concern is they shall have a free choice as to the most advantageous and effective bargaining unit available, whether it be in combination with other groups or not, or a choice not to bargain at all if they deem this to be in their interest.

It has been argued on behalf of the engineers in industry that they have only the same problems as other plant groups and, therefore, they can have no need for separate bargaining groups even if they wish them. This argument shows almost complete disregard for inherent differences between industrial groups and for their individual functions, their individual interests, and more important, their individually effective approaches to collective bargaining.

It is true that engineers and scientists in an industrial plant have certain group problems which, more or less, parallel similar problems of other groups, which it is equally true and also evident that engineers and scientists in an industrial plant, by the very nature of their work and of their functions, are certainly a more separate and distinct group than are various separate craftsmen, such as carpenters and steam fitters and electricians, and so forth, who work in the same plant.

As such a separate group, characterized by unique functions, unique interests, and unique capabilities, rather than ban the desired prerogatives, there should also be accorded the right to several choices of action:

(1) To set up a separate and distinct bargaining unit, if they so desire, which bargaining unit should be affiliated with a labor union, or independent, as they so desire.

(2) To enter a mixed bargaining unit, along with the draftsmen, technicians, and so forth, if they so desire.

(3) To set up a noncertified bargaining group.

(4) Or to abstain from collective bargaining if they so desire.

Sections 2 (12) and 9 (b) (1) of the Taft-Hartley Act, which sections we want retained, permit engineering groups any of these choices. It is not true, as has been implied elsewhere in previous hearings, that these sections enforce the separation of engineering and drafting and technician groups. Such combination groups are one of the above choices permitted by these sections, and such mixed groups must be certified under these sections as appropriate bargaining units if the groups so desire.

Collective bargaining by engineers has progressed and has expanded under these provisions for which we are requesting continuance. The large and increasing number of existing, active, independent bargaining units of engineers is, in itself, an attest to the need for these provisions. And in this regard it should be remembered that these provisions infringe upon no one's choice of action with respect to collective bargaining.

A few of our colleagues engineering groups have chosen to go into fixed bargaining units, which are CIO or AFL affiliates, because they have found this to be more advantageous in their situation, and we certainly can have no objection to this, and it is one of the choices offered by these sections.

However, before these sections were enacted many engineering groups were really deterred from bargaining because of their inability to get certification from local NLRB agencies for what they considered to be an advantageous and appropriate unit.

Moreover, other engineering groups were then forced, against the will of their majority, into bargaining units wherein the bargaining interests of the engineers were subjugated to those of a larger majority. In most cases, the engineering groups atrophied in the bargaining function. They either disregarded the activity completely, or went to great effort and expense to be excluded from the unit. Such occurrences have strongly prejudiced some engineering groups against the labor movement in general, and this does not appear to us to be in the public interest.

Correction of such inequities by these sections to 2 (12) and 9 (b) (1) has resulted in improved relations for all concerned, and has promoted bargaining among engineers, and has not deterred in the least those groups of engineers, draftsmen and technicians who have found it more advantageous to combine in their bargaining activity.

And so we ask why these sections should be omitted from the new law, since they are so eminently reasonable. We believe they should be retained since they are, in the light of experience, so conducive to the orderly development of collective bargaining. These sections do no harm to any group, and we believe they are of real benefit to all industrial groups. We ask nothing new; only for the retention of something which has proved to be, from experience, good.

That concludes my testimony. I wish to thank the committee on behalf of the participating groups for this opportunity to testify.

Mr. Bailey. Br. Brumbaugh, I believe you can save some time for the committee, and obviate the necessity for individual members of the committee asking you questions if you will answer this one direct question.

Mr. Brumbaugh. Yes, sir.

Mr. Bailey. Your primary purpose in appearing before the committee is to contend that your engineering groups will lose their independent status because of the failure to carry over into the proposed new legislation sections (2) (12) and 9 (b) (1) that are in the present Taft-Hartley Act?

Mr. Brumbaugh. That is not our primary consideration. We think that, as applied to organized units, it is clear there is a possible danger of that, but our primary concern, sir, is for groups who are not yet organized, that they shall have the choice—as many of our groups have had—as to whether or not they wish to affiliate with large unions voluntarily, or perhaps be absorbed by large units against their will, as had happened in some instances before the passage of these sections.

Mr. BAILEY. I think that makes your position clear.

Have you any questions, Mr. Irving?

Mr. IRVING. No questions.

Mr. BAILEY. Mr. Jacobs?

Mr. JACOBS. I have no questions.

Mr. BAILEY. Mr. Burke?

Mr. BURKE. Yes.

If I understand the tenor of your testimony, what you want to do, practically, is to allow the professional engineers to be set up either in a separate collective bargaining unit, or if they choose, to become part of the production and maintenance or plant unit; is that right?

Mr. BRUMBAUGH. Yes, sir.

Mr. BURKE. That, I believe, was done under the Wagner Act, as well as under the Taft-Hartley Act, by Board decision, was it not?

Mr. BRUMBAUGH. As I understand, sir, under the Wagner Act it was almost entirely at the discretion of local agencies of the NLRB as to whether such engineering groups should be put into a plant unit, or should have their independent group.

Mr. BURKE. Do you remember when the Society of Designing Engineers voted for affiliation with the CIO, and went into the various international unions—first of all, they went into the Federation of Architects, Engineers, Chemists, and Technicians, and that was set up within the CIO for that particular phase, and then—of course, I am more familiar with the auto industry than anything else, and I think you will find that engineers in the auto industry, who are now represented by the United Automobile Workers, are far in excess of the 3,200 that you quote here that are in both the AFL and CIO.

Mr. BRUMBAUGH. That could be, sir. I will admit that we did not have very good information. I would be interested in knowing how many there are.

Mr. BURKE. I can readily realize that. Of course, as I say, I am more familiar with the automobile industry than with any other industry in the country, and I do know that to be a fact; particularly, since I happened to come from an engineering department myself.

In that particular case they set up a professional and technical unit, and this was under the Wagner Act, by the way, and it was set up as a separate and distinct unit from the production and maintenance unit of the plant workers, although the union members among the engineers themselves contended for a unit as part of the collective bargaining unit of the total plant. The Board in that particular case went against the wishes of the union and the express wishes of the people, and did set up a separate unit recognizing the company's contention of lack of community interest, and so on; but, by and large, you would be satisfied if the new bill did provide that the unit could be set up in either of the two ways: One, as a separate unit by itself, depending on the evidence developed in the hearing, and so on; and secondly, if the people in that unit so desired, be a part of the plant-wide unit. You would be satisfied with that?

Mr. BRUMBAUGH. Yes, and to put it another way, we think that the group should have the choice by a majority vote of this group as to whether they want to have an independent, unaffiliated group, or whether they want to affiliate with the AFL or CIO another way.

Mr. BURKE. The principle of the election being held among the group to determine whether or not they wanted to be a part of the plant-wide unit, I believe, was used first in the Willys-Overland case?

Mr. BRUMBAUGH. I am not sure.

Mr. BURKE. I believe it was. From that time, then, many other cases arose within the automobile industry. And, I might say, that the engineers in the United Automobile Workers have received pretty good recognition all the way through. In fact, the international president is an engineer himself.

That is all.

Mr. BAILEY. Mr. Werdel?

Mr. WERDEL. Mr. Brumbaugh, the people you mention as engineers, what do they include, generally? Are they college-trained men? That is what is bothering me.

Mr. BRUMBAUGH. In the groups which I represent the percentage of graduate engineers varies from group to group. I would estimate, on the average, that it might be 80 percent graduate engineers.

Mr. WERDEL. College-trained men?

Mr. BRUMBAUGH. College trained.

Mr. WERDEL. And those could be chemists or physicists or civil engineers?

Mr. BRUMBAUGH. Yes, mechanical, electrical, chemical; yes, sir.

Mr. WERDEL. Is there any labor organization opposition to your request, that you know of?

Mr. BRUMBAUGH. I know of only the testimony in the Senate committee by a Mr. Oliver, I believe, of the A. F. of L.

Mr. WERDEL. Of who?

Mr. BRUMBAUGH. Of the A. F. of L., affiliated with the International Federation of Engineers, Architects, and Technicians, I believe it is. That is the only testimony I know of having been presented against these sections.

Mr. WERDEL. As a matter of fact, under the Wagner Act there were occasions in a plant where there might be one or two chemists, say, in a dehydrating plant, and they were put into the plant-wide bargaining unit as a classification by a vote of the people that voted in the plant; is that not correct, under the Wagner Act?

Mr. BRUMBAUGH. I think so, but where it was not an expression of the wishes of the individuals in that group itself.

Mr. WERDEL. And having then been included in the bargaining unit their wage rates were figured, and you were for all time covered by those wage scales—not that I object to your stand. I think that if your people represent college educations, and so forth, they are entitled to some differential and to a right to bargain independently. I assume that is what your real objection is; you want to bargain independently so you can maintain a little different wage scale, that is expressed in terms of pennies per hour; is that it?

Mr. BRUMBAUGH. That is one, but there are others.

Mr. BURKE. Will the gentleman yield?

Mr. WERDEL. Yes.

Mr. BURKE. Under the Wagner Act the Board did it in three cases—in three ways:

First, in some cases it excluded from bargaining this type of employee;

Second, it set them us as a separate bargaining unit from any other bargaining unit in the plant: and

Third, in some cases it set them up as part of the plant-wide bargaining unit.

Mr. Werdel. I agree with that, but almost invariably, within the knowledge I have—and mine is not Nation-wide by any means— if there were one or two men classified as engineers, chemists, or physicists, unless they personally objected they were usually included, and within a short time thereafter we often found them objecting.

I believe that is what the man is talking about.

Mr. Brumbaugh. Yes, there were a number of such cases where there were fairly large groups of engineers who were included against their wishes.

Mr. Werdel. That is all.

Mr. Bailey. Thank you, Mr. Brumbaugh, for your appearance.

Mr. Brumbaugh. Thank you, gentlemen.

(The revised statement referred to by Mr. Brumbaugh is as follows:)

Statement Relative to H. R. 2032 Presented by John M. Brumbaugh on Behalf of a Group of Independent Certified Collective Bargaining Units of Engineers

This brief statement constitutes the plea of approximately 7,300 engineers, in 14 independent unions or collective bargaining units, for carry-over of sections 2 (12) and 9 (b) (1) of the Taft-Hartley Act into the new Labor Relations Act. A list of these units and their membership is included at the end of this statement; as is also a break-down of other groups, which shows that at least 18,000 engineers in industry (of which about 10,000 are in existing independent bargaining units) join us in this plea for retention of the above-cited sections.

Section 2 (12) explains what is meant by "professional personnel"; as that designation is used in the stipulations concerning the appropriate grouping of employees into collective-bargaining units. Section 9 (b) (1) provides that no group of such professional personnel shall be included in a proposed mixed bargaining unit unless a majority of that professional group so chooses.

To the groups which I represent, these sections give the following very vital provision. Engineers and scientists in industry, who, as a naturally distinct group in any company, may find it advantageous to form a bargaining unit of their own, are guaranteed the right to: (*a*) form such an independent unit, (*b*) form a separate unit and affiliate with an established labor unit, (*c*) go into a mixed unit, or (*d*) refrain from bargaining activity. We believe that the right to these choices is essential to the furtherance of proper and advantageous collective bargaining among all engineering groups in industry, and among all other industrial groups. We believe such proper bargaining is essential in the public interest, so that our economic order may be preserved and improved.

Testimony favoring these same sections 2 (12) and 9 (b) (1) has been presented by Mr. E. Lawrence Chandler, speaking for the Engineer's Joint Council (panel of representatives of technical professional engineering societies). It has been charged in other hearings that these societies are primarily technical in their functions, that their officials are drawn largely from top-management personnel of large corporations, and that they should not therefore speak for employee engineers. We agree that there is some basis for questioning the appropriateness of any representative of these groups as a spokesman, on economic matters, for engineers in industry. However, many engineers in our groups are members of these societies, and it so happens that we do agree with Mr. Chandler on retention of these sections; as we do on many other noneconomic issues. Moreover, we believe we have good reasons for their retention in addition to Mr. Chandler's.

On the other hand, in fairness to our groups and many other engineers in industry, we cannot avoid stating that the only engineering representatives, whom we expect to speak for omitting these sections from the act, must be considered as authorized by only a small minority of the engineers in American industry.

In a study made in 1947 for the Industrial Relations Counselors, by Prof. Herbert R. Northrup (professor of industrial relations, New York School of Social Work), the following was reported: The International Federation of Technical Engineers, Architects, and Draftsmen (A. F. of L.), founded in 1918, had, in 1947, 6,200 members; 8.5 to 10 percent of whom were engineers—or a maximum of 620 engineers. We are rather sure that they could not have more than twice that many today—or a probable maximum of 1,200 bona fide engineers.

The same study said that the United Office and Professional Workers (CIO), had about 10,000 members, with approximately 10 percent or 1,000 engineers. Here again, we are rather sure that the number has not doubled to date. This would give a probable maximum of 3,200 engineers in the two groups, who are probably the major proponents of dropping the sections in question from the act. We cannot avoid contrasting this probable 3,200 with the 18,000 cited above, and also point out that the sections in question do not detract in any way from the rights or bargaining efficacy of these affiliated groups. On the contrary, we find that they make for more satisfactory and effective bargaining units generally, since groups are thereby free to form into whatever type of mixed or homogeneous units they may find desirable.

The groups which I represent do not wish to testify against the interests of the large labor unions. On the contrary, we hold that collective bargaining by engineers is in their long-term interest; and that a free choice of appropriate unit (as provided by the sections we advocate) is the only basis upon which most engineering groups have actively participated in bargaining activity. We petition the Congress that they do not create obstacles to this free choice, and thereby hinder the development of proper collective bargaining.

As established bargaining units, most of our concern is for large groups of our colleagues in industry who are as yet unorganized, and thus have no duly authorized spokesman on such matters. Our cocern is that they shall have a free choice as to the most advantageous and effective bargaining unit available, whether it be in combination with other groups or not; or a choice not to bargain collectively at all, if they deem this to be in their interest.

It has been argued that engineers in industry have only the same problems and interests as other plant groups, and that therefore they can have no need for separate bargaining units, even if they wish them. This argument shows complete disregard for inherent differences between industrial groups, and for their individual functions, interests, and approaches to bargaining. It is true that engineers and scientists in an industrial plant have certain group problems which more or less parallel similar problems of other groups. But it is equally true and quite evident that the engineers and scientists in an industrial plant are, by the very nature of their work and function, certainly a more separate and distinct group than are the various separated craftsmen; such as carpenters, steamfitters, electricians, etc., who work in the same plant. As such a separate group, characterized by unique functions, interests and capabilities (rather than by desired prerogatives), they should also be accorded the right to: (*a*) set up a separate and distinct bargaining unit, if they so desire—which bargaining unit should be affiliated with a labor union, or independent, as they so desire, (*b*) enter a mixed bargaining unit, along with draftsmen, technicians, etc., if they so desire, (*c*) set up a noncertified bargaining group, or (*d*) abstain from collective bargaining, if they so desire.

Sections 2 (12) and 9 (b) (1) of the Taft-Hartley Act, which sections we want retained, permit engineering groups any of these choices. It is not true, as has been implied elsewhere, that these sections enforce the separation of engineering-drafting-technician groups. Such combination groups are one of the above choices permitted by these sections; and such mixed groups must be certified under these sections as appropriate bargaining units, if the groups so desire.

Collective bargaining by engineers has progressed and expanded under these provisions, for which we are requesting continuance. The large and increasing number of existing, active, independent, bargaining units of engineers is, in itself, an attest to the need for these provisions. And, in this regard, it should be remembered that these provisions infringe on no one's choice of action with respect to collective bargaining. Before they were enacted, many engineering groups were deterred from bargaining by their inability to get certification, from local NLRB agencies, for what they considered to be an advantageous and appropriate unit. Moreover, other engineering groups were then forced, against the will of their majority, into bargaining units wherein the bargaining interests of the engineers were subjugated to those of a larger majority. In most such cases, the engineering groups atrophied in their bargaining function. They either disregarded the activity completely, or went to great effort and expense to be excluded from the unit. Such occurrences have strongly prejudiced some engineering groups against the labor movement in general. This does not appear to be in the public interest.

Correction of such inequities by these sections 2 (12) and 9 (b) (1) has resulted in improved relations for all concerned, has promoted bargaining among engineers, and has not deterred in the least, those groups of engineers, draftsmen and technicians who have found it more advantageous to combine in their bargaining activity.

We ask why these sections should be omitted from the new law, since they are so eminently reasonable. We believe they should be retained since they are, in the light of experience, so conducive to the orderly development of collective bargaining. These sections do no harm to any group, and we believe they are of real benefit to all industrial groups. We ask nothing new; only retention of something which proved to be good.

The following is a list of the independent bargaining units which I represent, by official authorizations in my possession, in their appeal for retention of sections 9 (b) (1) and 2 (12) of the Taft-Hartley Act:

Name and company employing—	*Approximate number of engineers*
Unit I. Eastern Conference Committee of Independent Engineering Organizations:	
1. Council of Western Electric Technical Employees, Kearney, N. J.	1, 520
2. Engineers Association, Sperry Gyroscope, Hempstead, N. Y.	900
3. Association of Professional Engineer Personnel, RCA, Camden, N. J.	510
4. Association of Engineers and Engineers Assistants, General Electric, Philadelphia, Pa.	160
5. Bloomfield Westinghouse Association of Engineers, Bloomfield, N. J.	150
6. Association of Technical and Professional Employees, Westinghouse Electric, Bloomfield, N. J.	30
Unit II. National Professional Association of Engineers, Architects, and Scientists (employed by various concerns):	
1. Southern California Professional Engineers Association	3, 000
2. San Francisco Area Group of Professional Employees	
3. Sacramento Group of Professional Engineering Employees	
4. Engineer's Guild of Oregon	
5. Seattle Professional Engineering Employees Association	
Unit IV. Research and Engineering Professional Employees Association,	
Unit III. Minneapolis Federation of Honeywell Engineers	300
Standard Oil of Indiana, Whiting, Ind.	410
Unit V. Association of Industrial Scientists, Shell Development Co., Berkeley, Calif.	330
Total, over	7, 310

All of the above are certified by N. L. R. B. as collective bargaining units. Several other bargaining units, with about 400 engineers, have requested similar representation, but have not supplied official authorization. There are at least 9 other independent bargaining units, with at least 3,000 engineers, all of which are known by us to share our views on this issue because of their member bulletins and other contacts we have had. This makes at least 10,000 engineers in existing independent bargaining units, and we know of at least 2,500 others who expect to be certified in the near future, and who also concur with us.

In addition to these collective-bargaining groups, we know of at least 6,000 engineers in industry, in noncertified bargaining groups or nonbargaining groups and organizations, who are also in accord with us in this appeal. Among these are about 2,500 engineers in the Bell Telephone Laboratories, at least 1,500 in several engineers associations in the General Electric Co., and 200 at the Humble Oil Co., Baytown, Tex.

This makes a grand total of at least 18,000 engineers in industry, of which more than half are in certified bargaining units, in groups which are known to favor strongly the carry-over of sections 2 (12) and 9 (b) (1) of the Taft-Hartley Act to the new Labor Relations Act. There are also many tens of thousands who have no real representative because they have not even joined their technical societies. By their bargaining inactivity, it is presumed that they favor these same provisions.

In contrast to these 18,000, and the many other inarticulate groups, we believe that the total number of bona fide engineers in the AFL and CIO affiliated groups, who may have spoken against these sections, could not exceed 3,200—and we repeat that retention of these sections does not detract from the rights or bargaining effectiveness of these groups of engineers and technicians.

Mr. Bailey. The committee will now hear Dr. H. M. Griffiths of the National Ecoonmic Council.

You may state your name and affiliations.

TESTIMONY OF DR. H. M. GRIFFITHS, DIRECTOR OF PUBLIC RELATIONS OF THE NATIONAL ECONOMIC COUNCIL, INC., NEW YORK, N. Y.

Mr. Griffiths. My name is H. M. Griffiths. I am director of public relations of the National Economic Council, Empire State Building, New York.

Most of the witnesses whom you have heard here, Mr. Chairman, have come for some special interest. Some have come representing the unions, and some have come representing employers. We wish to make it clear at the outset that we are here representing a cross section of the general public.

Our membership represents employers, it represents employees, it represents housewives, and people who work at the benches, and people who hold executive positions, and so I want to say we are not in a position here of representing any one special interest, but the interest of the constituency which comprises our membership.

Mr. Bailey. You may proceed.

Mr. Griffiths. It is the opinion of the National Economic Council that H. R. 2032 or any equivalent thereof should be rejected. The need of the United States, in the interest of the public of wage earners, of management and of ownership, is that the Taft-Hartley law be strengthened, not repealed.

The Taft-Hartley law is not unfair to the wage earner. In fact, it gives sorely needed protection to the wage earner against exploitation. The chief danger to the wage earner today is not that of exploitation by the employer. It is the power held over him, or desired to be held over him, by the barons of organized labor. We believe the Taft-Hartley law is a character of liberty for the American wage earner who desires to retain his self-respect as a person. The representation that it is a slave-labor law is pure invention, and every informed, intelligent person knows it.

The National Economic Council believes that reenactment of or substantial reenactment of the old Wagner Act, would be a dangerous backward step in American labor relations, in the following respects:

(1) Restoration of the closed shop is a direct blow at the moral and legal right possessed by virtue of natural right and guaranteed by the Constitution whereby any man is free to join or not to join a labor union as his own conscience and judgment may dictate.

(2) Invalidation of all State laws against the iniquitous closed shop is an invasion of the police powers of the States under the Constitution. The interstate commerce plea is a mere subterfuge.

(3) The right of employees to vote by secret ballot on whether they wish to work or continue to work under a union shop contract is taken away, thus further reducing the area of the employee's freedom. This, not the freedom given under the Taft-Hartley, is real "slave labor."

(4) The right of employees to vote themselves out of a Communist-controlled, or mismanaged union by secret ballot is taken away by repeal of the decertification provisions of the Taft-Hartley Law. This is an afront to all decent American workers who do not wish to pay tribute to Communist labor bosses, and in effect compels them to support un-American activities if their union is Communist-dominated.

(5) The right of employees to be free of coercion from any quarter is taken away by retaining the Taft-Hartley provision against employer-coercion while omitting the Taft-Hartley provision against coercion by unions. This is an open invitation to coercion and an open door for the restoration of labor abuses of which the American public is heartily sick. It further restricts the employee's freedom.

(6) The obligation upon employers to bargain collectively in good faith contained in the Taft-Hartley law is retained, but the corresponding obligation of the union to bargain collectively in good faith is omitted. This again opens the door to gross abuses and abandons even the pretense of mutuality.

(7) The Taft-Hartley ban upon political contributions by employers is retained, while the making of such contributions by labor unions is not prohibited. This again, taken together with the closed shop, forces employees to make political contributions against their will and without their consent. There is no mutuality. This is an immoral device, and there are others equally immoral in the proposed legislation, to increase the political power of labor barons at the financial expense of their serfs, the rank and file. Here is "slave labor" with a vengeance.

(8) The proposed legislation, in repealing the Taft-Hartley provisions against featherbedding returns to medieval economic thinking which does vast harm to workers, employers and public. It slows down the efficiency of industry to produce, make statutory the obligation of employers to pay employees who do no useful work, and saddles the public with many millions of dollars added without reason to the cost of living. In effect it is a tax upon consumers paid to union members for not working, which is extortion.

(9) The proposed legislation omits the Taft-Hartley provisions guaranteeing to employers freedom of speech, while preserving such freedom for labor unions and their officers. This is class legislation at its worst. America has no room for the philosophy and the practice of class-conflict, nor should they be sanctified by law.

(10) In eliminating the Taft-Hartley provisions making labor unions responsible for the acts of their agents and liable for violations of their contracts, while holding employers both responsible and liable, the proposed legislation is grossly immoral, lacks mutuality, and invites lawlessness from a privileged class thus notified in advance that it will not be penalized for unlawful acts it does by agents or for damage to employers, employees and the public done by breaking its own pledged word.

(11) The proposed legislation further violates the freedom of individual employees because, while it retains the Taft-Hartley pro-

hibition against discriminations against employees by employers, it omits the Taft-Hartley provision making it an unfair labor practice for labor unions to cause or attempt to cause an employer to discriminate against an employee. This is plainly a provision to put the rank and file worker completely under the thumb of labor bosses.

(12) The proposed legislation, in omitting the Taft-Hartley ban on strikes by Federal employees, threatens the future security of the United States.

(13) By eliminating the provisions of the Taft-Hartley law requiring non-Communist affidavits, the proposed legislation deprives patriotic, American-minded members of labor unions of a proven and efficient means by which Communist officers and Communist controls may be eliminated and kept eliminated from their unions. In taking away this weapon, it encourages communism among unions.

(14) The proposed legislation strikes a blow at the public safety and security by eliminating the provisions of the Taft-Hartley law which enable the courts at the request of the President to delay strikes threatening the national health and safety. That the small group of labor barons who control unions with power to threaten the national health and safety should be given power to use the national health and safety as a coercive weapon would be a monstrously immoral act. The Congress should put the interest of all the people above the interest of a few power-drunk men.

For these and other reasons, too numerous to set forth in this brief statement, the National Economic Council urges that the Taft-Hartley law be retained and the proposed substitute be rejected. We can think of no better way to promote that chaos and utter confusion in which communism thrives than to pass this bill.

We also urge the strengthening of the present law as follows:

(1) By enacting amendments protecting the right of any individual to employment upon agreement with an employer, whether he chooses to belong to a union or not to belong to any union.

(2) By enacting amendments denying to a majority of employees the power to coerce a minority by legalizing a compulsory union shop. Such coercion is an infringement of the natural rights of the minority, as well as an unconstitutional exercise of the power to abrogate the contracts between the minority and the employer made before the establishment of the so-called union shop.

The issues involved in these matters transcend the interest of partisan or political advantage. The Taft-Hartley law is consonant to and agreeable with the spirit and the letter of the American system of Government as contained in the Constitution. The proposed legislation is neither. It is class legislation, it invites lawlessness, it abrogates the constitutional liberties of employees and employers alike, it encourages Communist activity, it saddles heavy financial burdens upon the cost of living of every American family, and it betrays the interest and safety of the American public by failing in its duty to protect their health and welfare.

The National Economic Council earnestly urges the committee to preserve and strengthen the Taft-Hartley Law.

Thank you.

Mr. Bailey. Mr. Griffths, I notice in your presentation, you say you are Director of Public Relations of the National Economic Council, and beyond saying they have their office in the Empire State Building in New York, you give practically no background of your organization. Does it have a constitution?

Mr. GRIFFITHS. Yes, sir.

Mr. BAILEY. Does it have a board of directors?

Mr. GRIFFITHS. Yes, sir.

Mr. BAILEY. Is Merwin K. Hart the president?

Mr. GRIFFITHS. He is the president, and also a member of the board of directors. I have a sample of the literature containing a roster of the board of directors, which I will be glad to leave with the committee.

Mr. BAILEY. Was Merwin K. Hart, the president, at one time associated with one William Dudley Pelley?

Mr. GRIFFITHS. Not that I know of, and I do not think that has anything to do with the committee.

Mr. BAILEY. I think we should have the background of your organization.

Mr. GRIFFITHS. My answer is that I have never heard of any association. Have you?

Will you answer my question? Did you ever hear of any such association?

Mr. BAILEY. I am quoting here now from Who's Who in which he is listed as a member of the American Union for National Fame in 1938 to 1940, and also chairman of the committee to send relief supplies to Fascist Spain in 1943.

Mr. GRIFFITHS. What has that to do with William Dudley Pelley?

Mr. BAILEY. I am talking about Mr. Hart.

Mr. GRIFFITHS. Yes, but you asked if Mr. Hart was associated with Mr. Pelley. I asked you the question whether, to your knowledge, he was.

Mr. BAILEY. But I am asking you a question.

Mr. GRIFFITHS. Do you not think it is unfair to ask the question unless you have the evidence to prove it?

That is the smear technique, sir.

Mr. BAILEY. I object to your statement here.

Mr. GRIFFITHS. Unless you have some reason to believe he has been, you should not have asked the question.

Mr. BAILEY. I think this committee has a right to know the background of the groups who come here to put pressure on Congress to pass legislation to regulate other people's business.

Mr. GRIFFITHS. I do, too, but I do not think you have a right to ask such a question. I have never heard of any such connection, and I doubt whether any has ever been alleged or proved.

Mr. BAILEY. You state here on page 4 of your presentation that in taking away the weapon of the non-Communist affidavit that it encourages communism among unions.

Mr. GRIFFITHS. That is right.

Mr. BAILEY. Does the Taft-Hartley Act require non-Fascist affidavits?

Mr. GRIFFITHS. Not so far as I know, Mr. Chairman.

Mr. BAILEY. Would you say that failure to include a non-Fascist affidavit would encourage fascism among the employers?

Mr. GRIFFITHS. As far as I know, Mr. Chairman, if you will let me answer that question in my own way, there is no organization known as a Fascist Party in this country. I do not know of any Fascists, myself. So far as I know, they are all gone. There are Communists, and that refers to whether a person has a membership in the Communist Party, a membership which is well known. The term "Fascist" is another smear term which is just used by a number of people to refer to people they do not like. There is not any such thing as a Fascist Party, so how could anybody ask a person to make an affidavit to something that does not exist?

Mr. BAILEY. You will agree, then, if the non-Communist affidavit is required of labor unions, it should be required of employers, alike?

Mr. GRIFFITHS. I will agree with that, sir.

Mr. BAILEY. Will you agree that the best way to handle that would be in general legislation rather than to write it into labor legislation, or any other kind of labor legislation?

Mr. GRIFFITHS. I do not know what you mean. Do you mean to make every citizen sign an affidavit he is not a Communist?

Mr. BAILEY. Would that not be the desired end which we all want, if we could do that?

Mr. GRIFFITHS. I do not think so.

Mr. BAILEY. Do you see any difference?

Mr. GRIFFITHS. This refers to officers of labor unions, and labor unions are, to the knowledge of anybody who knows anything about it, being currently infiltrated by Communists today.

But to go out and ask the whole American people to sign up and say they are not Communists would be a work which could not be accomplished, and there would be no point to it.

Mr. BAILEY. The gentleman is aware there is a legislation pending before committees of Congress in that direction. In fact, they cover practically the entire field. You are aware of that, are you not?

Mr. GRIFFITHS. No, sir, I am not. I think there is a great distinction in what you propose and the other legislation.

Mr. BAILEY. You are familiar with that legislation?

Mr. GRIFFITHS. In general. Some of it has just been introduced, and I have not read the bills.

Mr. BAILEY. You would not know what groups are covered?

Mr. GRIFFITHS. I understand you are suggesting that every citizen of the United States should tell whether he is a Communist, or not.

Mr. BAILEY. When he is brought into a position where his Americanism is subject to question, probably it should be required.

Mr. GRIFFITHS. I am willing to go along with you on that. I thought you said they should go out and ask all Americans whether or not they are members of the Communist Party.

Mr. BAILEY. I think the gentleman would agree that would be impossible.

Mr. GRIFFITHS. That is right.

Mr. BAILEY. Have you any questions, Mr. Irving?

Mr. IRVING. I would like to know something about the financing of the organization, and how the members are gotten.

Mr. GRIFFITHS. You mean the members of the National Economic Council?

Mr. IRVING. Yes.

Mr. GRIFFITHS. We have memberships at $10 a year. We have a great many people who cannot afford to pay $10 a year but who—because we know that they are in sympathy with our aims and have been for a long time, because of correspondence with us telling what their theories are—are continued on without the payment of the full fee.

We have other persons who contribute to us larger amounts than that.

Mr. IRVING. That is all. Thank you.

Mr. BAILEY. Mr. Jacobs?

Mr. JACOBS. I read here in the second paragraph where you state that the Taft-Hartley law is not unfair to the wage earner.

I take it that you are familiar with the law?

Mr. GRIFFITHS. I have not memorized it, but I take it that in general I am familiar with it.

Mr. JACOBS. Will you refer to section 8 (b) (4) (D)? You recall that section, do you?

Mr. GRIFFITHS. Not by the number. If you have it there I will look at it.

Mr. JACOBS. I will give you a copy to use. It is on page 7, I believe, down about the middle of the page.

That is the provision that deals with the jurisdictional strike in the craft unions. It provides that it is unlawful to engage in a strike, or encourage anyone else to engage in a strike over a jurisdictional dispute between crafts. That, of course, as you probably know, is enforcible by injunction.

You are familiar with that?

Mr. GRIFFITHS. That is right.

Mr. JACOBS. But there is also a provision, is there not, for settling those disputes, and for calling in arbitrators, or the Board?

Are you familiar with that?

Mr. GRIFFITHS. I think so.

Mr. JACOBS. I think you will find that section 10 (k) provides that awards can be made, and give the work to one craft or the other.

Will you tell me where, in the Taft-Hartley law, there is any provision to enforce the award against the employer? We know that in 10 (l) it can be enforced against the workers.

If you are familiar with the law—I have been looking for it for a long time and have not found it; and maybe you can tell me a provision under which an award can be enforced against the employer.

Mr. GRIFFITHS. I am not in a position to give you that exact information at the moment, sir. If you have not been able to find it, it might take me a little while to find it.

Mr. JACOBS. I am afraid it would take you an awful long time to find it.

Mr. GRIFFITHS. If it is not there I would join you and say it should be made equally mandatory upon the employer.

Mr. JACOBS. You would then vary your statement that it is not unfair to labor and say there was only a unilateral remedy?

Mr. GRIFFITHS. I would say the Taft-Hartley Act has gone 90 percent of the way in representing the wage earner, and that if the provision which you mentioned is not in there it should be put in there. It certainly is not something they had before, is it?

Was it in the Wagner Act before that?

Mr. JACOBS. My friend, you used your time with your prepared statement, and I am asking the question.

However, I will answer your question. Neither was section 8 (b) (4) (D) in the Wagner Act, was it?

Mr. GRIFFITHS. So far as my memory goes; no.

Mr. JACOBS. Let us get back on the track, now.

Mr. GRIFFITHS. But they are no worse off than they were.

Mr. JACOBS. You used your time on your statement, and now, I want to ask you some questions.

You are using my time, and I want to ask you some questions.

You are aware of the fact, I suppose, that in the questionnaire that has been put out it demands a "Yes" and "No" answer in regard to the Taft-Hartley Act?

Mr. GRIFFITHS. I have seen some of them.

Mr. JACOBS. I am not trying to restrict you to that, but I do not want you to use my time, especially on something I am not asking you about.

Mr. GRIFFITHS. All right.

Mr. JACOBS. We will get back to the question of the closed shop:

Do you know of any corporation—that is, an employer—that permits the stockholders who are not officers and directors to come in and disagree with them at the bargaining table? Do you or do you not?

Mr. GRIFFITHS. Offhand, no.

Mr. JACOBS. Do you believe that the workers are entitled to strive by contract to procure a contract whereby they may have equal unity at the bargaining table?

Mr. GRIFFITHS. I think, sir—and I am not trying to make your speech for you; I am trying to answer the best I can—I think, sir, when you are dealing with the question of the equity which a person has in his job, you are dealing with something of a different nature than you are when you are making analogies about corporate structure.

Mr. JACOBS. Will you answer my question? Do you believe that the workers are entitled to strive by contract to procure a contract whereby they may have equal unity at the bargaining table?

Mr. GRIFFITHS. Not necessarily, sir, if some of the workers do not agree to it.

Mr. JACOBS. We will talk about the labor barons for a minute. Do you know how much money is in the treasuries of the first 30 international unions?

Mr. GRIFFITHS. I know it is a good deal of money, but I do not have the figure. Undoubtedly you do.

Mr. JACOBS. According to the figures I have, it is a little over $200,000,000. You heard the testimony as to what the American Telephone & Telegraph Co. is worth here this afternoon, did you not?

Mr. GRIFFITHS. I could not hear it all, sir. There were echoes in the room.

Mr. JACOBS. It is stated to be 9½ billion dollars or, in other words, about 40 times as much as all the international unions I mentioned.

Do you know how much money the State of New York is worth, what the assessed valuation of the State of New York is?

Mr. GRIFFITHS. No.

Mr. JACOBS. It is $14,000,000,000 plus.

We are talking now about the labor barons, and all their wealth. You recognize that there are seven corporations in the United States that are each worth more than the total assessed valuation of the State that I represent in Congress, the State of Indiana. Did you know that?

Mr. GRIFFITHS. No, sir. I presume you are leading up to something here.

Mr. JACOBS. I am just trying to find out how much you know about the relative wealth of those who oppose the people whose purpose you are talking about—and I suppose the question is answered.

Mr. GRIFFITHS. I would like to answer the question.

Mr. BAILEY. At this time the chairman desires to explain there is a roll call for a recommitment of a bill, and it is necessary for us to recess the meeting for 30 minutes, and we will be back to finish your testimony and the testimony of one other witness who is here to be heard.

We will stand in recess for 30 minutes.

(Whereupon, at 5:25 p. m., the committee recessed until 5:55 p. m. of the same day.)

(The subcommittee resumed at 6 p. m.)

Mr. IRVING (presiding). We will proceed.

Mr. Wier, do you have any questions?

Mr. WIER. No; I do not want to question him, since I did not hear his testimony.

Mr. IRVING. Mr. McConnell?

Mr. MCCONNELL. Dr. Griffiths, a little bit earlier, there was a discussion about whether they should not also include Fascist organizations when they mentioned Communist affidavits.

Mr. GRIFFITHS. Yes, sir.

Mr. MCCONNELL. I think the wording of the act really covers all of those points. It speaks about—

> and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

So I think that really covers a Fascist organization, and without mentioning any of the names, I am sure it does.

Mr. GRIFFITHS. Yes, sir, I would agree to that.

Mr. MCCONNELL. Now, speaking about the reason for having the non-Communist affidavits signed by employers as well as the labor leaders, the statement was made, I believe, to the effect that all people be required to make a non-Communist affidavit. The difficulty with that, of course, is that it would be, from the standpoint of organization, almost impossible to set it up and handle it. I have always felt that one of the reasons for having the employer and employees in a production plant or business sign those affidavits is the fact that they are a production team, and production is most essential in case of any trouble with some unfriendly outside power. I think that is a thought that might be considered when we are deciding on whether they should be included in the act.

Mr. GRIFFITHS. Yes, sir.

Mr. MCCONNELL. Now, I want to ask you one question.

Have you considered the proper way to handle the national emergency strikes?

Mr. GRIFFITHS. As a matter of principle, I am opposed, and have always been opposed, to the use of coercion and force to make anybody work against his will. I think that the provisions of the thirteenth and fourteenth amendments, and particularly the thirteenth, refer, however, to individuals who were made to work against their will, but when you are dealing with a situation where one man has it in his power, or two or three men have it in their power, to paralyze the national economy, and the men who are involved have really no part in that decision themselves, it then becomes a primary function of government to preserve the welfare of the whole people to take action to see that its health and safety are not endangered.

That is why we have advocated the retention of the provisions of the Taft-Hartley Act in that respect.

Mr. McConnell. Of course, you realize that in the Taft-Hartley Act, we do not provide for any settlement of those strikes. I think you realize that.

Mr. Griffiths. Yes, I understand. That is a cooling-off period.

Mr. McConnell. That is the cooling-off period, with an open end to it, you might say. The strike can be resumed at the end of a certain period of time.

We shied away from two extremes, one of complete freedom to do as one saw fit, and the other, compulsory arbitration, where it had to be settled by the Government itself. We shied away from those two extremes. I admit it was a compromise, and I also admit that many people are not sure that we have in any way arrived at a correct solution of the national emergency strikes.

Mr. Griffiths. Well, sir, I would not want to advocate here that any group of people be permanently kept under such an injunction.

Mr. McConnell. That is all.

Mr. Griffiths. May I make a supplementary statement, for just a moment or two?

Mr. Irving. Surely.

Mr. Griffiths. When Mr. Bailey was here as chairman of the committee, he began his examination of me as to my statement by inquiring to find out whether the president of the National Economic Council, which I represent, was ever associated with one William Dudley Pelley. I replied that to the best of my knowledge, he was not, and Mr. Bailey did not offer any proof that he ever had been, although I asked him to do so.

It will interest the committee to know that upon your recess, I went upstairs to the telephone, called Mr. Hart, and asked him point blank whether he knew Mr. Pelley, without telling him why I was asking. Here is his reply to me:

> I have never met or had any association with William Dudley Pelley.

He authorized me to put it in those exact words after I had explained to him, then, because naturally he wanted to know why I asked him a question about a man that I do not think he and I ever discussed. He further made a statement that he did not know what Mr. Pelley looked like, except that he had seen a photograph of him with a goatee. He had heard he is in prison, but does not know whether he is in prison justly or unjustly, but in so saying, he is not implying whether Pelley is guilty of anything. He just does not know.

No, sir, I think that the committee should be well apprised of the fact that the implication which was bound to come in the statement of the chairman, or the Congressman who was the chairman then, was not founded in fact.

Mr. Wier. Mr. Chairman, as long as you brought up this act, I will ask just one question here. I was not going to ask any questions until you did, in view of the fact that I have been on the House floor.

Who makes up the National Economic Council? Maybe that has been answered.

Mr. McConnell. That has been answered.

Mr. Wier. Is it in the record?

Mr. McConnell. Yes. There have been several questions about the organization.

Mr. Wier. And it is in the record who pays the bill, and all that?

Mr. Griffiths. Yes, sir. And I may say that I have available for the committee, in case that question should be asked, because we have nothing to hide, a statement of the National Economic Council, excerpts from its constitution and bylaws, showing its purposes and the names of all its officers and directors, including one Vice President of the United States, some people who are actually officers of labor organizations, people who work at the bench, and people who are a cross section of American life. We do not come representing industry; we do not come representing employees. We come representing a cross section of what we believe the public to be.

Mr. Wier. That is all I want to know. If it is on record, I will do my own checking and my own thinking.

That is all.

Mr. Irving. I think it would be well for Mr. Jarosz to pass those out to the various members, for I see no objection to making that part of the record.

Mr. Griffiths. We have no objection, sir. We have others of our publications here, too, sir. You can examine this during your spare time.

Mr. Wier. I think we get some of this propaganda in the mail.

Mr. Irving. Have you any further questions?

Mr. Griffiths. Mr. Chairman, should I answer the question which Mr. Jacobs asked of me just before the recess? I would like to, in about 1 minute.

Mr. Irving. I think it is not quite in order as long as Mr. Jacobs is not here.

Mr. Griffiths. Well, I am here and he asked me the question.

Mr. Irving. But if it takes only 1 minute, go ahead.

Mr. McConnell. Yes. Mr. Jacobs asked him the question.

Mr. Griffiths. He asked me in effect this, whether or not there was not such a great disparity between the assets in the hands of certain corporations and the assets in the hands of labor unions as to make of no significance the terms which we have used here in describing the power of labor barons.

My reply to that, sir, is quite simple. Money is power, but is is only power in a relative sense. It is only one kind of power. There is another kind of power, and that is the power which can stop the wheels of industry from working. If you added up the assets today of all the coal companies, the producing coal companies in this country which Mr. Lewis has now stopped—we will not call it a strike, but we will just say he stopped them from operating for 2 weeks—undoubtedly, you would find that those assets are greater than those of the United Mine Workers.

Nevertheless, the wheels are not rolling; coal is not coming out of the ground. Why? Because another kind of power, the power to stop the industrial machine, is far more important at this critical stage than all these theoretical statements about the amount of assets which certain corporations have.

The person who controls and has power in our economy today is the person who controls the bottlenecks, and those bottlenecks are controlled by the barons of union labor, and not by corporations.

Mr. IRVING. I think Mr. Jacobs made it quite clear that there had been a previous witness that used the dollar-and-cents terms with regard to economic power.

Mr. WIER. Are you answering for Mr. Jacobs?

Mr. IRVING. No. I am not answering for Mr. Jacobs, Mr. Wier. I am stating the term that he referred to.

Mr. Burke, did you have a chance to question this witness?

Mr. BURKE. No.

Mr. IRVING. Do you care to?

Mr. BURKE. No.

Mr. IRVING. We will thank you, Dr. Griffiths, for appearing, and we appreciate your coming, of course, and presenting your statement.

Mr. GRIFFITHS. I thank you, and I thank all the members of the committee.

Mr. IRVING. We will have the next witness. Mr. Clorety.

STATEMENT OF JOSEPH A. CLORETY, JR., VICE CHAIRMAN, AMERICAN VETERANS COMMITTEE

Mr. CLORETY. My name is Joseph A. Clorety, Jr., I am national vice chairman of the American Veterans Committee.

Mr. Chairman and members of the committee, the American Veterans Committee—AVC—wishes to express its appreciation to the subcommittee for this opportunity to present our position on H. R. 2032. The third national convention of the American Veterans Committee went on record clearly, unequivocally and succinctly, as follows:

> We believe that free, strong, responsible trade-unions are a hallmark of a democratic society. We are for the speedy and complete repeal of the Taft-Hartley law, and for reinstatement of the Wagner Act without crippling amendments of any kind.

We interpret this mandate, which was adopted by an overwhelming majority, as fully justifying a firm endorsement of H. R. 2032.

I am certain that delegates to our convention, and our membership as a whole, now regard removal of the Taft-Hartley act from the law of the land as a step to be taken by the Eighty-first Congress at the earliest possible date. We opposed this act while it was pending in the Eightieth Congress, and its operation since August 22, 1947, has strengthened our conviction that we were right in our opposition.

I wish to emphasize that we have taken this stand in two national conventions, virtually unanimously, despite the fact that our membership represents a reasonably accurate cross section of the American people and of veterans of the last war. While the bulk of our membership, like the bulk of the American people, are dependent upon the pay roll, we do number among our members significant representation of employers, professional men, farmers, and those veterans whose disabilities make their interest in this legislation strictly academic—or I should say patriotic. Of the overwhelming majority who do work for an employer, I have no doubt that we include roughly the same ratio of unorganized workers as exists among all workers in the American economy.

We are aware that some may query both the right and the propriety of a veterans' organization, as such, taking a stand on this type of legislation. AVC was founded on the concept, then and now peculiar to AVC, that the basic interests of the veteran are inseparable from those of the community. We appear here as "citizens first, veterans second" endorsing this legislation because we believe that its enactment is in the public interest.

More specifically, we favor H. R. 2032 for the following reasons:

Primarily, elimination of the Taft-Hartley Act from the law books and reenactment of the National Labor Relations Act of 1935 will in our judgment strengthen collective bargaining, which we deem the key to sound equitable labor-management relations.

Secondly, passage of H. R. 2032 will alleviate, if not remove entirely, the workers' feeling that the Congress of the United States entertains a spirit of animosity toward labor. As the committee knows, each of labor's outstanding gains, from the time of Adam Smith down to this very date, has been won only after truly terrific struggles inside and outside legislative halls. It is small wonder in the light of economic history, that the worker does entertain such suspicions and that such reactionary legislation as the Taft-Hartley Act can only fan these flames.

Thirdly, passage of H. R. 2032 will provide a sounder administrative procedure for governmental action to assure fair and effective operation of collective bargaining.

Fourth, enactment of H. R. 2032 will permit resumption by management and labor in many instances of disrupted patterns of amicable cooperation which were shattered by the Taft-Hartley Act.

Fifthly, we deem it imperative that the Taft-Hartley Act be repealed and the Wagner Act reenacted before a possible economic crisis permits the worst teeth in the Taft-Hartley Act to come into play in an effort to destroy organized labor.

Undoubtedly, many other reasons have influenced our members in adopting the position which we take. I have cited those which committee and convention discussions of this problem indicated to me were our major considerations in urging this subcommittee, the full Committee on Education and Labor, and the Congress to enact expeditiously H. R. 2032, or legislation substantially the same as that now before the subcommittee. After examination of H. R. 2032, I find no reason to believe that the amendments to the Wagner Act which are proposed by H. R. 2032 would be regarded by our membership as "crippling amendments," against which our national convention took its stand.

We were happy to note several weeks ago that this subcommittee passed a resolution under the terms of which we can reasonably anticipate favorable action on H. R. 2032. We commend the statesmanship of members of the subcommittee who have thus announced their intention to wipe out the iniquitous Taft-Hartley Act, restore the Wagner Act with the improvements set forth in H. R. 2032, and thus bring back to date the hands of the clock of progress in labor-management relations. The American Veterans' Committee shares these aspirations, and will support to the full this fight to regain the legitimate rights of labor.

I wish to thank the committee for the opportunity to appear, and on behalf of our national chairman, Gilbert Harrison, to express his regret that it was impossible for him personally to present that position.

Mr. IRVING. Do you have any further remarks or summary that you wish to make?

Mr. CLORETY. I think probably the statement I have given completely reflects the position of the organization, to which I have nothing to add other than in answer to any questions that any members of the subcommittee may wish to ask.

Mr. IRVING. Mr. Wier, do you have any questions?

Mr. WIER. No. I think it is a good, outright statement. It is all right.

Mr. IRVING. Mr. Burke?

Mr. BURKE. I think, too, it is a mighty fine statement. I have no questions.

Mr. IRVING. Mr. McConnell?

Mr. MCCONNELL. I have no questions.

Mr. IRVING. On the part of myself and the committee, I wish to thank you for appearing before the committee and offering your statement.

Mr. CLORETY. Thank you, Mr. Chairman.

Mr. IRVING. We appreciate it very much.

The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 6:35 p. m., the subcommittee adjourned, to reconvene at 10 a. m., Tuesday, March 15, 1949.)

NATIONAL LABOR RELATIONS ACT 1949

TUESDAY, MARCH 15, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Cleveland M. Bailey presiding.

Mr. Bailey. The subcommittee will be in order.

The chairman has a number of statements that have been submitted with the request that they be included in the official record of the hearings.

We have statements by William T. Gossett, vice president and general counsel of the Ford Motor Co.; Joseph Gritter, secretary of the Christian Labor Association of the United States; the General Federation of Women's Clubs; Edmund R. Purves, executive director, on behalf the American Institute of Architects; and E. W. Tinker, executive secretary of the American Pulp and Paper Association.

If the chairman hears no objection, these will be accepted for inclusion in the record.

(The statements referred to will be found in the appendix, following close of today's testimony. See index for page numbers.)

Mr. Bailey. At this time the committee would be pleased to hear from Leonard B. Boudin.

Please state your name and affiliations for the record.

TESTIMONY OF LEONARD B. BOUDIN, CHAIRMAN, LABOR LAW COMMITTEE OF THE NATIONAL LAWYERS GUILD, NEW YORK, N. Y.

Mr. Boudin. My name is Leonard B. Boudin, and my address is 78 Beaver Street, New York 5, N. Y. I am chairman of the labor law committee of the National Lawyers' Guild, and am appearing today in that capacity before this committee.

I should also like to state I am a member of the State and Federal bars, including that of the United States Supreme Court.

I have been a specialist in the field of labor law for approximately 13 years, representing in that capacity labor unions affiliated with the American Federation of Labor, the CIO, and various unaffiliated unions, and while these remarks are supported by the practical experience in the field, the views expressed here are exclusively and completely those of the National Lawyers' Guild, and I am appearing in that representative capacity.

The National Lawyers' Guild is a national association of several thousand members of the bar. Most recently, in February, at its national convention, it adopted a report and resolution calling for the repeal of the Taft-Hartley law and the reenactment of the Wagner Act, and also in accord with past enunciations of policy by the National Lawyers' Guild.

The enactment of the Lesinski bill is necessary to relieve workingmen from the unequal bargaining position in which they now find themselves and to restore to them certain basic civil liberties of which they are presently deprived.

The purpose of the Wagner Act, and of the Lesinski bill, was accurately expressed by Senator Wagner in his testimony 14 years ago before the Senate Committee on Education and Labor. At that time he said, and I quote—

> It is designed to further the equal balance of opportunity among all groups that we have always attempted to preserve despite the technological forces driving us toward excessive concentrations of power and wealth.

The Wagner Act was an extremely mild statute. It merely protected workingmen against employer-interference with their rights of association and collective bargaining. Its sanctions were remedial, not punitive; they were civil, not criminal. It employed the rather leisurely administrative process.

The union which was refused collective bargaining, the working man who was discriminatorily discharged, the employees upon whom a company union was foisted, received a partial remedy for these injuries after years of Board and court hearings.

Yet a cry went up, as we know, even while enforcement of the law was restrained by injunction, that this mild law gave labor too much. The motivation of this antagonism was obvious—resentment at the protection given by law to the simple right of workingmen to band together for joint protection and collective bargaining. And for 12 years Congress successfully resisted efforts to amend the Wagner Act—efforts which were first made in time of peace, and then throughout our preparations for war and even during the war.

Finally, in 1947, following a postwar pattern familiar to all students of American history, came the extraordinary Taft-Hartley law.

This law did more than deprive labor unions and their members of benefits given them by the Wagner Act. It made them weaker than they were before the passage of the great charter. It did this in three ways:

First, by relieving employers of existing duties to their workers;

Second, by imposing new disabilities upon employees and their organizations; and

Third, by declaring different rules of law for similar conduct on the part of employers and employees, the most significant of which are described below. In the guise of mutuality it created on the Labor Board a gigantic police court, eliminated traditional forms of self-help by workingmen, revived the temporary injunction against labor, created criminal sanctions, and interfered with basic civil liberties.

Certain of these statutory provisions in the Taft-Hartley law aim at a general weakening of the bargaining unit and the collective labor agreement. Thus certain employees are completely deprived of their collective bargaining right and protection against discrimination. I refer to supervisory employees, to so-called agricultural laborers, and to striking employees whose union failed to give the technical strike notices required by the statute. That is section 8 (d) of the statute.

Other employees are required to bargain in separate groups of their desires or past bargaining history. The closed shop is made illegal and the right to demand a union shop is attained only after a cumbersome procedure which leaves the employer free to reject it. A gigantic pretense, consisting of 17,958 union-shop elections has thus been made in 1 year, giving the workers the right to decide whether they are to be governed by a union shop, but permitting the employer to retain his veto power. It is no wonder that during this period both the Board and the unions and employers had the opportunity and time to conduct only 3,319 representation elections, as compared with the 17,958 union-shop elections. The union shop itself, as we have learned, unfortunately, is limited to the collection of union dues, and the statutory union shop requires the discharge only of the dues delinquent. The troublemaker, the labor spy, the agent provocateur is protected so long as he pays to the union his periodic fee. Of course we know the content of the agreement is further restricted by unrealistic limitations imposed upon agreements for welfare plans and for the check-off of union dues, all of which has led to a great deal of litigation and arbitration.

The next group of statutory provisions directly reduce the permissible economic activities of workingmen. Thus, section 8 (b) (4) (C) has made it unlawful for workingmen to refuse to perform services for one employer in an effort to compel another to bargain with a union unless it has actually received a Board certification. This is the law today even though no other union may be the certified bargaining representative. This, even if the strike is in support of a union chosen by the employees.

Section 8 (b) (4) (A) of the present law—the committee will notice I am interpolating here—is more comprehensive and far more reprehensible. It forbids any strike or refusal to handle goods where an objective is to force an employer to cease doing business with or handling the products of another person. Thus, employees who are members of a union in one plant are compelled to work upon nonunion products of another employer with whom their union is in dispute. No matter how unethical the conduct of the nonunion employer may be, regardless of the extent of his unfair labor practices, his product is given statutory immunity once it leaves his nonunion plant. This is the revival of the Bedford-Stone and Duplex cases in their literal form. Can we do better than quote from Mr. Justice Brandeis' statement that:

> The propriety of the union's conduct can hardly be doubted by one who believes in the organization of labor.

The language of the statute is so vague and so broad, and the Board's general counsel so unsympathetic to labor that he has applied the section to prevent workers from refusing to do actual strikebreaking. Only a long trial in a Federal court was able to give the coup de grâce to this theory (*Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672), in which I happened to have been involved. But certainly the result of that trial would not prevent variations of this interpretation of the statute from flowering in this statutory atmosphere.

Again, the Board has construed the no-strike provisions of the law to prohibit peaceful picketing. On what possible theory should we interfere with the basic right to peacefully publicize the existence of a dispute? Indeed, Congress, we had thought, attempted to protect this right through section 8 (c) of the statute, which provides that—

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice, under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

But although peaceful picketing was held to be without the protection of this provision, employer expressions, far more potent and inherently coercive have been given complete protection. This is hardly the mutuality which the statutory supporters use as their constant argument.

I think the committee should compare the freedom given to the employer to interfere in elections by antiunion letters warning employers of "their own future welfare," (in re Wrought Iron Range Co., No. 14–C–1197), of compelling employees in shifts to listen to antiunion speeches (in re *Babcock* v. *Wilcox*), with the Supreme Court's warning that:

> Slight suggestions as to the employees' choice between unions may have telling effect among men who know the consequences of incurring the employees' strong displeasure.

That is the I. A. M. versus N. L. R. B. case, 311 U. S. 72. And I believe the opinion was that of either Mr. Justice Douglas or Mr. Justice Jackson.

Again, the disparity in treatment under this law is shown by the application of the agency theory. Congress in 1932 had recognized by the Norris-LaGuardia Act that labor unions, by their very nature, could not be made responsible for actions, unratified and unauthorized, of their many thousands of members or of thier hundreds of affiliates.

The reasoning behind the Norris-LaGuardia Act was plain and, I think, incontrovertible and, I think, corporate and other employers have unlimited power, and have the right to select the agents who will represent them in their business, but labor unions are voluntary associations whose members have joined voluntarily, to receive the benefits of association. The average union does not, and indeed cannot, examine the qualifications of every applicant. They cannot sift the occasional agent provocateur from the honest union man. Surely he was not hired to represent the union by virtue of his admittance to membership unless, of course, he holds a position or office, or a position of trust, in the union.

Yet section 301 of the Taft-Hartley Act seeks to recreate this artificial responsibility which the Norris-LaGuardia Act eliminated. The Board has drawn blood from this doctrinal stone by holding a union liable for a fracas engaged in by individual workingmen who were picketing. On the other hand, in several recent cases, employers have been relieved of liability for the acts of supervisory employees who indubitably were their agents.

It will be recolled that under the Wagner Act the Board originally held that only strikers could vote. That was the original Sartorious

Doctrine. The pendulum, however, has been swung the other way completely by section 9 (c) (3) of this law, which holds that only the replacements have the right to vote. But since Senator Taft has confessed error on this point in the hearings now recently concluded, I suppose that nothing more need be said.

The revival of the injunction has, of course, been the most spectacular evidence of disparity of treatment between employee and employer. The emergency strike provisions of the law, which required a half dozen times in passage, are intended to settle economic disputes by punishing the workers rather than by seeking economic solutions. They certainly offer no incentive either to the employers or the Government to seek the settlement of a dispute, since any inconvenience to either may be disposed of by injunction.

Far more serious are the provisions of the act relating to the issuance of injunctions in nonemergency situations. Section 10 (j) of the existing law authorizes the NLRB to seek a temporary injunction in its discretion whenever it issues a complaint of unfair labor practice against a union or an employer. Section 10 (l) requires the Board to ask a Federal court for such an injunction in certain instances involving only unions. This has resulted in a revival of the injunction to an extent undreamed of even in the pre-Norris-LaGuardia Act days. For the quantum of proof to be given the Federal court is even less than that which historically supported the temporary injunction. Its duration—this is the most serious part of the section—its duration is completely within the discretion of the Board, since an injunction issued by a Federal court expires only upon the issuance of a Board decision in the main case. And there is nothing in the law which says that the Board ever has to issue a decision, and it certainly has taken a long time in some of the injunction cases, and has been severely criticized by one of the courts of appeals for a delay which has occurred since the temporary injunction.

In other words, the appeal from the temporary injunction reached the appeal court despite the ordinary delays that are supposed to follow from court procedures before the Board had a chance to decide the case.

Such injunctions, I should also point out, have remained in effect even where trial examiners in the main case before the Board have held that the Board's general counsel was in error and that the workingmen were not violating the law. But the workingman had no power to go back to the court and say, "The trial examiner has ruled that we were all right."

The Board's answer would have been, "Wait until the Board decides the case."

As a result, we find that each of the nearly 40 injunctions which have been issued against unions have prohibited peacefully conducted strikes and peaceful picketing.

Only one temporary injunction was issued against an employer, although two were sought by the Board, out of the two score that were sought, altogether. But the lack of mutuality goes much further than numbers. It is often forgotten that the injunction against workingmen prevent their engaging in the only forms of self-help which they possess in an economic battle. The statute is expressly intended to cut down their economic power, the power to strike, to ask the public for aid, and to picket. But the temporary injunction directed against an employer occupies a completely different position. It does not in the sightest impair his economic power, in this battle. But the rare temporary injunction that is directed against him merely prevents the right of interference with collective bargaining against unfair labor practices, as in the case of General Motors, where the Board prevented an employer from unilaterally putting into effect a pension or insurance plan. But that was not the effect of economic warfare as such, because under this act he retains the traditional weapons of financial resources, as to which he has an absolute right, of course, and the right to run his business with replacements. No one is going to question that right. The point I make is that the employees are deprived of parallel rights.

Therefore, we say that even if Congress had made mandatory the issuance of temporary injunctions against employers as it did against unions, the effect would have been insignificant in the end result of a labor dispute.

May I ask the chairman how much time I have left? I do not want to try the patience of the committee.

Mr. BAILEY. You have time. Go ahead.

Mr. BOUDIN. Thank you.

The scope of these injunctions is reminiscent of those so critically analyzed by Professor, and now Mr. Justice, Frankfurter, and Mr. Nathan Greene in their celebrated text, "The Labor Injunction," published, I think, in 1931. They describe the dreadful history of the injunction weapon against labor: The summary procedure, the inability of Federal judges, competent in fields of technical law, to understand the social and indeed the human issues involved; the wide scope of the injunction order, both with respect to the activities that are forbidden and with respect to the persons who are enjoining it; the prohibition of peaceful strikes, picketings, circularization, and the heavy punishment for contempt.

Only last week we were reminded by Chief Judge Learned Hand, one of the great American judges and the head of the United States Circuit Court of Appeals for the Second Circuit, that the lower Federal courts have not been always deft in their handling of the labor injunction. This was stated in the issuance of a temporary injunction, and he began his statement with a reminder of the complicated nature of labor disputes today and of labor problems in general.

Yet these tribunals, which have shown historically a lack of confidence, and unfortunately in many cases, a bias—but I am concerned here primarily with the lack of competence in understanding labor—have been returned to the arena, by the Taft-Hartley Act, from which Congress so wisely excluded them 17 years ago, and they have proceeded to do exactly what their predecessors did who acted without the impetus of the statute. They did worse.

In *Douds* v. *Local 294 of the International Brotherhood of Teamsters, A. F. of L.* (reported in 75 Fed. Supp. 414), the court enjoined in the union from inducing the employees of any employer to engage in concerted activities for the purpose of boycotting any person, any person in the world, or any business.

I think that Professor Frankfurter, now Mr. Justice Frankfurter, would be shocked at seeing the revival of the practice which he so brilliantly analyzed in 1931. And only recently, in a case I referred to, the contempt case, the Federal judge imposed a $20,000 conditional fine upon a union that was threatening to engage in picketing, a fine of $20,000 flat and $1,000 a day, and the arrest of the union's officers and agents if picketing occurred 1 day. And I refer to peaceful picketing.

Now, I should interpolate here, parallel with this injunctive weapon in the Taft-Hartley law, is created a right in employers to sue unions for engaging in certain peaceful strikes, certain peaceful boycotts and peaceful picketing, which are described in the act as unfair labor practices. One will search this statute in vain for the grant of equal relief to unions and their members against employers who are guilty of unfair labor practices.

In short, not only does this act revive the temporary injunction in a mandatory form against labor unions, but it gives the right to money damages to employers, but it does not give a parallel right to the unions or to the workingmen who have suffered great injury of unfair labor practices.

Now, of course, ultimately the individual employee will receive back pay 5 years from now when the Board and the courts have finally acted upon his discharge case. But that financial remuneration can hardly benefit him for the suffering that he has been engaged in during the preceding years. The union has no right to any money damages no matter how serious the unfair labor practices of the employer are, no matter how damaging it might be to the union, even if the union is destroyed.

Now, I come last to the third group of statutory provisions, which in the view of the guild finds no justification at all, even in this mutuality argument, which is urged, or which was urged—I hear it urged very little today—in support of the Taft-Hartley law. Those provisions are directed toward the general deterioration of trade-union effectiveness.

They have no place in a labor statute. They basically belong in a civil liberties statute and in a statute which will protect these rights rather than take them away.

One celebrated example, well known to the committee, is, of course, the prohibition of trade-union expenditures in political campaigns, which the proposed bill, H. R. 2032, adequately handles. It handles it very well, as a matter of fact. I need not comment upon that, since its constitutionality was saved only by the whittling down by the Supreme Court of a not unreasonable construction of the Taft-Hartley law as read. The Court clearly intimated that if the Taft-Hartley law read as we thought it read, the political expenditures section would have been held unconstitutional.

But equally notorious and even more shocking in this subject upon which the guild has repeatedly taken a position, is the infamous statute 9 (h), which has established a purgatory oath for all unions who would use the processes of the Board.

This oath, to be taken by all union officers, interferes directly with freedom of speech, of belief, and of association. It falls, we think, before the brilliant and frequently quoted declaration of Mr. Justice Jackson in the Barnette case:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, or religion or other matters of opinion or force citizens to confess by word or act their faith therein.

The Board has admitted in litigation on this subject involving a variety of unions that there was no evidence of such clear and present danger before the Congress, which is normally relied upon to justify this type of infringement or any other basic infringement of basic first-amendment rights.

On the other hand, it has been suggested by the Board that section 9 (h) is really not as bad as it appears to be, because it merely prevents noncomplying unions from using a governmental facility. It merely deprives them of a governmental privilege. If this were so, it would still be abhorrent to any believer in our form of government. Imagine a court of a grand jury refusing to hear anyone who has failed to pass a political test.

But section 9 (h) goes far more down the line in the sanctions which it imposes and in its capacity to destroy great labor unions. For the Board has kept from the ballot unions who were the indubitable choice of the employees involved. In one recent case, a union selected by a minority of the workers replaced and established collective bargaining agents. Like all repressive measures, section 9 (h) has had the self-generative effect upon its administrators. The Board has continually expanded its application. It has limited the rights of employees to file unfair labor practice charges of certain types because they are members of noncomplying unions, even though the section relates to unions and says nothing about employers or about employees.

The Board has held that a complying national union cannot be certified if it has noncomplying local unions who also engage in collective bargaining. This, by the way, is not stated in section 9 (h). And when in one case it was shown that the locals had no bargaining function and therefore could not even come under the Board's interpretation of section 9 (h), the Board changed its rules in the middle of litigation by ruling that the mere existence of the locals prevented the certification of the national union.

Now, there are many other sanctions which flow from section 9 (h). A noncomplying union, as the committee knows, cannot have a union security election. It therefore cannot have the union shop. I have indicated the guild's view with respect to the weaknesses of the union-shop clause, but even this weak clause cannot be secured by a union which has not complied with section 9 (h). Then, of course, if the union cannot be on the ballot, its status and its contracts, if it has any left, are deprived of the protection which the Board gives to complying unions. Further, when the other union is certified, as it normally will, being the only union on the ballot, the noncomplying union will find itself forbidden to engage in a strike, picketing, or in a boycott, under the administrative and judicial construction of section 8 (b) (4), which I referred to before.

These affidavits, in the view of the guild, are a form of pressure upon union leaders to abandon the usual standard they employ to evaluate leadership—the quality and consistency of performance in the interests of the union members—and to apply instead a standard of no definition and of vague suspicion.

The standard has no definition because of the variety of meanings to be given to the word "Communist," and to the clause "believe in the overthrow of the Government by force and violence or by other illegal methods," to use the language of the affidavit.

Section 9 (h) introduces for the first time in our history, although we have experienced other repressive measures, of course, the concept that Government may make political belief a determinant by which members of a voluntary organization, labor or nonlabor, should choose their leadership. It is a concept fraught with danger to our democracy. It is but a short step from the outlawry of freedom of thought in our political life since it proceeds on the assumption that Americans cannot be trusted to choose their leaders.

It is particularly insulting to American workers because they alone have been told that they are not wise enough to manage their own affairs, which must be managed for them by Senators and Congressmen. But I would regard it as degrading to any group to be told that they must file affidavits with respect to their Americanism.

In practice, section 9 (h) has actually generated, not settled, industrial disputes. It has created intense bitterness within the ranks of labor. Unions have been encouraged to fight or raid other unions, with the employer lined up against one or both. Employers have frequently used noncompliance as a pretext for refusing to bargain with the chosen representatives of the workers.

The committee will recall that section 9 (h) was really an accident, a sport. It was not disclosed by Senator Taft in the original legislation, and it came through in the methods of legislative procedure, which this committee is more aware of than I, of course.

For these reasons, among many others which time prohibits our discussing, we believe that section 9 (h) requires special condemnation and should fall with the entire Taft-Hartley law.

Now for our conclusion. Prior to the adoption of the Taft-Hartley law, years of bitter struggle had succeeded in setting this Nation on a path toward a sound labor policy founded on the collective bargaining process. The Wagner Act, based on recognition of the inadequacy of the bargaining power of the individual worker in relation to the modern corporate employer, gave legal sanction and protection to the right to organize and bargain collectively. The Norris-LaGuardia Act sought to eliminate from the Federal courts the use of the injunction process as a bar to peaceful, collective, economic action by workers. It did not protect disorderly acts or unlawful acts or criminal acts.

Even before the Taft-Hartley law, a powerful segment of American industry and its congressional spokesmen conducted an unrelentless drive to undermine the Wagner Act, limit and frustrate its operation, and encourage defiance of it and secure its repeal. By almost 100 injunction proceedings prior to the decision of 1937 affirming its constitutionality, and by a continued campaign of attack and evasion thereafter, these groups succeeded in preventing the Wagner Act from becoming in full sense the law of the land. The Taft-Hartley law represented the ultimate victory of these forces.

The Taft-Hartley law rests on principles basically antagonistic to the objectives sought in the national labor policy of the preceding decade. It seeks not to encourage but to impede organization and collective bargaining. It seeks not to discourage but to promote warfare between labor and management; and it seeks not to eliminate but to extend the operation of the antilabor injunction.

The evils of the Taft-Hartley law cannot be eliminated by minor revisions or by deletion or amendment of isolated statutory sections.

Its errors are ones of fundamental principle, purpose, and effect, and can be remedied only by total elimination of the entire statutory scheme and the return to the underlying principles of the Wagner Act.

The Lesinski bill is commended in its basic outline which embodies a repeal of the Taft-Hartley law and a reenactment of the Wagner Act. We urge that Congress enact the basic provisions of the Lesinski bill and reject any attempts to use the bill as a vehicle for salvaging any of the evils of the Taft-Hartley law.

The National Lawyers Guild appreciates the opportunity which it has been given by this committee to appear and testify on the critical subject of labor legislation. It desires to have incorporated in this record the accompanying printed statement which was submitted last month by it to the Senate Commitee on Labor and Public Welfare.

Thank you very much.

Mr. BAILEY. Mr. Boudin, on page 2 of your formal presentation, you use this language:

> This law did more than deprive labor unions and their members of benefits given them by the Wagner Act. It made them weaker than they were before the passage of that great charter.

Now, in this connection, I would like to call your attention to a radio forum conducted in Washington some days ago, participated in by President Green of the American Federation of Labor. In this forum he said now that we were in a fight to protect our American way of life and our American ideals against Communist onslaught, that this was the time that labor unions should be strong rather than weak. And he decried the weakening effect of the Taft-Hartley Act.

Do you and your group approve of President Green's stand in this matter?

Mr. BOUDIN. Unfortunately, although I heard that he talked on the radio, I missed the opportunity to hear him. I am here for the labor law committee of the guild. There are other committees of the guild which considered the problems to which you referred, the general civil liberties problem, the issues of communism, and so forth. I would not regard myself as authorized to express the views of the guild on that subject.

I may say, speaking generally, that it certainly appears clear to me that the strength of the labor unions is the strength of the country, and that in fighting any kind of force which would affect the democracy of this Nation and its institution, historically, labor unions have shown themselves, whether in the First World War or in the last World War—and I hope it will not be necessary in future periods—to represent the bulwark of our democracy. The experience which some of the members of this committee may know of labor during the last World War, the participation of law in the War Labor Board, the very small number of strikes that occurred during that period—all these could not possibly have occurred had not there been large, strong labor unions who were able to mobilize the forces of labor and to participate in the democratic functions of the War Labor Board.

Mr. BAILEY. The Chair yields to a question from Congressman Smith.

Mr. SMITH. You did not answer Mr. Bailey's question. He asked you about what Mr. Green said about communism.

Mr. BOUDIN. Yes.

Mr. SMITH. Now, why not answer the question?

Mr. BOUDIN. I have already stated to the Chair that I am here to express the opinion of the guild. I am not here in an individual capacity on the subject of the Lesinski bill and on labor legislation. I am not here to discuss, nor am I authorized, and I regret, nor am I competent, to testify as to the position of the organization which I represent on various other issues. There are other committees of the guild which are authorized to express their views——

Mr. SMITH. Is it about communism? Is that it?

Mr. BOUDIN. I presume so. And if the committee desires to hear from other committees on these subjects, I am sure they will be available.

Mr. SMITH. But you are not here to answer Mr. Bailey's question?

Mr. BOUDIN. I am here to testify on a specific subject, and I think I have answered the question as well as I can.

Mr. BAILEY. I have one more question, Mr. Boudin. You mentioned the matter of the use of injunctions in labor disputes. I want to ask you if you think that mandatory injunction proceedings can ever be justified against labor.

Mr. BOUDIN. I believe definitely not. Even those persons who believe that injunctions should issue against labor unions in disputes agree, and I think the Board probably agrees, that the mandatory injunction is an impossible administrative and judicial weapon. The Board in many cases has felt that it might be unwise to go into court to seek an injunction, because of equities on the part of the employees or of the workingmen, or because it was a border-line case. But it has expressed itself openly as being under a duty to go into court to secure these injunctions. And only very wise judges, like Judge Simon Rifkin in the district court of New York and other judges have been able to pierce through this mandatory power and to realize that in certain definite situations an injunction cannot be issued. But I would say that the mandatory injunction is an evil always to be avoided—mandatory, I think you refer to, in the sense that the Board must go into court.

Mr. BAILEY. The Chair will retain the remainder of the time allocated.

At this time, have you any questions, Mr. Irving?

Mr. IRVING. No, I have no questions. I will yield my time to Congressman Jacobs.

Mr. BAILEY. Mr. Jacobs?

Mr. JACOBS. Mr. Boudin, in regard to the anti-Communist affidavit—you are a lawyer, as I understand it?

Mr. BOUDIN. Yes.

Mr. JACOBS. I came in late, but I understand you represent the Lawyers Guild.

Mr. BOUDIN. I so do, sir. I am chairman of its labor law committee, and am appearing in that capacity.

Mr. JACOBS. With regard to the anti-Communist affidavit requirement as prescribed in the Taft-Hartley law, have you ever considered that in connection with the constitutional inhibition against bills of attainder?

Mr. BOUDIN. Yes. On looking over my remarks, I noted that I omitted reliance upon that constitutional provision. I have always regarded section 9 (h) as being violative of that section, and in an article which the committee might be interested in, which I had published in the January 1948 issue of the New York University Law Quarterly Review, I discussed this statute from the point of view of the bill of attainder.

Mr. JACOBS. Do you happen to have a copy of that?

Mr. BOUDIN. Yes, and I will be glad to submit additional copies to the committee.

Mr. JACOBS. I would like to have a copy of it.

Now, in view of the rather forthright comments by some of the officials of the Communist Party that have been recently reported in the press, I wonder what your reaction would be to a bill that would forbid a Communist from holding office, either in a corporation or a labor union, not one which would withdraw the processes of the law from the organization in the event it had such an alternative, but that it would embody a provision of quo warranto by which you get rid of him? What would you think about that?

Mr. BOUDIN. Speaking as a lawyer, I think that would fall equally within the bill of attainder clause, because it would punish a named person or a selected group easily defined by depriving him of the right to hold office. I would not regard that as an appropriate means of enforcing the other laws of the United States.

Mr. JACOBS. What is your reaction to the statements that have been published recently by the officers of the Communist Party?

Mr. BOUDIN. I would prefer, if I might, not to give my own reaction, for the reasons that I think I have suggested. I am here really, and have prepared myself exclusively, for the purpose of analyzing the existing legislation from the point of view of labor legislation. We feel that civil liberties is not very far away, of course, from labor legislation. But I am here actually in a representative capacity and only in that capacity.

Mr. JACOBS. With the understanding that you speak only your own view upon the subject, I would be interested in your reaction, if you feel like stating it. I will not press you.

Mr. BOUDIN. I would prefer, at least so long as I am here in this capacity, to express no views. I will be glad to discuss with the committee on another occasion my own views on any other subject.

Mr. JACOBS. This suggestion that I have made would not be one which would have the effect of depriving the processes of the law to the organization for any wrong, which might be committed against it and its members, as the Taft-Hartley law does at this time. Do you feel that that is so?

Mr. BOUDIN. I do feel, Congressman, because I want to be candid, that the provision which would deprive labor unions of their officers by eliminating the officers as such rather than by eliminating the benefits of the act and imposing sanctions on the union, is merely another way of doing the same thing. As a matter of fact, it is probably true that the way to which you referred would be even more obviously unconstitutional. If there is a right of freedom of association—and I believe there is, and that workingmen have a right to choose their own representatives—then that right is interfered with whether you say the representatives can be eliminated by a quo warranto proceeding or whether you say that the representatives can be eliminated indirectly by this type of procedure which we now have in the statute.

Now, I think that the right of association is so fundamental that the workingmen themselves must have the power to determine whom they desire as their officers.

Mr. JACOBS. Do you think that the right of association really includes the right to occupy positions of power in our economy?

Mr. BOUDIN. Unless one were prepared to say that one could not run a business if he were a Communist, to use the Communists as an example, then I think you have to say that Government should not interfere with the right to earn a livelihood, whether it is in a labor union, whether it is in an employers' association, or whether it is a business.

Mr. JACOBS. I am not, of course, talking about the right to earn a living so much as I am the right to occupy an official position, not only in a labor union, but in a corporation, of one who is proven to be disloyal. I would condition it upon that.

Mr. BOUDIN. I think I can meet that in two ways. We are probably in agreement, even though I may phrase it in terms of balancing. First, I think it clear that political views should under no circumstances be established by the Government as a condition to holding a position of any kind. We will pass the field of Government employment, as to which I am not an expert and on which many studies have been made, and will consider the question of employment, whether in labor unions, in corporations, or associations. Under none of those circumstances, do I regard it as proper for the Government to say, "You shall not work in this grocery store, or you cannot work in that labor union as an officer or as an employee or a business agent unless you fall within the Government's views as to the proper political point of view."

I make that statement categorically, and I would not withdraw from it in respect to any business.

Mr. JACOBS. That would hold true of a man even though he is convicted, so long as he has his liberty and is available to work. I would agree with you on that.

Mr. BOUDIN. When you get to a man who is disloyal to the Government, than it may be that the Government can move in and impose certain restrictions and conditions. But the disloyalty must be proven, not on the basis of what Congress says is an appropriate standard of political views, but by an appropriate trial pursuant to a valid statute in which a man has actually been convicted of a crime.

Mr. JACOBS. I wonder now at that point if our paths are converging again. Would you say that a statute providing quo warranto to oust anyone from a position as an officer of a corporation or a union, should be provided upon proof of his disloyalty?

Mr. BOUDIN. Upon proof that his disloyalty is shown by conviction in an American court before an American jury. With that modification, yes. The use of the word "disloyalty" is, of course, as we know from our experience of the last 20 years, very dangerous.

Mr. JACOBS. It is very broad; that is true.

Mr. BOUDIN. If we have a conviction upon charges properly made in the form of an indictment, whether it was of a Communist or anybody else, then I think we might well consider the question as to whether a conviction of a person, not necessarily for disloyalty, but for other reasons, might not be a bar to occupying important positions. You might still——

Mr. Jacobs. Would you not——

Mr. Boudin. You might still, if I may interrupt you, because I want to be sure that I am not going too far in the constitutional line—you might still meet constitutional problems, because I am not sure in a private business, for example, and one cannot say that a businessman who had been convicted, and I might say that some have been under the antitrust laws—could not continue in his business. I am also not sure, speaking now from a constitutional point of view, whether you could say that regardless of the offense or of the crime, a labor union leader could be prevented from continuing in office. But at least, I am willing to assume that if you had a substantial crime, whether it was for disloyalty under the Smith Act or under some other statute and you had a conviction under that statute, then I think one might consider this problem again.

Mr. Jacobs. In other words, what you are saying is that we have to be very careful in dealing with a very delicate question and keep the balance between civil rights and our protection against disloyalty on a pretty even balance, or we will go overboard one way or the other.

Mr. Boudin. Yes. And I am saying that Congress cannot establish any standard at all with regard to loyalty or disloyalty or political views in a labor relations statute or any other statute. Congress can establish a provision in a law under which a person who has been convicted of a crime before an American Federal district court, before an American jury, might be subject to certain disabilities.

Mr. Jacobs. Would you think, really, that a law that would prohibit a man from holding an office in a corporation, or an alien who had been convicted of a crime, having the effect of depriving the officer of a corporation of the right to continue in that office if he is convicted of violating the antitrust laws—then do you think that might actually have quite a deterring effect against the violation of the antitrust laws?

Mr. Boudin. It might have a deterring effect, but I think you would have to change the Constitution before it could be passed.

Mr. Jacobs. You think that might infringe upon the inhibition against bills of attainder?

Mr. Boudin. I am not sure it would be the inhibition against a bill of attainder in connection with the use of the antitrust laws, because there the question of a selected class, which is definable, and there the coloration of political views which normally goes with a bill of attainder, would not be present. I think that might be a violation, however, of the fifth amendment.

Mr. Jacobs. And even from a practical viewpoint, you might preclude some very good talent.

Mr. Boudin. Yes. I understand that most frequent violators of the antitrust laws are very competent businessmen.

Mr. Jacobs. Now, I would like to go to another subject, briefly. I have been quite interested in the unfair labor practice as it is described in section 8 (b) (4) (D), which is the craft jurisdictional dispute. I have read that very carefully and tried to examine it in reference to all of the other provisions of the Taft-Hartley law. There is a provision, 10 (k), for a determination by award of the Board when such a dispute arises. There is also a provision, the last sentence of 10 (l), which makes that mandatory injunction provision applicable where it is an appropriate remedy. Then, of course, if you go back, I think it is, to section 10 (j), where the discretionary injunction provision is, it provides for the remedy of the employer to enforce the law against the labor organization that might engage in a strike or a concerted stoppage of work or encouraging anyone to engage in such, in violation of section 8 (b) (4) (D).

Now, I have read the act very carefully in an effort to find where the union may enforce the award provided in section 10 (k) against the employer. I have not yet been able to find it. I wonder if you have examined the law in reference to that matter?

Mr. **Boudin.** I have not found it, either. I have been looking at it while you were talking, Congressman.

Mr. **Jacobs.** Have you thought of that problem?

Mr. **Boudin.** Actually, I have not. One of the reasons I have not given it consideration, which I suppose I should have, is that as I recall it, the Board has never applied that section; that is, applied section 8 (b) (4) (D).

Mr. **Jacobs.** Yes. I understand that it has in one case.

Mr. **Boudin.** It may have in a recent case.

Mr. **Jacobs.** In a rather recent case, I understand that it has.

Mr. **Boudin.** I got the impression, on looking over the testimony of the Chairman of the Board before the Senate Committee that he also——

Mr. **Jacobs.** May I interrupt you at that point, to say that if you have not given it consideration, it would not be fair to go into it here now, at this time.

Mr. **Boudin.** Thank you.

Mr. **Jacobs.** It is a highly technical and complex matter.

Mr. **Boudin.** I plead inexpertness on that point.

Mr. **Jacobs.** All right. I want to ask you a question or two about the so-called emergency strike.

Now, there has been quite a bit of sentiment created throughout the country for what is designated as "a delay" in stoppage of work, where a strike might create a national emergency. I find that a good many people have not thought beyond the delay. But I can conceive of the possibility of the dispute's still being in existence at the end of the period of delay.

Have you thought along the lines of what we are going to do when we arrive at that point?

Mr. **Boudin.** I do not think we can do anything.

Mr. **Jacobs.** Of course, we could delay it further.

Mr. **Boudin.** Well, for a while. You cannot delay it indefinitely.

Mr. **Jacobs.** Well, let us stop and think of that a little.

Mr. **Boudin.** All right.

Mr. **Jacobs.** You say we cannot?

Maybe we could. I am not talking about whether it is fair to do so, but I am talking about what he should do.

Mr. **Boudin.** I see. You are not referring to what the present statutory language embodies?

Mr. **Jacobs.** No.

Mr. **Boudin.** You are talking about the power of Government?

Mr. **Jacobs.** I am talking about that later provision which says that if the event is not settled it shall be reported to Congress—and I presume that it is not presented to Congress just for us to talk about at a tea party; is that correct?

Mr. BOUDIN. That is correct.

Mr. JACOBS. All right. We have arrived at that point now.

The next step would naturally be compulsory settlement; is that right?

Mr. BOUDIN. That is right.

Mr. JACOBS. All right. Then we would want to fix a wage that would be fair to all parties concerned.

Mr. BOUDIN. I am afraid that that is what Congress would have to do.

Mr. JACOBS. We would have to do that if we say the men cannot strike.

Mr. BOUDIN. The alternative would be to say that the men cannot strike and that they would have to work at the wages which they had been working at. I take it that the point you are making is that you are creating of Congress a compulsory arbitration body?

Mr. JACOBS. No; I am going a little further than that. I am carrying it still further than that.

What is going to happen with those people that have been working on wages that we fix, when they come back here and say, "This is not enough for us to work for, to buy shoes for our kids. Will you fix the price of shoes?"

Mr. BOUDIN. That might be a good idea.

Mr. JACOBS. All right. There are a lot of people who did not like OPA in this country, as I recall.

Mr. BOUDIN. That is correct.

Mr. JACOBS. I just wondered if some of our people who have been urging these Taft-Hartley provisions have thought that thing through very carefully.

Mr. BOUDIN. As a matter of fact, I have not thought of that aspect, either. But you were quite right. If you are going to begin wage regulation by Congress on this scale, you must include price regulation and you must include a variety of other forms of regulation. I am glad you pointed that out. I had not thought of that.

Mr. JACOBS. You think we might be getting into some pretty deep water there?

Mr. BOUDIN. Yes; but, of course, that can be postponed for about 6 months.

Mr. JACOBS. What?

Mr. BOUDIN. That can be postponed for about 6 months until the next emergency strike arises.

Mr. JACOBS. But if we start down that road, we are liable to meet that problem.

Mr. BOUDIN. I do, however, think that it is important to meet that problem now before we meet the emergency strike and then have to consider the price regulation, the wage regulation, and all other regulations to which you have referred.

Mr. JACOBS. Well, I thought about those things pretty much in connection with some of these questionnaires that people mumble over the radio and ask people to answer "yes" or "no" on.

That is all.

Mr. BAILEY. Mr. Burke?

Mr. BURKE. No questions.

Mr. BAILEY. Mr. McConnell?

Mr. MCCONNELL. Mr. Boudin, did I hear you mention the name of Justice Brandeis?

Mr. BOUDIN. Yes, you did, sir.

Mr. MCCONNELL. I guess you would consider him a capable and fine protector of civil liberties, and so on?

Mr. BOUDIN. Yes. And I have read many things that he has said.

Mr. MCCONNELL. Do you agree with the majority of the things that he has said in connection with the protection of an individual's rights, liberties, and so on?

Mr. BOUDIN. Yes.

Mr. MCCONNELL. I would like to read to you from Justice Brandeis' book, the Brandeis Guide to the Modern World, edited by Alfred Lief, and published by Little, Brown & Co., in Boston, Mass. Here is what Justice Brandeis said. I think it is rather interesting, as we are considering the writing of a labor law.

> It is an essential condition of the advance of trade unionism that the unions shall renounce violence, restriction of output, and the closed shop. The abuses of trade unionism, as we have known them with their violence, restriction of output, and their lack of constructive policy, are in large part the result of the fact that they have been engaged in a bitter struggle for existence.
>
> When public opinion is brought actively to the support of labor unions, these abuses will, I believe, tend rapidly to disappear, but the American people should not and will not accept unionism if it involves the closed shop. They will not consent to the exchange of the tyranny of the employer for the tyranny of the employees. Unionism, therefore, cannot make a great advance, until it abandons the closed shop, and it cannot accept the open shop as the alternative. The open shop means the disintegration of the union. I think there is no man or body of men whose intelligence or whose character will stand in absolute power, and I should no more think of giving absolute power to unions than I should of giving to capital monopoly power. I believe that experience will teach the labor unions that they can never succeed in a large way as long as they insist upon the closed shop. The closed shop seems to me opposed to our ideas of liberty as presenting a monopoly of labor which might become as objectionable a monopoly as that of capital.

You mentioned Justice Brandeis, and I thought that was a very interesting comment on this whole matter of the closed shop and the power, and so on, and I was just presenting it for your consideration in partial reply to your apparent dislike of every part of the Taft-Hartley law.

Mr. BOUDIN. I was aware of what Mr. Justice Brandeis has said on that subject. As a matter of fact, I assumed that some comment would be made by the committee when I mentioned our reliance upon a decision of his. I do not, however, agree that the closed shop carries with it the dangers or the evils to which this great judge has referred, and I think the experience of the last 50 years has shown that. The closed shop has been a power for good. I think no one can question the fact that in the typographical situation the loss of the closed shop has resulted in this terrible period that occurred.

The closed shop was basically a stabilizing influence in that industry and many others. Now, I would be the first to admit that there are many abuses with respect to the closed shop, with respect to the open shop, and the union shop, and with respect to all varieties of labor relations.

Those abuses, however, should not be considered without remembering that there are many advantages in the thing, and they permit the employees to share the load of a union which is working for all of us. And I suppose this is one of those philosophical arguments that could be begun here and continued day after day, and perhaps I should merely have contented myself by saying I did not agree and had not agreed with the remarks made on the closed shop.

Mr. McConnell. I yield the balance of my time to Mr. Smith.

Mr. Bailey. Mr. Smith?

Mr. Smith. What is your educational background?

Mr. Boudin. I am a graduate of the College of the City of New York. I am a graduate of the St. Johns University Law School in New York. I am a member of the Bar Association of the City of New York, and of the county lawyers association, in addition to being a member of the National Lawyers Guild.

Mr. Smith. What is your law firm?

Mr. Boudin. I beg your pardon?

Mr. Smith. What is your law firm?

Mr. Boudin. My firm is now known Neuburger, Shapiro, Rabinowitz & Boudin. I was formerly associated with the firm of Boudin, Cohn & Glickstein, a law firm representing labor unions and other clients.

Mr. Smith. Is the majority of your practice in the labor field?

Mr. Boudin. Oh, yes, the vast majority. That is why I made a point of indicating at the beginning that I was a practicing lawyer representing labor unions, but that I was speaking with the authority of and subject to the mandate of the Lawyers Guild. It is only my experience, I think, as a labor lawyer that can give emphasis to what I say.

Mr. Smith. You placed great emphasis this morning on freedom of speech.

Mr. Boudin. Yes, I did, because that is the emphasis placed by the Lawyers Guild at its recent convention.

Mr. Smith. Then why do you want to deny the employer the right of free speech?

Mr. Boudin. I do not want to deny the employer the right of free speech, Mr. Smith. I do, however, feel that in certain situations, such as the Babcock-Wilcox case, to which I referred, the employer's economic power is inherent in his expression of a point of view. Where, for example, the employer calls the employees down in shift after shift to listen to antiunion speeches and to be warned directly or indirectly that there will be a discharge or a loss of benefits if a union were to win an election, I would regard that as inseparable from coercion.

Mr. Smith. Now, I am not talking about intimidation. I am talking about the right of an employer to make a speech any place, any time, on what he thinks the benefits of unions are.

Mr. Boudin. You see, I think it depends on the situation. Before the Taft-Hartley Act was passed there were two kinds of situations with which the Board and the court dealt. One was a pure statement by the employer of his views; he did not like unions; he did not like this union, and so forth.

The other was in a context of coercion in which the employer clearly was threatening. I say "clearly," although it may have been incorrect. But the understanding was clear that if the employees selected a union, they would be subject to economic harm. It is that kind of situation which is today protected by section 8 (c) of the Taft-Hartley

Act, and which I think does not come within the realm of free speech as such. I will agree with you that in the absence of a background for coercion or the formulation of a context of coercion, speech should be free whether it is of the union or of the employer. I think it has to be handled on a case-by-case basis, and that the section such as 8 (c) has been given such breadth that unfair labor practices which the Court of Appeals for the Second Circuit of New York recognized were a pressure on employers, are now protected by the statute. I do not take the rigid point of view which might be suggested by your question.

Mr. Smith. You stated a while ago something about a peaceful boycott. Now, you just tell me what you mean by a peaceful boycott, which implies that there are other boycotts that are not peaceful.

Mr. Boudin. I assume that a boycott is a refusal to handle the goods of an employer or a refusal to work on the goods of an employer. Only yesterday I received a release from the National Labor Relations Board involving such a case. It involved local 807 of the Teamsters, an A. F. of L. union, and the Schultz Refrigerating Service, Inc. According to this, Schultz locked out the employees because he did not want to deal with the union. The employees then picketed the Schultz trucks, asking people presumably not to deal with Schultz. That was regarded by the trial examiner of the Board, who said it was a perfectly peaceful activity, as, however, coming within the scope of the secondary boycott provision. That I will regard as a provision which he apparently recognized as inequitable, but that he was forced to rule on, involving the peaceful secondary boycotts to which I referred.

I recognize that in the course of labor disputes there can be disorderly acts and violence, and I was attempting to make a distinction between that situation and the other.

Mr. Smith. I take it from your testimony here this morning that you do not think the Government ever has a right to demand a non-Communist oath from anyone, Government employees or anybody else?

Mr. Boudin. No. You recall that I stated with respect to the Government employees, I believe there are resolutions in the committees of the guild that have dealt with that particular problem. It is not my field and I do not want to express the view of the guild on the subject. I am limiting myself to this problem of labor relations. And when Congressman Jacobs, I believe it was, asked me about businesses generally, or corporations, then I moved into the field of employers.

Mr. Smith. I am talking about government.

Mr. Boudin. Yes. Well, I am answering you that I am not authorized to indicate the views of the guild with respect to government.

Mr. Smith. Is it not the views of the guild that the Government does not have the right to demand a loyalty oath?

Mr. Boudin. No. I have told you already that I am not authorized to indicate the views of the guild.

Mr. Smith. Do you not think that you could give them?

Mr. Boudin. No. I do not think that I can fairly present those views. But if you want, I could have a representative of the guild appear before this committee and indicate his views on the subject.

Mr. Smith. You are the president of the guild, are you not?

Mr. Boudin. No. I have a much lesser office. I am chairman of the labor law committee of the guild. I assure you that I have never been the president of the guild of New York or elsewhere.

Mr. Smith. That is all, Mr. Chairman.

Mr. Bailey. Mr. Morton?

Mr. Morton. No questions.

Mr. Bailey. Thank you for your appearance.

Mr. Boudin. May I thank the committee for its courtesy?

Mr. Bailey. At this time the committee will be forced to recess due to the fact that there is a roll call, and a vote will be taken soon on the rent-control bill. It is necessary that the members of the committee be on the floor of the House.

The committee will stand in recess until 3 o'clock this afternoon.

(Whereupon, at 11:30 a. m. the committee recessed until 3 p. m. of the same day.)

AFTERNOON SESSION

(Pursuant to recess, the subcommittee reconvened at 3 p. m.)

Mr. Bailey. For the record and for the information of the members of the committee, and the witnesses who are here to testify, the chairman wishes to advise that the House is still in session and the Committee of the Whole is still considering the rent control bill.

The committee cannot go back in session until they have disposed of that, and I think that will be accomplished about 5 o'clock.

So, the committee will stand in recess until 5 o'clock this afternoon.

(Whereupon, at 3:05 p. m. the subcommittee recessed until 5 p. m. of the same day.)

(Pursuant to recess, the subcommittee reconvened at 5 p. m.)

Mr. Bailey. The subcommittee will be in order.

For the information of our witnesses, who have been summoned here, may I state that the House is still in session, and on the motion to resubmit the rent control bill, roll call is being taken on it and there will still be a roll call on final passage.

The committee will stand recessed until 7 o'clock. We will start the hearings promptly at 7, without fail.

(Whereupon at 5:05 p. m. the subcommittee recessed until 7 p. m. of the same day.)

NIGHT SESSION

(Pursuant to recess, the subcommittee reconvened at 7 p. m.)

Mr. Kelley (presiding). The subcommittee will please be in order. Is Mr. Gabriel here?

Mr. Gabriel. Present.

Mr. Kelley. Before you proceed I have a statement from Mr. Richard J. Gray, president of the building and construction trades department, American Federation of Labor, and without objection I would like to insert it in the record.

(The statement referred to will be found in the appendix following close of today's testimony. See p. 915.)

Mr. Kelley. I also have a statement by Sal B. Hoffmann, president Upholsterers' International Union of North America, American Federation of Labor, that we would also like to insert in the record.

(The statement referred to will be found in the appendix following close of today's testimony. See p. 920.)

Mr. Kelley. Mr. Gabriel, you may proceed.

TESTIMONY OF CHARLES C. GABRIEL, REPRESENTING VARIOUS LABOR ORGANIZATIONS WHICH COMPRISE THE EASTERN SEABOARD ALLIANCE OF TELEPHONE UNIONS, ACCOMPANIED BY ABRAHAM WEINER, COUNSEL

Mr. Gabriel. Mr. Chairman and members of the committee, my name is Charles C. Gabriel. I am making this presentation on behalf of the various labor organizations which comprise the Eastern Seaboard Alliance of Telephone Unions.

The Eastern Seaboard Alliance of Telephone Unions consists of eight labor organizations which are the recognized collective-bargaining representatives of upward of 70,000 telephone workers in the Bell telephone system.

The labor organizations which comprise the Eastern Seaboard Alliance of Telephone Unions are the following:

The United Telephone Organizations, representing all plant department employees of the New York Telephone Co., down-State area;

The Empire State Telephone Union, representing all plant employees of the New York Telephone Co., up-State area;

The Telephone Workers Union of New Jersey, representing all plant department employees of the New Jersey Bell Telephone Co.;

The Federation of Telephone Workers of Pennsylvania, representing all plant department employees of the Bell Telephone Co. of Pennsylvania;

The Ohio Federation of Telephone Workers, representing all employees in the plant, traffic and accounting departments of the Ohio Bell Telephone Co., northeastern area;

The Maryland Federation of Telephone Workers, representing all plant department employees of the Chesapeake & Potomac Telephone Co. of Baltimore;

The International Brotherhood of Telephone Workers, representing all plant department employees of the New England Bell Telephone Co.;

The Connecticut Union of Telephone Workers, representing all employees of the Southern New England Bell Telephone Co.

Telephone workers, through their collective-bargaining representatives, desire to put themselves on record favoring outright repeal of the Taft-Hartley law.

At the same time, they desire to put themselves on record with proposals regarding two situations with which they have been intimately involved. These two situations are:

(1) National emergency disputes.

(2) Jurisdictional disputes.

National emergency disputes: The collective-bargaining representatives of telephone workers negotiate with the most powerful and the largest corporate empire that exists in this country—the Bell system.

The operations of the Bell System are Nation-wide in scope and it has been recognized that a labor dispute in the vital field of communi cations presents the country with a national emergency situation. The President of the United States, in 1948, appointed a Board of Inquiry under title II of the Labor-Management Relations Act, when a Nation-wide work stoppage in the long-lines department of the American Telephone & Telegraph Co. appeared imminent. Thus, telephone workers and their collective-bargaining agents are directly affected by the national emergency provisions of the Taft-Hartley law and, consequently, base their observations upon concrete experience.

The national emergency sections of the Taft-Hartley law are completely inadequate to deal with national emergency situations. They are inadequate because they have been based upon a false philosophy, namely, that the way to settle a dispute having Nation-wide repercussions is to sit on one side of the parties and prevent that party alone from exercising its economic strength. Of course, a dispute is quieted by slugging one of the disputants but when he again regains his senses his grievances still exist and become aggravated by reason of the frustrating and unfairly one-sided treatment to which he has been subjected.

The entire approach which gave rise to the national emergency sections of the Taft-Hartley law must be altered if a valid, fair, American law, dealing with such situations is to be enacted.

The first step is to remove the injunction—the black-jack which is used entirely on one of the parties to the dispute. The unfairness of the injunction is apparent if we change the picture and substitute knock-out pressure upon management for the present system of slugging labor. Actually, the injunction forces labor to continue to work for management on the latter's terms. Suppose a law were enacted providing forcibly for management to accede to labor's terms. The deafening roar of protest that would then arise would engulf all of Washington.

It is obvious, therefore, that pressure upon one side to a dispute alone is not only unfair; it also stores up resentment without solving the dispute, thereby leading eventually to explosive results.

It is submitted that a new approach is necessary.

Instead of using force and emotion, the substitute of reason, education and scientific approach is suggested.

The present law calls for ad hoc boards of inquiry. Various amendments proposed also call for ad hoc boards. Such boards obviously come into a technical, highly explosive situation with little or no background knowledge of the issues, the parties or the grievances.

It is suggested, therefore, that in place of ad hoc boards for national emergency disputes, there should be created permanent panels for those industries directly affecting the public interest, such as public utilities, coal, steel, and atomic energy.

The objection may be raised that the cost involved would be too great. It is pointed out that the cost to a nation of one nation-wide steel strike or one nation-wide coal strike would be far greater than the cost of maintaining such panels. Newspaper reports have estimated the daily cost of the recent Philadelphia transit strike as running into millions.

Such permanent panels would be infinitely far better equipped to deal with emergency situations than an ad hoc board, much in the same manner that experts will accomplish results in their field where tyros will only botch things up.

What should the powers and duties of such permanent panels be? Inasmuch as they are permanent, they would constantly be collecting full and complete data in that industry to which they have been assigned.

Many disputes are of the result of inaccurate data, or even worse, data that is collected by one side and is unavailable to the other. In the telephone field this a sore point. With its immense wealth and facilities for research, the Bell telephone system is capable of producing a vast amount of statistical material that cannot be refuted or even scientifically and accurately examined by the comparatively poor labor unions in that field. Many industries which would and do unhesitatingly supply facts and figures to the Bell telephone system would and do just as unhesitatingly refuse to supply such facts and figures to the various labor unions in that field. Consequently, frustrated by lack of data and scientific knowledge, emotion is substituted for a weapon. The intrusion of emotion and strong feelings results in the dispute. Incidentally, the cost of acquiring this statistical data by the Bell system which operates public utilities ultimately is reflected in the rate bill to the public. It is, therefore, urged that public expenditures in this regard be used for the acquiring of statistical data which can be used by labor as well as management and which will ultimately inure to the benefit of the public.

The intrusion of emotion due to lack of knowledge can be entirely eliminated by providing that the permanent panels should collect and supply all data involving that particular field to which they have been appointed. Thus, the representatives of both the employees and management would equally have access to full, complete, accurate, and scientific data.

Provision should be made for the panels to make studies involving the various facets of union-management problems and to make the results thereof available to both parties. Such studies should be made with an eye toward solving the underlying causes that give rise to labor disputes in that particular field.

Furthermore, all records of data and the results of studies should be made public.

It is submitted that this educational feature alone will serve to settle many disputes because problems openly approached with reason and complete statistical data are far more capable of being solved than if approached with lack of knowledge bolstered by nothing more than blind strength of conviction.

In addition to its educational or statistical-collecting-and-furnishing functions, the permanent panel should, of course, be given powers to handle and hear disputes and to issue recommendations.

Certain Nation-wide issues no doubt will arise that the parties are unable to solve themselves. Where the present law calls for an ad hoc board of inquiry in such cases, it is submitted that the same powers of investigating the dispute and conducting hearings should be given to the permanent panels. Since these panels will constantly be involved in all the problems in their field, they will approach the dispute with the confidence that comes from knowledge. Furthermore, their recommendations will be based, not upon opinions that are newly arrived at, but upon opinions that have the secure foundation of long experience, knowledge, and facts. The parties themselves will have more confidence in a permanent panel that knows the problems and all the technical features involved than in an ad hoc board that no doubt will be influenced by various pressures when they suddenly find themselves with a national emergency problem in their laps.

The present Taft-Hartley provisions call for the ad hoc board of inquiry merely holding hearings and then stating the position of each party to the dispute. This is a useless gesture. The parties and the public know the positions. It is the solution of those positions that is sought.

It is, therefore, urged that the permanent panels should have the power to make recommendations and to give the reasons for such recommendations after conducting a hearing. Furthermore, such recommendations and reasons should be made public.

In summary, the above suggestions are for repeal of the present inadequate and unsound national emergency sections of the Taft-Hartley law and the enactment of new provisions calling for the following:

(1) Appointment of full-time permanent panels in various fields directly affecting the public interest instead of ad hoc boards.

(2) The permanent panels should have the following educational duties:

(*a*) Collection of all data relevant to their particular field;

(*b*) Making such data available to all parties and to the public;

(*c*) Making studies of the labor-management problems in their field with an eye toward the solution of the underlying causes that give rise to labor disputes in that field;

(*d*) Making the results of these studies available to the parties and to the public.

(3) In national emergency disputes, the panels should be given the following powers and duties:

(*a*) Conduct hearings with full subpena powers;

(*b*) Make recommendations with full reasons therefor;

(*c*) Make such recommendations and reasons public.

It may be objected that no power is given the Government to enjoin a strike when recommendations are not accepted.

In answer to this objection, it is submitted that in the past recommendations were made by ad hoc boards in situations fraught with emotion and high feelings. But the suggestions above are for the purpose of changing the entire atmosphere in which national emergency disputes may be resolved. Instead of an ad hoc board appointed to hear a single dispute, the matter is brought before a panel that is daily conversant with its job and which has been supplying both sides with educational and statistical material for a length of time. Where reason and education have been the accepted course of procedure and where all sides know they will get a fair shake from a panel that knows its job, the results would unquestionably be more acceptable. In such an atmosphere, a recommendation carries much greater weight than it does when rendered by an ad hoc board administering its task without attempting to collate and furnish information to the parties.

The above suggestions will lead, it is submitted, to knowledge and reason taking the place of emotion in national emergency situations where the latter has no place. Until now, all suggestions have placed emphasis upon force and coercion in such disputes rather than upon education and reason.

It is about time we gave the facts a chance to operate.

Jurisdictional disputes: Telephone workers, perhaps more than any other group of employees in the country, have been sore beset by the jurisdictional dispute. It is tribute to the restraint and acute sense of public responsibility of this group of employees that they have not permitted their jurisdictional grievances to become explosive and injure the public interest.

Wherever projects have been erected, the problem has arisen: shall telephone workers or electrical workers draw through conduits the telephone wires for telephone installation in such projects?

This problem is a pressing one, for instance, at Idlewild Airport and in projects like the huge housing development of Stuyvesant Town, Peter Cooper Village, Riverton Houses, United Nation's project and Brownsville Houses. There the jurisdictional dispute was between the United Telephone Organizations and the International Brotherhood of Electrical Workers. The National Labor Relations Board has refused to hear the dispute despite the mandatory nature of section 10 (k) of the Taft-Hartley law and the matter is now before the courts.

The present statute is completely inadequate to meet the jurisdictional dispute problem. It fails to supply guide posts to direct the action of the Regional director, the general counsel, or the National Labor Relations Board.

The jurisdictional dispute is an irksome and explosive one. It cannot be permitted to fester. Yet, there is nothing in the Taft-Hartley law that calls for rapidity of action on the part of the National Labor Relations Board or any of its agents. For example, on September 2, 1947, the United Telephone Organizations filed a charge with the regional director of the second region against local 3 of the International Brotherhood of Electrical Workers alleging the existence of a jurisdictional dispute at Idlewild Airport. Here was an explosive situation. It required the weighty pressure of the mayor of New York, the Port Authority of New York, and the New York Telephone Co. to stave off a strike. But the dispute still remained and festered. The Board, in such a situation, should have acted swiftly. Either the fear of treading on political toes or sheer failure to appreciate the gravity of the situation resulted in complete inaction on the part of the Board or its agents.

It was not until 11 months later, on August 18, 1949, that the United Telephone Organizations was informed tersely by the regional director that the charges were dismissed, despite the fact that the documents specifically charged violations of section 8 (b) (4) (D) in that the IBEW had resorted to strikes and threatened strikes to compel the New York Telephone Co. to divert from its own employees, members of the United Telephone Organizations, to members of the IBEW work which was customarily done by its own employees.

No hearings were held and it is possible to determine the motivating factors that entered into the regional director's decision.

This smacked of star-chamber proceedings.

The general counsel affirmed the action of the regional director with no reasons given.

The National Labor Relations Board has failed to move in the matter and now court proceedings have been instituted to determine whether section 10 (k) of the Taft-Hartley law made Board hearings mandatory.

Suffice it to say, however, that the above method of operations are certainly not the correct or honest manner of handling the explosive jurisdictional dispute.

The ostrich approach to a problem as pressing as a jurisdictional dispute is hardly the way to solve such problem.

Perhaps inactivity was the chosen course because a labor organization, rather than an employer, filed the charge. This conclusion is offered because of the swiftness of action in *Matter of Moore Drydock Co.* (case No.20–CD–1), where the Board quickly entertained a jurisdictional dispute charge filed by an employer.

On March 3, 1949, the National Labor Relations Board made public its decision in the Moore Drydock Co. case. It was with perplexing surprise that the telephone labor organizations noted that the Board specifically held that section 10 (k) of the act mandatorily required the Board to "hear and determine" jurisdictional dispute charges.

If section 10 (k) of the act mandatorily requires the Board to "hear and determine" jurisdictional dispute charges, why did it, through its agents, refuse to "hear and determine" the jurisdictional dispute charges filed by the united telephone organizations in September of 1947?

The general counsel affirmed the dismissal of such charges by the regional director in New York. Thus, the general counsel and the Board have divergent opinions regarding the functions of the Board under section 10 (k) of the act.

The independent action of the general counsel, contrary to the express wording of section 10 (k) of the act and contrary to the Board's construction of that section in a formal decision, has served to prejudice the United Telephone Organizations in particular and telephone workers in general in their rights under the act.

Such independent powers of the general counsel serve as a strain upon the efficacy of the National Labor Relations Act, particularly in such explosive situations as jurisdictional disputes. The recent Hoover report on the regulatory agencies recognized that no good purpose is served by giving the general counsel such independent powers.

It is, therefore, urged that the proposed labor law contain provisions calling for:

(*a*) Unequivocal mandatory action by the Board, or its appointed agents, to hold hearings when a jurisdictional dispute charge is filed. Independent action by the general counsel preventing such hearings should be precluded by the law.

(*b*) Rapidity of action by the Board, or its appointed agents. The Board should be required mandatorily to hold, or have one of its agents hold, a hearing within a stipulated time after the filing of a jurisdictional dispute charge.

(*c*) A decision to be handed down within a specified time after hearings have been conducted.

It is further submitted that Congress should study this question of jurisdictional disputes with a view toward setting forth guideposts for the Board to use in deciding a jurisdictional dispute charge. There is nothing in the present act calling for such guideposts. The administration bill does contain certain criteria. It is submitted, however, that additional criteria should be established by Congress to guide the Board or its agents in reaching a decision.

Experience of telephone labor organizations has indicated that the claims to job preferment by certain classes of employees are spurious and may easily result in a good deal of unemployment. This should be guarded against, and criteria setting forth the grounds upon which the Board should proceed will aid in guarding against such eventuality.

Specifically, in the telephone industry, electrical workers who are trained in a wide field of operations assert jurisdiction over the specific job of drawing and pulling wire through conduits for the purpose of telephone installation. On the other hand, telephone employees in the telephone plant department are specifically trained for such telephone work. If this work is denied them, they cannot turn to other fields where they have no training. But the electrical worker can still earn a living at his trade without taking away the one specific job for which telephone plant employees are trained. Consequently, in a jurisdictional-dispute charge, the Board should be guided specifically by such considerations.

Therefore, in addition to the above proposals, it is further proposed the new labor law contain criteria to guide the Board, or its agents, in making decisions in jurisdictional-dispute cases. Such criteria, in addition to those in the administration bill, should be as follows:

(*a*) In a dispute over job jurisdiction, a presumption should exist in favor of those specifically trained for the job.

(*b*) A presumption should exist in favor of the employees of a company engaged in performing the disputed job.

In short, therefore, the proposals of the undersigned regarding jurisdictional disputes involve:

(*a*) Mandatory action to hold complete hearings.

(*b*) Swift action.

(*c*) Criteria to guide the Board in making its decision.

In concluding, I wish to say the International Brotherhood of Telephone Workers and the Maryland Federation of Telephone Workers do not wish to join with us in these proposals, as they have a satisfactory working agreement at the present time.

I wish to thank the committee for the time they have given us.

Mr. Kelley. Have you given any thought as to how the panels would be composed?

Mr. Gabriel. I would imagine they would be appointed in the same manner in which they were appointed back during the war. We had telephone panels of one nature or another in regard to hearing disputes at the time, which were considered a national emergency.

Mr. Kelley. Mr. Powell.

Mr. Powell. Do you mean by that a panel for each industry?

Mr. Gabriel. I believe the proposal is for each classification of industry affecting the national well-being of the country whereby national emergency disputes might exist.

Mr. Powell. And the members to be paid, of course?

Mr. Gabriel. That is right.

Mr. Powell. In your section on jurisdictional strikes, your criticism there is mainly directed at the National Labor Relations Board in your particular dispute, where the Board just has ignored you; is that right?

Mr. GABRIEL. The language of the act is not specific in its application in regard to the way the Board has acted.

Mr. POWELL. In other words, it is not mandatory for the Board to move immediately, and the Board is within the law by letting you sit by since 1947?

Mr. GABRIEL. We do not believe so. However, we are in the process of determining whether or not it is within the law.

MR. POWELL. As regards the Lesinski bill, the same situation exists in that bill; is that correct?

Mr. GABRIEL. That is right, you have no mandatory provisions there for the Board to hear a jurisdictional dispute.

Mr. POWELL. Outside of what you have commented on here, what is your feeling concerning the Taft-Hartley bill, as a whole?

Mr. GABRIEL. As a whole we consider it to be entirely unsatisfactory.

Mr. POWELL. That is all.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Mr. Chairman, in the absence of the minority members of the committee, I think I shall refrain from asking the gentleman any questions.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I just wanted to say that, of course, I disagree with this last section here, where you say a presumption should exist in favor of the employees of a company engaged in performing disputed work. It is possible for construction contractors to have many employees, and one could very easily eliminate one of the building trades in that fashion as I see it, if that presumption were favored.

Mr. GABRIEL. Of course, we look at this matter in the nature of a presumption existing as we see it in working for the Bell system in that you have a specific company performing a specific job with its own tools, equipment, and owning the property which it places in service. In the building trades you might have a little more difficult problem to assimilate.

Mr. IRVING. You are making a recommendation for a lot of industries besides the telephone industry?

Mr. GABRIEL. That is correct.

Mr. IRVING. And I certainly could not agree that that would be a fair way, and it would cause many explosive situations also.

That is all I have.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. I assume you have given some consideration to the effect of section 8 (b) (4) (D) and section 10 (k) in connection with each other, apparently, in view of the Idlewild dispute?

Mr. GABRIEL. That is correct.

Mr. JACOBS. Here is what I would like to ask you, whether or not, in the event an award would be given by the Board under section 10 (k), if there is any provision in the Taft-Hartley law where the employees in the union can enforce the award?

Mr. GABRIEL. No; I am afraid I cannot give an answer as to that.

Mr. JACOBS. The gentleman to your right, I think, started to comment on that.

Mr. WEINER. Mr. Gabriel is not an attorney, and I am. My name is Abraham Weiner, and I am the counsel representing this group. With respect to thatI a believe that the act, taken in conjunction with the rules of procedure of the Board, provide that if the Board renders an award, and one of the parties against whom the award is rendered refuses to accept that award, then the Board issues an unfair labor practice complaint against that party.

Mr. JACOBS. What specific section do you refer to?

Mr. WEINER. Section 8 (b) (4) (D) and section 10 (k), and the rules of procedure of the Board itself.

Mr. JACOBS. Then you think that section 8 (b) (4) (D) would carry back to the general language before (A), (B), (C) and (D); is that your view of it?

Mr. WEINER. No; section 8 (b) (4) (D), which is the manner of proceeding, is taken care of by section 10 (k) of the act, and section 10 (k) is the sore point that Mr. Gabriel spoke about. Section 10 (k) says the Board is empowered and directed to hear a jurisdictional-dispute charge, that is, a charge under section 8 (b) (4) (D). In the Idlewild dispute the Board shunted the dispute aside, after holding it in the office of the regional director for 11 months. That is quite a contrast to the recent case of the Moore Drydock Co. case.

Mr. JACOBS. I understand that, but under 10 (k) the requirement is to hear and determine a dispute and make an award in the event it is not settled; that is correct, is it not?

Mr. WEINER. That is correct.

Mr. JACOBS. It is an unfair labor practice under section 8 (b) (4) (D) to force or require—

> any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class—

et cetera.

Suppose an award were made and the employer refused to abide by it; what language is there in this act that gives the employees the remedy by which they can enforce that award against the employer?

Mr. WEINER. There is nothing in the act that forces that employer to abide by the award of the Board. It just seems to hit at that group of employees against whom the award is directed, the employees of group B——

Mr. JACOBS. But supposing that group of employees, which would be the IBEW, in your case, that you are talking about, did like the Arabs, and folded their tents and silently stole away in the night. Now, they are not there any more; they are not doing anything, are they?

Mr. WEINER. No. Then no unfair labor practice complaint would issue against them. And suppose the employer still refused to give the first group——

Mr. JACOBS. To you, yes.

Mr. WEINER. That is right. There is nothing in the act that would protect us in that particular case, as written.

Mr. JACOBS. If they desired to give it to another group, you would be right back where you started, and you would start another complaint and go through the procedure in section 10 (k) again?

Mr. WEINER. That seems to be so. There is no provision in the law as written in a situation of that sort. I doubt whether something like that would actually come up. I think the employer would be glad to resolve it in any possible way to get his work going on again. He may not.

Mr. JACOBS. At any rate, there seems to be a blind spot in someone's thinking.

Mr. WEINER. From a theoretical point of view, if not a practical one, there certainly is a blind spot there.

Mr. JACOBS. That is all.

Mr. KELLEY. Mr. Wier?

Mr. WIER. Let me ask you just a few questions about other experiences that your organizations have had under the Taft-Hartley Act. You were organized under the Wagner Act, were you?

Mr. GABRIEL. Yes; we were.

Mr. WIER. Did you have any difficulty under the Wagner Act, in the operation of it?

Mr. GABRIEL. No. The Wagner Act, as far as we are concerned, operated satisfactorily.

Mr. WIER. Satisfactorily?

Mr. GABRIEL. Yes.

Mr. WIER. By the way, you made no designation here. Are these units that you list in your presentation as affiliated with your group independent, or are they affiliated with the CIO or the AFL, or what?

Mr. GABRIEL. This is an independent group.

Mr. WIER. You are not affiliated with the CIO?

Mr. GABRIEL. No; we are not.

Mr. WIER. You are not affiliated with the AFL?

Mr. GABRIEL. No; we are not.

Mr. WIER. You are not affiliated either way?

Mr. GABRIEL. No.

Mr. WIER. You represent, I assume here, quite a substantial group of employees. At least, you are the bargaining agent for a substantial number; is that correct?

Mr. GABRIEL. That is correct. We state upward of 70,000.

Mr. WIER. Of all the employees that are in your field, or these companies, what percentage of them are members of your union?

Mr. GABRIEL. On the average of 90 percent.

Mr. WIER. Ninety percent; in all of these companies?

Mr. GABRIEL. That is correct. In the particular departments we have outlined.

Mr. WIER. Do you have at the present time any kind of security, such as union shop, closed shop, check-off, or anything?

Mr. GABRIEL. We have maintenance of dues; we have a voluntary check-off system.

Mr. WIER. Is it in the contract?

Mr. GABRIEL. In most instances, yes.

Mr. WIER. Do you have a contract with all of these companies that you represent here?

Mr. GABRIEL. The various unions as outlined do have contracts with the various telephone companies; that is correct.

Mr. WIER. You do have written contracts with these telephone companies covering the collective-bargaining agency for the employees under your jurisdiction?

Mr. Gabriel. That is correct.

Mr. Wier. And in these contracts, you have a check-off; is that what you said?

Mr. Gabriel. That is right.

Mr. Wier. The companies have agreed to that, have they?

Mr. Gabriel. Yes; they have.

Mr. Wier. And you have under the Taft-Hartley Act an individual voluntary assignment of the dues to your union; is that correct?

Mr. Gabriel. That is right.

Mr. Wier. Do you have any difficulty with that?

Mr. Gabriel. Not particularly, up to this time.

Mr. Wier. When did you get that agreed to?

Mr. Gabriel. I might qualify my statement in that during a strike period, we have used it as a weapon.

Mr. Wier. You had a strike last year in some of these units?

Mr. Gabriel. Two years ago, in 1947.

Mr. Wier. Two years ago. Was that following the installation of the Taft-Hartley Act, or was that under the Wagner Act?

Mr. Gabriel. No. That was under the Wagner Act.

Mr. Wier. That was under the Wagner Act. And you have not had the experience of some of the teeth of the Taft-Hartley Act?

Mr. Gabriel. No. Fortunately, we have not had to experience some of those.

Mr. Wier. Now, let me ask you this. In the very beginning of an organization, it is true, is it not, in most of these cases, you were organized when the Taft-Hartley Act went into effect? Is your organization work going on now? I presume that you are still doing organizational work?

Mr. Gabriel. That is right. We are.

Mr. Wier. And, under the Taft-Hartley Act, the management is given very liberal interpretations under this right of free speech, and so on. Have you encountered difficulties with management in their free-speech approach to the employees that are prospects to your unions or are members of your unions? Have you found interference?

Mr. Gabriel. We have had few elections lately but, in what few we have had, there has been a certain amount of interference.

Mr. Wier. Have you had any occasion, or have you tried the clause in the Taft-Hartley Act on charges of unfair labor practices as against your employees?

Mr. Gabriel. We are in the process of being involved in that.

Mr. Wier. Did you ever get a decision of an unfair labor practice against any of those companies?

Mr. Gabriel. Not yet.

Mr. Wier. Not yet. I am waiting to see the one who says he has. So you do have interference here and there by the employers in the prerogative of your workers to become members of your union or continue their membership?

Mr. Gabriel. To a much greater extent than before the Taft-Hartley Act.

Mr. Wier. Greater than before the Taft-Hartley Act. Did you notice any change in the attitude of your employers after the passage of the Taft-Hartley Act in regard to negotiations, grievances, and relationships?

Mr. GABRIEL. I would say they have worsened from the union's viewpoint to a considerable extent.

Mr. WIER. I see.

Mr. GABRIEL. As we might point out, in the last bargaining negotiations where we were in bargaining sessions of five, six, and seven months before resolving a contract which to a certain degree was unsatisfactory.

Mr. WIER. I was going to ask you that question. You gave me the answer. But what did you get on your last negotiation with your membership in the way of money?

Mr. GABRIEL. Roughly $1 to $6, on a sliding scale, per week.

Mr. WIER. Six dollars a week? That is, $1 a day?

Mr. GABRIEL. One dollar to six dollars.

Mr. WIER. I see.

Mr. GABRIEL. The telephone workers of New Jersey, where they have a compulsory arbitration law in that State, got $2 across the board. In other telephone companies, the procedure was to give raises in wage patterns which were brought about by community comparability in a sliding scale which ranged, in some instances, from $1 to $6 in the larger communities.

Mr. WIER. How many of these unions dealing with the Bell Telephone Co. have compulsory arbitration?

Mr. GABRIEL. I believe only New Jersey.

Mr. WIER. Only New Jersey?

Mr. GABRIEL. Yes.

Mr. WIER. You would say that is a State law for public utilities, I presume?

Mr. GABRIEL. That is correct.

Mr. WIER. You have to go in and take what the arbitration board awards?

Mr. GABRIEL. That is right.

Mr. WIER. Well, we are coming closer to it all the time.

You lay considerable stress upon some difficulty you had with the electrical workers' union in some of these building projects. I think your outline here of a determination of those disputes is a dangerous approach to the over-all picture; that is, when there is a clash between you and another union as to who is going to do the particular work. But I certainly would not sit in this Congress and agree with the plan you outline, on the basis that it would involve hundreds of other disputes farfetched from the type of grievances you have. A lot of our jurisdictional disputes in the field of industry are primarily in fields where we find the introduction of new materials, replaced materials, and new populations, where nobody has made a decision as to the jurisdiction of that new material. I certainly would disagree with you entrusting the Labor Board, with no knowledge at all with the fields of building construction and the field of metal trades, to sit in and make a determination as to what union it belongs and what union might not, historically, in that particular industry. It is all right in the kind of dispute that you might have. But still you do not settle it there. You ran into a situation where the whole project had been tied up.

Mr. KELLEY. The gentleman has 1 minute remaining.

Mr. WIER. Well, I cannot finish in 1 minute. So I will call it off.

Mr. KELLEY. Mr. Sims?

Mr. Sims. I have no questions. But I will be glad to yield my time to Mr. Wier.

Mr. Wier. I am worried about that jurisdictional dispute, too. I am a member of the A. F. of L. now. I have a good paid-up card right now. I felt like going out on strike this afternoon. Probably they would have had an injunction on me.

Have you had any experience with injunctions?

Mr. Gabriel. No; we have not, to this time, had any particular experience with injunctions under the Taft-Hartley Act.

Mr. Wier. You have not had any dispute at all under the Taft-Hartley Act?

Mr. Gabriel. No.

Mr. Wier. You are lucky.

I think that is all, Mr. Chairman. I think considerable has been said about that jurisdictional aspect; but I am, like you, deeply concerned with the jurisdictional dispute. However, I do not think your method is the proper method, of putting it in the hands of impartial observers and those that have no knowledge of the field of industry to make a decision that is far reaching.

Mr. Kelley. Mr. Sims?

Mr. Sims. No questions, Mr. Chairman.

Mr. Kelley. Mr. Gabriel, thank you very much.

Mr. Gabriel. Thank you.

Mr. Kelley. Mr. Clarence Mitchell, National Association for the Advancement of Colored People.

Mr. Mitchell.

Mr. Powell. Mr. Chairman, may I ask permission to put in the record at the close of Mr. Mitchell's testimony a statement of Mr. Elmer Henderson, director of the American Council on Human Rights?

Mr. Kelley. Without objection.

Mr. Mitchell, you may proceed.

TESTIMONY OF CLARENCE MITCHELL, LABOR SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Mitchell. Mr. Chairman and gentlemen of the committee, I am Clarence Mitchell, labor secretary of the National Association for the Advancement of Colored People.

First, I want to thank you gentlemen of the committee, and you, Mr. Chairman, for giving us an opportunity to be heard on what we consider a very important subject. In two of our national conventions of the NAACP, we have called for the repeal of the Taft-Hartley Act. This is the unanimous action of the persons who came to our convention from all over the country as delegate.

There are many aspects of this law that other people will talk about, but I wisk to confine myself to a part of the labor legislation which normally has not been given the kind of consideration which we believe it merits, and that is the question of instances of discrimination against persons who are employees in plants or who are members of trade-unions, solely because they happen to be Negroes or members of other minority groups.

In order to clarify and present this testimony in a fashion that will get the point across, we have submitted our proposals as suggested amendments to the Wagner Act. However, we feel that, whatever the final form of the legislation may be, there must be embodied provisions of this kind if persons who work for a living and happen to be colored, or members of other minority groups, are getting to get fair treatment at the bargaining table.

The first thing we ask for is that no union which segregates or discriminates against persons because they happen to be members of a racial or minority group be certified. The next thing we ask is that any union which happens to have the collective-bargaining relationship and is found to segregate or discriminate after it receives the contract be disestablished or decertified.

We ask that, in closed-shop situations, no closed shops be granted where individuals are segregated or discriminated against because they happen to be colored.

Finally, we ask that no employer be required under the law to bargain with a union which segregates or discriminates.

This question has been kicking around ever since the Wagner Act was passed back in 1935. Repeatedly, instances have arisen in which this issue was at stake, and always it has been treated in a very shoddy fashion. Perhaps the grandfather of this error that I am here to talk about tonight is found in the Larus case, which is cited in our testimony. In that case, the National Labor Relations Board approved the principle of having so-called separate but equal unions, or a complete exclusion of persons from union membership because they happened to be colored, or the segregation of them into auxiliaries, simply because they happen to be colored.

This is the Larus doctrine, and this we believe to be unfair and undemocratic. We believe that, if the Board had exercised a little courage in the beginning, it would have been able to come up with a philosophy and an administrative approach on this thing which would have given all persons a fair chance in labor organizations.

The Board did not elect to do that. It took a narrow and timid construction of its duty under the law, and that principle was incorporated into the Taft-Hartley Act, so that what was before merely an administrative determination on the part of the Board then became a principle which was incorporated into the law. In other words, those who voted for the Taft-Hartley Act, those who wished that on the people of this country, actually incorporated the principle of segregation into law.

Now, they have some very beautiful language in the Taft-Hartley Act in section 8 in which they talk about no discrimination against individuals on the part of employers and no dismissal of people if unions act against them in a discriminatory manner. And they have gone around the country saying that this is something wonderful and a pat on the back for minorities.

But actually they were pinning the donkey's tail of second-class citizenship on colored people when they gave them this kind of sock. And the Board was very quick to make use of this license for continued immoral conduct in four cases that I wish to cite. They appear in my testimony.

One of the first was the Norfolk & Southern Bus Corp., also the Texas & Pacific Motor Transport Co., the F. W. Wint Co., and the Veneer Products Co.

I want to discuss briefly two of those cases, because they show how clearly this principle of B-class locals and auxiliaries and second-class citizenship for colored people in trade-unions have been incorporated into the law under the Taft-Hartley Act.

I will take the Veneer Products case first. In that situation, the firm down in North Carolina had two locals which were under the jurisdiction of the operating engineers of the A. F. of L. In that plant, colored people were members of a local and white people were members of another. In the old days, when they had separate locals for colored people, usually they called the white locals by the number—that is, it was 431 or something of that sort—and then they called the colored local 431–A. But in this case, they called the white local 457 and the colored local 457–D. So we are getting farther down in the alphabet as they go along in the designations of separate locals for colored people.

The employer raised a question in that case: Why should we have those separate locals? And he contended that the existence of those separate locals meant that the union discriminated against the employees. He offered proof to that effect.

The Board went in and, in one of those amazing decisions, came up with a statement that the only reason why they had this separate local for colored people was to keep the colored money separate from the white money, and therefore they did not see any instance of segregation or discrimination in that case. And they referred back to their decision in the Larus case, saying that segregation was not any indication of discrimination.

We have even a more serious thing in the Texas & Pacific Motor Transport case. In that case, the teamsters union of the A. F. of L. already had the bargaining rights in that company. Apparently they were doing a very good job of representing the employees. Along came the International Association of Machinists and said they wanted to represent certain employees in that establishment, and the teamsters—which I wish to interpolate here to say is one of the best unions in the matter of race relations and has a great many colored members and a very decent record on this subject—the teamsters came before the Board and said that they had proof that the machinists were discriminating against Negroes and they would not give them equal representation, and they asked for an opportunity to present that evidence.

The Board would not even permit the teamsters to present their evidence, and they went further in the Board. They said to the machinists when they came forward and offered to present some evidence showing that they did not discriminate, "We are not interested in that. We find that issue is not pertinent, and you therefore do not have to submit any evidence to show that you do not discriminate."

The record of the machinists is notorious on that point. There is a great volume of evidence, gentlemen, that the rank-and-file members of that union wish to do the right thing on this race question. They have had votes up and down, and generally they have tried to overthrow that system of excluding colored people from unions altogether. In California, for example, at the Lockheed Aircraft Co., the local lodge of the machinists defied the international, which had a provision in the constitution that a man had to be white in order to be a member of the union. And these people said, "That must mean 'white of character,' and therefore we are going to initiate these colored people."

And they did. And they are there today as members of that union.

In the State of Washington, the local lodges of the machinists did initiate colored people and had them as members of the union, and the international officers came in and tried to keep them out and tried to make the people in Washington put these colored people out of the union.

All that adds up to this, that in those States where there are fair employment practice laws, such as New York, New Jersey, and others, and in those States where we have one court decision, as in California and Kansas, the International Association of Machinists admits Negroes to full membership, and does so because it is required by the courts and the law to do so. But in the South, they still have a system of intense discrimination against colored people, and they confine themselves to separate locals everywhere, so that it was a very shortsighted policy on the part of the Board to say that this union did not discriminate against colored people, and not even to admit this issue to the question of discussion.

We believe that there is a tremendous growth in the trade-union movement of a realization that unions have to operate on a democratic basis. Both the American Federation of Labor and the CIO have taken long steps in the direction of achieving democracy within the structure of trade-unions.

I would just like to read this brief section of my testimony, because I wanted to point out some of the things that are concrete evidences of the nature of the picture around the country.

In Charlotte, N. C., colored and white members of a carpenters local are on excellent terms and treat each other fairly. On the other hand, at this very moment, there is extensive discrimination against colored carpenters who seek employment on the atomic energy construction projects in Tennessee. They are full-fledged members of the carpenters union. Their trouble arises because they are consigned to locals, separate and apart from those for white people. The white locals usually get the lion's share of the work. The colored union men are frequently denied employment after they have traveled many miles in response to calls for carpenters.

In Charleston, S. C., colored men are important officials of the bricklayers' union. In Louisville, Ky., they are an important part of unions bargaining for dairy workers, and in Atlanta, Ga., there are unions in the building trades with mixed memberships of colored and white persons with colored officers. On the other hand, in Cleveland, Ohio, the International Brotherhood of Electrical Workers have threatened to close down certain training courses offered in public schools if colored people are admitted.

Our testimony includes these illustrations because we wish to have the record show that the pattern of discrimination is varied and not necessarily based on geography. We also condemn those who make wanton and generalized attacks on the whole labor movement. This is a problem which the Congress has power to solve. In passing constructive labor legislation the United States Government throws a mantle of dignity and protection over the shoulders of the working man. We ask that this garment be made in the American style and tailored to fit all of our citizens of all races and faiths.

We feel that as one looks back over the experience under the Taft-Hartley Act, there is no justification that there should be a continued ban on the closed shop. The NLRB's figures on elections held to determine whether persons wished to be represented under a union-shop contract have shown overwhelmingly—and we cite the figures in here—that workers desire this form of protection and we think they are entitled to have it. We recognize for the purposes of this testimony no difference between the closed shop and the union shop.

We feel when the closed shop is restored, as the present legislation proposes, that there must be some adequate safeguard introduced which will say that all persons as a matter of right, regardless of their race, shall be members of a union. That was left to administrative determination under the Wagner Act, and the Board, as I said before, held that where you had a closed shop and the union didn't want to admit people to membership, it was just decided that they could remain on the job but they didn't have to be members of a union.

We say, bring back the closed shop, but by all means, include safeguards of the nature of those we have suggested in the amendment which appears in our testimony.

We also feel that even though you may take care of that particular phase of the law which relates to the closed shop, that does not include the great majority of workers in industry. We have some figures which appear in our testimony concerning the number of persons who were covered by collective-bargaining agreements of various kinds in 1945. The reason we selected that period was because it was before the Taft-Hartley Act and it was still possible, of course, then legally to have the closed shop.

Out of some 13,000,000 persons who were covered by collective-bargaining agreements, only about 30 percent of them were covered by closed-shop agreements. Hence, about 70 percent of the workers of the country who are covered by collective-bargaining agreements would not be reached under this amendment which we have suggested as a protection in closed-shop situations.

Therefore, we have suggested our other amendment to the effect that no union be certified as the bargaining agent when it segregates or discriminates and that any union which subsequently starts discriminating—you know, a lot start off all right, but when they get going they change around and decide to exclude Negroes—and we would make this a condition of revocation of contract when they begin to discriminate.

Of course, the final thing that we suggest in the way of an amendment deals with this question of employers not being required to bargain with unions who segregate or discriminate. There are many instances, if we are realistic, in which unions are big enough to go around the employer and not bother with the National Labor Relations Board; and that is a good thing, but we don't feel that it is fair if a union is strong enough to avoid the machinery of the National Labor Relations Board and at the same time segregate and discriminate, we do not believe it is fair for them to force an employer to bargain with them and possibly work out conditions of employment which will be detrimental to persons of certain minority groups.

These remedies which we propose are supplementary to what will be required if President Truman's civil-rights proposals are adopted in full, and we have a Federal fair employment practice law. They are not intended to give to the National Labor Relations Board fair employment practice functions. They are designed to make equal treatment for all citizens regardless of race a part of labor relations and a part of the thinking and action at the bargaining table.

We believe that the majority of persons who work for a living and who have seen the curse of divisive tactics on the part of employers will welcome legal restraints against discrimination.

Mr. Kelley. Mr. Powell.

Mr. Powell. Mr. Mitchell, the NAACP has about how many dues-paying members?

Mr. Mitchell. We have approximately a half-million dues-paying members.

Mr. Powell. Five hundred thousand?

Mr. Mitchell. Yes.

Mr. Powell. They are in every State of the Union?

Mr. Mitchell. We have branches in 43 States.

Mr. Powell. Forty-three States?

Mr. Mitchell. Yes.

Mr. Powell. It was the unanimous vote at the past two national conventions of all the delegates that they were opposed to the Taft-Hartley Act?

Mr. Mitchell. That is correct. The majority of colored people work for a living. We have some employers, but they aren't as numerous as those who work for a living. Those who work for a living recognize that this law has not been in the best interests of labor. They want to see it off the books and replaced by something that gives everybody a fair deal.

Mr. Powell. These amendments which you have brought forward represent not your personal view solely, but they represent the view of the NAACP board, do they not?

Mr. Mitchell. That is correct. As the labor secretary, I have the responsibility of pulling the things together and stating them in such a fashion that they will represent the views of our organization, and these are the objectives that we seek.

Mr. Powell. Are there any union men serving on the national board of the NAACP and, if so, what are the names of some of them?

Mr. Mitchell. Well, we have Mr. Philip Murray as one of the members.

Mr. Powell. Philip Murray is a member of the national board of NAACP?

Mr. Mitchell. That is correct, and also Mr. Walter Reuther of the automobile workers. However, I would not wish to say that I had cleared these amendments with them. I am certain from the way they conduct their union affairs that this kind of thing represents their sentiment, but I would not say this has been cleared with them.

Mr. Powell. I am bringing this out because suggesting amendments such as this might be construed as being inimical to the cause of labor, and I want the testimony to show that the NAACP has always been prolabor and could not be other than prolabor and have on its board people such as Mr. Philip Murray, Mr. Walter Reuther, and others.

Mr. MITCHELL. Mr. Congressman, I would like to comment on that. I have been unable to understand why when we have these broad attempts at social legislation brought up, if a group of the population which is discriminated against comes forward and says, "All right, we are in favor of building this wonderful new dream house, but all we ask is when you give out the room assignments you have our name on the list." Somebody then says, "You are rocking the boat; don't raise these questions because they will destroy the legislation."

I think that is a very short-sighted and selfish point of view and it is certainly something we most strongly condemn.

Mr. POWELL. It is my purpose, Mr. Mitchell, it was before your testimony was made and before I even talked to you, to introduce this kind of amendment, not these exact words, although I may accept your words, because I think that what you have said is absolutely correct. You cannot have part-time democracy.

For the sake of the record, do you know any places in the United States south of the Mason and Dixon's line where Negroes and whites belong to the same locals and get along perfectly all right?

Mr. MITCHELL. Yes. As I mentioned in my testimony, I have been in a number of places where that is true. It is true in South Carolina; it is true in Georgia; it is true in Louisiana, and Alabama. In fact, one of the outstanding examples of that is the United Mine Workers. They have through the years done the decent thing, and there are many A. F. of L. unions in the construction business which have colored and white members, and they get along very well. It is the renegades that usually cause us trouble.

Mr. POWELL. What about the machinists now? The machinists have written in their international constitution "only whites." What about the Texas machinists?

Mr. MITCHELL. I am glad you brought that up because in the case that I mentioned, the Texas and Pacific Motor Transport case, the NLRB said there was no evidence that the machinists were discriminating and wouldn't even take the question seriously.

We have a situation coming before us from down in Houston in the Texas and New Orleans Railway. The machinists represent the employees who are in the shops there.

There was a colored man there named Calloway Gaddis. He started work back in 1924 in that shop. He got into some kind of dispute with management in 1944, and he was fired and kept off the job for about 10 months.

Finally he was reinstated; he won his point, and went back on the job. He was then entitled to seniority beginning in 1924. The company restored it to him. The machinists then moved in and said management couldn't give him that seniority. The union said that his seniority had to date from 1944.

Mr. Gaddis took the question up with the local union of the machinists, which represented those employees, and in that situation the local union was very disturbed about it. Again, as I said, most people would like to do the right thing. The union's local officers said they felt that it was destroying the union not to give this colored man his seniority. They wrote a letter to one of the district officials saying, "Please give him back seniority."

That official said, "You have got to have a vote in order to do it." They had the vote and then he said, "Well, after you get the vote you have got to go to individual members and ask them whether it is all right."

We took that up with the international officers of the machinists here in Washington, and they referred us down to a vice president in Alabama. That man referred us to the same man down in Texas who was responsible for the discrimination, and we got a letter back from him saying, "Well, this colored man went outside of union channels to get his grievance settled and, therefore, we can't do anything for him."

That is reprehensible, and I think there must be some legal protection to keep that from happening.

Mr. Powell. One thing in your written testimony that should be brought out for the benefit of all of us is that it wasn't until the Taft-Hartley law was enacted that segregation and discrimination in trade-unions became a matter of law; isn't that correct?

Mr. Mitchell. That is quite correct.

Mr. Powell. The Taft-Hartley law made that a matter of trade-union law, and very few people know that.

Mr. Mitchell. That is correct.

Mr. Powell. That is, when the Taft-Hartley Act incorporated the Larus & Brother Co., Inc., decision, 62 NLRB 1075.

Mr. Mitchell. That is correct. If I may, I would like to say that the language of the Taft-Hartley Act is so beautiful. It says:

> No employer shall justify any discrimination against an employee for nonmembership in a labor union if he has reasonable grounds for believing such membership was not aavilable to the employee on the same terms and conditions generally applicable to other members.

Then they go on to say that—

> No union shall cause or attempt to cause an employer to discriminate against an employee in violation of this subsection.

Now, when that became law, a lot of people got out wonderful statements saying that here is a little FEPC and this is something that is going to give the colored people a real break. But they failed to read the conference report on the Taft-Hartley Act, and I have included that language in my testimony. The authors of this law, in a mean, conniving, sneaking way, include in the conference report a statement saying that the doctrine of the Larus case shall be the controlling doctrine in situations of this kind.

In other words, the Taft-Hartley authors said go ahead, segregate them, discriminate against them, kick them out, but you are not mistreating them under the Taft-Hartley Act.

If there is anything that I want to leave with you gentlemen, it is the clear and firm statement that this is a fraud which this Congress has a duty to correct.

Mr. Powell. I would like to also bring out that whenever the union has segregated and discriminated and there have been local laws enacted or there have been court decisions that that segregation or discrimination, of course, immediately ceased; and then what were the results? Were there any riots or any type of physical violence that resulted from the fact that men who were American men, regardless of color of skin, were then put in the same unions? What has been your experience?

Mr. MITCHELL. Our experience has been that whenever persons in trade-unions say that we are going to admit all people to membership without regard to race, the results are most healthy and most satisfactory. You get a better working relationship on the job, you get a better type of relationship between men. The old-line trade-unionists that I know, people who have come up through the union movement through the years, who have seen the evils of certain groups being set apart so that they might be used as strikebreakers, certain groups set apart so that they might be used to keep wages low, are opposed to segregation and discrimination, and they want to see all people in on a basis of equality.

Mr. POWELL. I have 1 minute left, and I would like to say this in conclusion: That there is before this committee, not this subcommittee but this entire Committee on Education and Labor, several bills pertaining to the enactment of fair employment practices legislation, and I am sure there will be hearings held on them; but, just in case they are not held, as you point out in your testimony, these amendments should be included and should be considered.

Mr. MITCHELL. I would like to say, Mr. Chairman, with or without the fair employment practice law, they are needed because this legislation gives a kind of Government protection to people who are bargaining for other workers, and a review of the practices of the NLRB shows that unless there is some legal protection in the law, the minority groups are not given proper treatment.

Mr. KELLEY. Mr. Bailey.

Mr. BAILEY. Mr. Mitchell, continuing your summation of discriminations under the Wagner Act and the fact that you say it was legalized under the Taft-Hartley Act, I note on page 3 of your formal presentation you sum up your opinions of those discriminations by saying, and I quote from your statement:

> The authors of this legislation tried to make it appear that they were giving minorities a pat on the back. In reality the lawmakers were pinning a donkey's tail of second-class citizenship on all of the colored people in the labor movement of this country.

I would like to ask you, Mr. Mitchell, if the parties that controlled the Eightieth Congress haven't been pinning the donkey's tail on you folks for about 80 years and you only found it out before the last election.

Mr. MITCHELL. I might say, Mr. Bailey, unfortunately, in America neither party has done what it should do on this question. We are mightily pleased with the position of the President on the civil rights program, and we are delighted that there are many of you gentlemen who stand with him on that. But we have been just exposed to the very awful spectacle of a filibuster over in the Senate which we know has been engineered by the worst kind of connivance between Republicans and Democrats. We hope that you gentlemen who believe in the principles the President has enunciated in the civil rights program and those of the Republicans who say they stand for the same thing will jointly write into law some of the things we have been hearing about in campaign speeches. We will then be able to pin the donkey's tail where it belongs, and that is on those who are opposed to democratic principles, so that they may be held up to ridicule and scorn before all the world.

Mr. Bailey. That is all.

Mr. Kelley. Mr. Irving.

Mr. Irving. Mr. Mitchell, are you familiar with an article or editorial that appeared in, I believe, one of the Texas papers, possibly the Houston paper, wherein a writer extolled the principles and benefits, and so forth, of the Taft-Hartley law in regard to a new charter or something for the Negro people?

That is, in my opinion, a contradiction to the position your group has taken. Have you seen that article or heard of it?

Mr. Mitchell. I would not be able to comment on it because I haven't seen it, but I would certainly say this position we have taken is not one which is based on an empty theory. The facts speak for themselves.

Anybody who reads the record, if he can understand English, knows that the Taft-Hartley law says that it is O. K. to segregate. That is what our association and millions of other people who believe in decency and freedom have been fighting through the years. I think it is very clear from the language of the act and from Senator Taft himself, who said on the floor of the Senate during the debates on this law that is all right for unions to segregate colored people, it is all right to put them in auxiliaries and B-class locals.

That is in the Congressional Record, so the intent is clear. I don't know who would endorse that kind of thing, but I know he would certainly not speak for the great majority of colored people.

Mr. Irving. I thought that was rather peculiar because of the situation and the experience that you show here right in Houston. I think the paper—I saw the paper and I didn't remember the man's name, nor I didn't remember exactly the town or the name of the paper. I was just saying I think it was from Houston, and I would say it is peculiar after your exposing certain things that you have here.

I am wondering if that is a bit of propaganda or is it a stand by a few of your people?

Mr. Mitchell. I would say that among honest men there is always room for differences of opinion. It may very well be that somebody who has not studied this legislation, but who read one of the releases that was gotten out by some of the people who were interested in rallying support for the Taft-Hartley Act thought it was a good thing. However, I believe that it certainly didn't speak for the majority of the people of Houston who have come to our conventions and who were among those who voted to call for the repeal of the Taft-Hartley Act.

Mr. Irving. I think that is all. If I have any time left, Mr. Chairman, I will yield it to the next member.

Mr. Kelley. Mr. Jacobs.

Mr. Jacobs. What union was involved in the Marinship Co. in California?

Mr. Mitchell. I am happy you brought that question up because there is the concrete illustration of the kind of thing that I have been talking about. The Marinship Corp., the Kaiser Corp., Calship, and others went out to California to do a war job, and they were hiring a great many people.

The companies signed a closed-shop agreement with the metal-trades council of the American Federation of Labor. The first time the agreement was challenged was in the employment in the Bethlehem-Alameda shipyards. Then when the matter came before the NLRB it was contended that two of the unions in the metal-trades council—namely, the boilermakers and the machinists——

Mr. JACOBS. Wasn't the lawsuit against the boilermakers and the company? Wasn't that the way it was?

Mr. MITCHELL. That is true. I would like to show you how it ties in with the philosophy of the Board I have been talking about. The Board said that it may be that there is discrimination, but then the machinists and boilermakers set up auxiliaries for the Negroes, and the Board said all right. You no longer discriminate.

That phase finally went into court in the Marinship case and in the Moore Drydock case and several others. The California Supreme Court in the most vigorous language condemned the auxiliary set-up, saying it was totally unfair to say that when a closed shop is established, Negroes cannot be members of the parent union; they have to be members of an auxiliary.

As the result of the Supreme Court decision in California, both the boilermakers and the machinists had to change practices and admit colored people to full membership, but they did not extend it beyond the borders of California, except in some other States where court decisions and fair employment practice legislation made it necessary to do so.

That, I think, is most unfortunate.

Mr. JACOBS. Can you tell me whether or not any other State has adopted the California rule by court decision?

Mr. MITCHELL. Yes. In the State of Kansas there was a decision—and here is another illustration, if you gentlemen will indulge me I would like to mention—here you had the Brotherhood of Railway Carmen. They went into the shops of the Santa Fe Railroad and organized the employees there, who happended to be colored and white.

Colored people joined just as everybody else did, and they were told they were going to be full-fledged members. Then after they got in as full-fledged members and the company began bargaining with the Brotherhood of Railway Carmen, the colored people were told they had to be members of a separate outfit, as they couldn't be a part of the white group.

The colored people took that case to the courts in Kansas. They took it all the way to the State supreme court and won. There is a paragraph of that Kansas decision that I would just like to read, if I may. It is very brief. It says this:

> It is urged, however, that since membership in the union is voluntary and not compulsory, the petitioners have no right to complain about limitations placed upon membership under the constitution and bylaws of the union. The argument is specious and unrealistic. Note might be taken of the allegation that in soliciting the members prior to organization of the local lodge, the organizers had assured the plaintiffs that all member would have equal rights and privileges. But, passing that, we come to the more fundamental matter. This court cannot be bland to the present-day realities affecting labor in large industrial plants. The individual workman cannot just it alone. Every person with an understanding of mass production and other features of modern industry long ago recognized the necessity of collective bargaining by labor representatives freely chosen if human rights are to be safeguarded.

And in speaking of the denial of the right to join the union, the court said:

> Such denial is repugnant to every American concept of equality under the law. It is abhorrent both to the letter and to the spirit of our fundamental charter Never was it more important than now to reject such racial discrimination and to resist all erosion of individual liberty. The acts complained of are in violation of the fifth amendment.

Mr. JACOBS. Wasn't it in the California Ship Co.——

Mr. MITCHELL. Marinship.

Mr. JACOBS. I thought it was Marinship. Was that the decision where the Supreme Court of California referred to the situation and said that the labor union was more than a country club or a church, that it involvd the economic rights of people and the denial of membership constituted a tortious act; was that the decision that used that language?

Mr. MITCHELL. I think that generally was the language. I would hasten to say, sir, that we felt in the California case—I happened to have been out there in those cases when we were attempting to settle them short of court action—we felt that if the employers in the beginning had taken this discrimination factor into consideration, there would have been avoided a great many of the problems that arose afterward. We certainly do not wish to assess the blame merely to the union. We feel, after all, the employer has the power to hire and he has an obligation not to sign a contract with a group that will discriminate against any part of his working force.

Mr. JACOBS. At any rate, the controversy did result in a court decision which fixed the law in California?

Mr. MITCHELL. That is correct.

Mr. KELLEY. Mr. Sims?

Mr. SIMS. I have no questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. Mr. Mitchell, as you know, I am a member of the A. F. of L.

Mr. MITCHELL. Yes, I do, sir.

Mr. WIER. Primarily I have no question on the fundamental basis that your group presents here tonight. I am interested in whether progress has been made in behalf of the colored people of this country in their relationship to the trade-union movement. I am familiar in the State of Minnesota——

Mr. MITCHELL. I am, too.

Mr. WIER. With the membership increase there. Some years ago, 12 years ago, I think there was listed possibly 15 internationals—at the top level—about 15 internationals that failed to shown any membership of the colored race. Is that the figure you people used to use?

Mr. MITCHELL. It is about 15. It may have been 17, but 15 is close enough.

Mr. WIER. How many on the top level by international law forbid the membership of colored people today, without naming them, just the number?

Mr. MITCHELL. I would be unable to answer that question because from time to time I have asked the officials of the American Federation of Labor to aid us in getting together the unions which had changed their constitution and bylaws so that everyone could be admitted without discrimination.

I frankly and freely admit that while they never gave us any very reliable figures, they had honest intentions, and I will concede that so far as the letter is concerned, many of the international unions have gotten straight, but the whole point of my testimony is not that you have got simply a nice, righteous statement saying we don't discriminate.

The reason why I cited the illustration involving the carpenters in Tennessee and those in North Carolina was to show that in the same union where colored people are members and where there is no question of excluding them, selfish individuals create a situation under which they deprive individuals of the right to work.

That cannot be reached by abolishing requirements in constitutions which exclude people because of race. It cannot be reached by anything other than saying that if you are found on the record to discriminate, then you have to get straight or you can't represent these people.

Mr. WIER. I said I wasn't going to touch on the fundamental question raised here tonight. I am trying to get information, thinking you had it on a national scale.

Mr. MITCHELL. I am trying to give it and, as I said before, I am sure you will find that there has been a substantial reduction, probably down to 6 or 7 of the top international unions of the A. F. of L. which have eliminated this provision in their constitutions and bylaws, but that, as I said, does not hit the problem.

Mr. WIER. Let me ask you this: Have you any knowledge of how many members of your race are in the entire trade-union movement?

Mr. MITCHELL. Yes. There are approximately one million and a half.

Mr. WIER. One million and a half of your race?

Mr. MITCHELL. Seven hundred thousand members in the A. F. of L.

Mr. WIER. A million and a half are now members of the trade unions. How does that figure compare with 1937 and 1938?

Mr. MITCHELL. Offhand, I couldn't answer that, but I would say it probably represents a 50- or 60-percent increase.

Mr. WIER. On the fundamental question, Mr. Mitchell, to the best of my ability I am observing what has taken place in the State I come from because what you bring up here tonight is running the gantlet in the State Legislature of the State of Minnesota right now. I don't know if you are familiar with it or not.

Mr. MITCHELL. I might say I am an adopted citizen of the State of Minnesota and I talked with them last night on the long-distance telephone about it.

Mr. WIER. You are familiar with the fact that with the support of Governor Youngdahl of the State of Minnesota, there was introduced legislation in the interest of FEPC?

Mr. MITCHELL. Yes. I might say that I know Governor Youngdahl personally and I have the highest respect for him, and I have the highest respect for the members of the Minnesota Legislature, as I know you were at one time a member, and I believe they are doing an excellent job.

In the State of Washington they have passed fair employment practices legislation.

Mr. WIER. Let's don't go to the State of Washington. Just stay in Minnesota.

Mr. MITCHELL. I was mentioning it because you might be interested in the whole record.

Mr. WIER. Let's stay in Minnesota. I know it better. Are you familiar with what has happened in the activities to process that FEPC out of the senate committee and out of the house committee in the State of Minnesota?

Mr. MITCHELL. I don't recall offhand what has happened in the house, but I know that in the senate it was defeated, as I recall, by the committee.

I believe an effort is being made to get it out on the floor. I have had some experience with the Minnesota Legislature on that point, and I know committees can do an awful job on legislation, but when you get it on the floor sometimes it is a different story.

Mr. WIER. What I wanted to make known to you was, if you didn't know it, that in the senate where it was defeated by a vote of 7 to 6, what you present here tonight played its part because the labor movement and many other liberal groups in the State of Minnesota for a long period of time have been sponsoring FEPC. Last year they got it out of the senate committee very favorably and it got stuck in the house committee.

This year, with a lot of support and the Governor's friends, a couple of smart antilabor senators who sat on the committee thought up a swell idea, and so they amended the FEPC, and under our State Labor Conciliation Act they included the question of labor unions being charged with discrimination, unfair practices, and carried that on so that the labor movement backed away for a couple of days until they could get themselves together again in meeting these amendments.

I just wanted to point that out to you, that it is worth watching.

Mr. MITCHELL. It is. I feel this, though, that in connection with any decent fair employment practice legislation there must be a provision which says that you can't segregate and discriminate in your union membership. That is a part of the New York law. Because of that provision I think some 20 or 30 unions, some of them railway brotherhoods, which are notorious discriminators, have come forward saying they will take colored people into membership.

They never would have said that if it hadn't been in there under the law. I feel that most of the people in the trade union movement who spend a lot of money promoting educational programs so that people will learn to work together as humans will not resent that part of the law.

I know many people in Minnesota in the American Federation of Labor and many in the CIO—I am convinced that those people for the most part stand for fair treatment.

I had many, many personal experiences with them, which would indicate that they do. So I would assume that once they study these provisions, if they are like the normal provisions that go in the FEPC laws, labor certainly will be for them.

Mr. WIER. That is all.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. No questions.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. No questions.

Mr. KELLEY. Mr. Smith?

Mr. SMITH. Who wrote that decision in the Kansas report?

Mr. MITCHELL. I think it was Judge Hoch. Yes, it was.

Mr. SMITH. Do you believe that the advancement of your race would be better served by abandoning the closed shop in any rewrite of this bill?

Mr. MITCHELL. No, I would not. I would say that the closed shop, as I pointed out in my testimony, is a form of union security, and it has ben devised for the purpose of protecting workers. I think it is a good thing, but I believe there must be some safeguard so that you just don't say because a man is colored he can't be a member of the union.

I think that has been the reasoning behind the Kansas Supreme Court decision, the reasoning behind the California Supreme Court decision, and it is also the reasoning behind the Supreme Court decision in the Steele case and the Railway Mail Association case that came out of New York.

Mr. SMITH. You favor, then, putting in the closed shop, permission for the closed shop in the new law?

Mr. MITCHELL. With the addition that we have suggested that no one shall have it if he segregates or discriminates.

Mr. SMITH. Are you in favor of the union shop?

Mr. MITCHELL. Yes, we believe that the union shop is important because it covers a number of unions where a great many colored people are employed.

For example, I mentioned the mine workers awhile ago. One of the characteristics of their contracts is that they have union shop provisions and they have a substantial number of colored people who, we believe, are protected by such provisions.

In other words, we think, in the evolution of labor relations, certain things have been devised which will promote industrial peace, the closed shop is one, the union shop is another, the check-off is another, and so forth; and these forms of security, when properly administered and when used for the benefit of all people, are good things.

We just say that we want everybody to have access to them.

Mr. SMITH. That is all, Mr. Chairman.

Mr. KELLEY. Mr. Mitchell, that was an interesting and intelligent statement. I want to thank you for coming here and giving the information to the committee as you have.

Mr. MITCHELL. Mr. Chairman, I would like to request that my full statement be incorporated into the record at this point.

Mr. BAILEY (presiding). Very well, it will be done.

(The statement is as follows:)

STATEMENT BY CLARENCE MITCHELL, LABOR SECRETARY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ON THE REPEAL OF THE TAFT-HARTLEY ACT

In two national conventions, members of the National Association for the Advancement of Colored People have called for the repeal of the Taft-Hartley Act. Now that this matter is before the Congress, we ask that any legislation adopted carry safeguards against discrimination and segregation based on race. Our testimony before your committee relates to this phase of the proposed law. For purposes of clarity we have prepared our suggestions as amendments to the Wagner Act. These amendments apply to sections 8 and 9 of that legislation.

We ask that no union be certified as the bargaining agent if it segregates or discriminates against employees because of race, religion, or national origin. We also ask that any union following this unjust practice to be decertified if it already has obtained bargaining rights. No employer would be required to bargain with a discriminatory union and the closed-shop would also be denied, if the organization seeking it refused membership to persons because of race, religion, or national origin.

Under the Wagner Act, the National Labor Relations Board could have achieved the results our amendments would make possible. Instead the Board gave its blessing to segregation and exclusion in *Larus and Brother Company, Incorporated* (62 N. L. R. B. 1075). The Taft-Hartley Act incorporated the Larus doctrine into law.

In the Larus case, it was contended that the colored employees of the company could not be represented properly by a union which segregated them into a separate local because of their race. The Board made the following statement in this case:

"This Board has no express authority to remedy undemocratic practices within the structure of union organizations * * * but we have conceived it to be our duty under the statute to see to it that any organization certified under section 9 (c) as the bargaining representative acted as a genuine representative of all the employees in the bargaining unit. Lacking such authority to insist that labor organizations admit all the employees they purported to represent to membership, or to give them equal voting rights, we have in closed shop situations held that where a union obtained a contract requiring membership as a condition of employment, it was not entitled to insist upon the discharge of, and the employer was not entitled to discharge, employees discriminatorily denied membership in the union. In such situations, being without power to order the union to admit them we have ordered employers to reinstate them."

The Board had previously held in the matter of the *Atlanta Oak Floor Case*, 62 NLRB 973, that the bargaining agent could segregate racial groups in its membership into separate locals. A principle was then evolved from these cases under which unions could exclude persons from membership because of race, or segregate them and still remain within the law.

The conference report of the Eightieth Congress on the Taft-Hartley Act states on page 41 that:

"As a protection to the individual worker against arbitrary action by the union, it is further provided that an employer is not justified in discrmination against an employee with respect to whom the employer has reason to believe membership in the union was not available on the same terms as those generally applicable to other members, or with respect to whom the employer has reason to believe membership was denied or terminated for reasons other than failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. In determining whether membership was available on the same terms as those generally applicable to other members, it must be borne in mind that in some unions the dues and initiation fees of persons who became members many years ago may have been more or less than those currently in effect, or the terms or conditions of membership may have been different. The conference agreement hence does not contemplate availability of membership on the same terms as those applicable to all of the members, nor does it disturb arrangements in the nature of those approved by the Board in Larus Brother, Co."

Thus, the framers of the act made it clear in the conference report that auxiliaries, B-class locals, and even complete exclusion of certain racial groups would be perfectly legal and proper. The authors of this legislation tried to make it appear that they were giving minorities a pat on the back. In reality the lawmakers were pinning a donkey's tail of second-class citizenship on all of the colored people in the labor movement of this country.

The Board was quick to use this continued license for immoral conduct in four decisions under the Taft-Hartley Act. These decisions were: (1) *Norfolk & Southern Bus Corporation* (76 NLRB 76); (2) *Texas & Pacific Motor Transport Company* (77 NLRB 87); (3) *F. W. Wint Company* (76 NLRB 71); (4) *Veneer Products, Incorporated* (34–RC–30).

In the Veneer Products case, the Board's opinion states:

"The constitution of the international union which chartered local 457, International Union of Operating Engineers, contains no statement of discrimination against Negroes. It appears, however, that there exists in the employer's plant another local, also chartered by the International Union of Operating Engineers, known as local 457–D, which, according to the petitioner's representative, has a membership almost entirely of Negroes, and which was established for the purpose of keeping funds contributed by Negro members separate from funds contributed by whites.

"In opposition to the statement of the petitioner's representative the employer offered to prove that local 457–D restricted its membership to Negroes alone. This offer of proof was rejected by the hearing officer."

In the Texas & Pacific Motor Transport case, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL, contended that the International Association of Machinists would not admit Negroes to membership.

The Board recognized that some of the employees concerned were colored, but said that there was no showing that the IAM would not accord adequate represenation to all employees. The machinists even sought to reopen the record on this point to submit evidence which it was contended would show that colored people could be admitted to full membership, but the Board refused the request of the machinists.

The record of discrimination by the machinists is notorious. There is considerable evidence that a large part of the membership of this union abhors discrimination against colored people. There have been several instances in which leaders of lodges in the machinists' union have defied their international officers and admitted colored persons to full membership. In Los Angeles, Calif., the lodge which represents employees of the Lockheed Aircraft Corp., has colored members because the leadership of the union interpreted a provision requiring that members be white to mean white of character, rather than identification with the white race. In the State of Washington, when lodges of the machinists admitted colored people to membership, representatives of the International body sought to have the union oust the colored members.

The IAM has changed its policies in those States where it is required to do so by fair employment laws, pressure from local lodges, and court decisions. However, it still discriminates throughout the South.

There is a growing realization among members of trade unions that division of individuals into separate locals based on race, or any other artificial factor, undermines the strength of those who seek to safeguard their economic interests through collective bargaining. There has been a tremendous growth of democracy in both the American Federation of Labor and the Congress of Industrial Organizations. We would like the record to show that the wise leaders of labor are uncompromising foes of segregation and discrimination. On the other hand, there are some persons among employers and labor unions who, by conspiracy and collusion, with or without closed-shop agreements, exclude colored people from jobs for which they are qualified. Only court action and fair employment practice legislation in certain States have been effective in dealing with such situations.

In Charlotte, N. C., colored and whtie members of a carpenter's local are on excellent terms and treat each other fairly. On the other hand, at this very moment, there is extensive discrimination against colored carpenters who seek employment on the atomic energy construction projects in Tennessee. They are full-fledged members of the carpenters union. Their trouble arises because they are consigned to locals, separate and apart from those for white people. The white locals usually get the lion's share of the work. The colored union men are frequently denied employment after they have traveled many miles in response to calls for carpenters.

In Charleston, S. C., colored men are important officials of the bricklayer's union. In Louisville, Ky., they are an important part of unions bargaining for dairy workers, and, in Atlanta, Ga., there are unions in the building trades with mixed membership of colored and white persons with colored officers. On the other hand, in Cleveland, Ohio, the International Brotherhood of Electrical workers has threatened to close down certain training courses offered in public schools if colored people are admitted.

Our testimony includes these illustrations because we wish to have the record show that the pattern of discrimination is varied and not necessarily based on geography. We also condemn those who make wanton and generalized attacks on the whole labor movement. This is a problem which the Congress has power to solve. In passing constructive labor legislation the United States Government throws a mantle of dignity and protection over the shoulders of the workingman. We ask that this garment be made in the American style and tailored to fit all of our citizens of all races and faiths.

The time has come for Congress to strengthen the hands of those within the labor movement who seek to promote democracy by admitting all persons to membership without regard to race, creed, color, or national origin. This cannot be accomplished merely by outlawing the closed shop. Elections held under the Taft-Hartley Act show that whenever they are given an opportunity to choose the majority of workers will select the union shop, which, for purposes of this testimony, we recognize as the same as the closed shop. The NLRB's own figures from April 1 to June 30, 1948, show that out of 11,882 elections held on the question of union shop, 11,568 resulted in the union's favor. In these elections over a million valid votes were cast by employees. The desire for this protection is natural and important. The Congress should give it to workers in organized labor. At the same time, the Congress is duty bound to include an adequate safeguard to protect persons who would otherwise be discriminated against because of race. Therefore, we recommend that the following amendment be inserted in the labor legislation.

This amendment is to section 8 (a) (3) of the Wagner Act:

Strike the period, substitute a comma, and add the following language: "And is eligible for certification by the Board pursuant to the provisos to section 9 (c); *Provided further*, That no agreement requiring such membership or payments, although valid when made, shall justify an employer's subsequent discharge of, or refusal to hire any employee whose membership in said labor organization has been denied, segregated, or restricted because of race, religion, color, or national ancestry.

Action on the closed shop, however, will not affect all of the persons who fall within the purview of decisions given by the National Labor Relations Board. A survey of collective-bargaining agreements made by the United States Department of Labor showed that, out of about 29,000,000 workers engaged in the occupatrons in which unions were organizing or endeavoring to obtain written agreements in 1945, about 13.8 million were covered by collective-bargaining agreements. Only 30 percent, or about 4,000,000, were covered by closed- and union-shop agreements with preferential hiring. We quote this study because it was made prior to the time Congress outlawed the closed shop. In order to protect the persons in plants where there is no closed or union shop, the following amendments must be added to the Wagner Act, if it is restored.

Amendment to be inserted at the end of the first sentence in section 9 (c):

Strike the period after the word "selected" and put a colon. *Provided*, That the Board shall not certify as such representative any labor organization which denies full membership rights or privileges to, or which segregates or otherwise discriminates against, any employee because of race, religion, color, national origin, or ancestry.

Amendment to be inserted at the end of the second sentence in section 9 (c):

Provided that neither the certification of a labor organization nor a collective-bargaining agreement with an employer shall constitute a bar to said hearing or to the certification of other representatives where it appears that subsequent to the certification or the execution of the agreement the labor organization has denied full membership rights or privileges to, or has segregated or otherwise discriminated against, any employee because of race, religion, color, national origin, or ancestry.

Amendment to be inserted to section 8 (a) (5):

Strike the period, insert a colon, and add the following language: "*Provided*, That no employer should be required to bargain collectively with a labor organization which is ineligible for certification by the Board pursuant to the provisos to section 9 (c)."

These remedies which we propose are supplementary to what will be required if President Truman's civil-right proposals are adopted in full and we have a Federal fair employment practice law. They are not intended to give to the National Labor Relations Board fair employment functions. They are designed to make equal treatment for all citizens regardless of race a part of labor relations and a part of the thinking and action at the bargaining table.

We believe that the majority of persons who work for a living and who have seen the course of divisive tactics on the part of employers will welcome legal restraints against discrimination.

Mr. Bailey. At this point there will be included in the record the statement of Elmer W. Henderson, director, American Council on Human Rights.

(The statement is as follows:)

STATEMENT OF ELMER W. HENDERSON, DIRECTOR, AMERICAN COUNCIL ON HUMAN RIGHTS, RELATIVE TO REPEAL OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947 (THE TAFT-HARTLEY ACT)

I have the honor to represent the American Council on Human Rights, composed of seven national fraternities and sororities joined together in a cooperative program to secure the extension of fundamental human and civil rights to all citizens within the United States. They are Alpha Kappa Alpha, founded in 1908 at Howard University in Washington; Alpha Phi Alpha, founded in 1907 at Cornell University in Ithaca, N. Y.; Delta Sigma Theta, founded in 1913 at Howard University; Kappa Alpha Psi, founded in 1911 at the University of Indiana, Bloomington, Ind.; Phi Beta Sigma, founded in 1914 at Howard University; Sigma Gamma Rho, founded in 1922 at Butler University in Indianapolis, Ind., and Zeta Phi Beta, founded in 1920 at Howard University. All of these are very old and established organizations with a combined total of more than 1,200 chapters on college campuses and in cities throughout the United States. They have pooled their resources and the influence of their collective memberships, undergraduate and alumni, in the great American fight to remove discriminations and injustices based on race, color, or religion from our national life.

We have carefully studied the measure before you, and are generally familiar with the original Wagner Act and the Labor Management Relations Act of 1947. We feel the Taft-Hartley Act should be repealed, but we do not feel that the Wagner Act is satisfactory in every respect.

Our primary concern, and this is our main reason for coming before you, is to urge that whatever new labor legislation is enacted by this Congress contain a clear prohibition against racial discrimination on the part of unions covered by it. We do not believe that unions which practice racial or religious dscrimination in membership should be allowed the privilege of certification as a bargaining unit. Further, we believe it entirely inconsistent with the spirit or intent of this legislation to permit unions covered by it to exclude, segregate, or separate members of potental members on the basis of race.

It is a well-known fact that a number of prominent labor unions do bar from membership Negro Americans and other minorities. The International Association of Machinists, the Plumbers and Steamfitters Union, A. F. of L., are examples of unions whose constitutions or rituals bar Negroes from membership. The Boilermakers' Union, A. F. of L., is an example of a union which segregates Negroes into auxiliary locals who have no voice in the affairs of the union and are not even allowed to represent themselves in grievances or in bargaining with management. During the war the discrimination practiced by these and certain other unions caused a serious bottleneck in war production. Officials of the Army, the Air Force, the War Production Board, the War Manpower Commission and the Fair Employment Practice Committee will testify to this. These unions are very powerful and have a monopoly in large areas of the industries in which they are engaged. Other unions practice discrimination in various ways all to the detriment of Negroes or other minority workers. This discrimination is not characteristic of the majority of labor unions, of course, but there is no reason in justice or equity why those unions who do discriminate on grounds of race or religion should be allowed the benefits of this legislation. Is it not only just and fair that a union coming to the NLRB demanding recognition should have clean hands? Should the Federal Government put its stamp of approval on this form of discrimination?

We, therefore, strongly recommend the following:

(1) That the Labor-Management Relations Act of 1947 (the Taft-Hartley law) be repealed.

(2) That the original Wagner Act or any new legislation adopted contain provisions prohibiting the certification by the NLRB for bargaining or any other purposes any union which refuses membership to workers because of race or religion or which segregates workers or discriminates against workers because of race or religion.

(3) That the closed shop be prohibited where the union involved refuses membership to workers because of race or religion, or segregates or discriminates against workers because of race or religion.

> We believe these proposals to be only fair and reasonable and should in no way deter the progress of this legislation.

Mr. BAILEY. The next witness will be Mr. Ira Mosher, chairman of the finance committee and former president of the National Association of Manufacturers.

TESTIMONY OF IRA MOSHER, CHAIRMAN OF THE FINANCE COMMITTEE AND FORMER PRESIDENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED BY RAYMOND S. SMETHURST, GENERAL COUNSEL

Mr. MOSHER. Mr. Chairman, my name is Ira Mosher. I am chairman of the finance committee, a director and a member of the executive committee of the National Association of Manufacturers. This association has a membership of more than 15,000 companies, 83 percent of which are small and medium-sized businesses, with fewer than 500 employees.

I want to thank you for this opportunity to be heard on a question of such importance to the American people as presented by the consideration of H. R. 2032. That is the question of a national labor policy that will promote industrial peace in this country.

I would like to first repeat what I said before this committee just 2 years ago when Congress was considering legislation to curb the most prolonged and costly strike siege in the history of this Nation. I said then:

> No more important task now faces the Congress than the achievement of a practical and workable national labor policy which will permit normal and constructive labor-management relationships and the resumption of free collective bargaining so essential to industrial peace and the health of the Nation's economy.

The task is no less important today in this period of economic readjustment. We have about 2 years' experience operating under our new national labor policy as conceived by Congress in the Labor-Management Relations Act of 1947. That is the experience which should be weighed carefully and calmly before any decision is made to scrap that policy, as now is proposed by H. R. 2032. This bill would repeal the Labor-Management Relations Act of 1947, and, except for minor amendments, would reinstate the Wagner Act of 1935.

Few people realize the full implication of a return to the old Wagner Act, and I hope that I can give you an accurate picture of some of the defects which developed in that law from 1935 to 1947. Simple common sense demands that we take a good look at those defects before we take such a backward step. We can do no less than review our experience under the Wagner Act and be guided by the record. It is a voluminous record and I can only summarize a few of the high lights.

First, the Wagner Act was in 1935 and would be in 1949 unfair, one-sided and totally inadequate to safeguard the public interest or to protect the legitimate rights of labor and management.

Second, the Wagner Act permitted in 1935, and would again in 1949 permit biased and unfair administration, which, of itself, encourages labor strife and disunity.

Third, the Wagner Act in 1935 launched the country into a period of strikes, violence, and economic loss, which mounted steadily, even during the war, until enactment of the Labor-Management Relations Act of 1947. These are broad statements, but they are supported by the record.

I want to take those three statements and develop the factual proof of their accuracy. In my brief I have gone into considerable detail. With your permission, I am going to emphasize some of those high lights.

Under the Wagner Act good faith bargaining was not required by the unions and without good-faith bargaining on both sides, there can be no satisfactory collective bargaining. There can't be any real collective bargaining under those situations.

The Board under that law held that employers had to bargain; mere rejection of a demand was not enough. He had to explain his reasons for objection, and he had to offer counterproposals. He had to bargain during the existence of a strike, whether the strike was called to exert bargaining pressure or otherwise.

Since there was no comparable requirement of good faith bargaining, the union wasn't under any obligation. The union wasn't under obligation to make counterproposals or to retreat from original demands, and there are plenty of occasions in the record where strikes were called in the complete absence of any negotiations.

I don't think there is any question but as a principle, No. 1, unions as well as employers should be obligated by law to bargain collectively in good faith, provided that a majority of the employees in an appropriate unit wish to be represented by a union.

Bargaining agreements unenforceable against unions: If you are going to have a contract, I don't see how we can have contracts if they aren't equally enforceable against the other party, each of the two parties concerned.

Neither the Wagner Act nor any other Federal statute made unions legally responsible for their contract obligations.

In the absence of a statute, unincorporated labor organizations were, in this particular, largely governed by State laws. State laws too frequently provided so many obstacles to effective action that unions enjoyed practical immunity from legal responsibility under collective agreements.

The seriousness of this inequitable situation was recognized by President Truman in opening the Labor-Management Conference in November 1945. In 1945 President Truman said, and I quote:

> We shall have to find methods not only of peaceful negotiation of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out.

I have quoted President Truman's own words to the Labor-Management Conference in November 1945.

The inevitable result of the Wagner Act and its administration was to encourage unions to disregard collective agreements whenever expediency would thus be served. There wasn't any stability of relationship, and one of the very purposes of the Wagner Act was defeated.

So I quote principle No. 2 on page 6 of my brief:

> Unions as well as employers should be obligated by law to adhere to the terms of collective-bargaining agreements—

And that

> collective-bargaining agreements should provide that disputes arising over the meaning and interpretation of a provision should be settled by peaceful procedures.

In that connection, I want to point out that arbitration is of little value unless the union is legally obligated to live up to that award. In fact, it can be confidently predicted that the use of voluntary arbitration rather than strikes would be greatly expanded if unions were responsible for living up to their agreements.

The charges have been made and repeatedly made that the liabilities of unions for violation of collective-bargaining contracts would open the way to court action and lawsuits on the part of employers. This accusation simply isn't supported in any way under the experience of the present law.

The chief argument against the Taft-Hartley provision that makes unions responsible for contract commitments was that it was unnecessary since they were already responsible under State laws wherever they operated.

How do we compare that statement with what actually happened, according to the record, that the minute the Taft-Hartley Act was passed certain unions went to extreme lengths to get provisions into their contracts which completely nullified the intent of the statute?

Free speech of employers: I shan't take your time. I think the subject has been covered, but I hope you will agree that employers and employees should both be protected in the right to express their respective positions.

The administration's proposal now before this committee, without justification or rationalization of any sort, seeks a return to that era in industrial relations when unions, their officers and agents, were the only ones permitted full exercise of their first Amendment right of free speech.

As to the right to strike: The right to strike under the Wagner Act, included not only the right to quit work as a group, but also the right to return to work if and when desired. The strikers retained their status as employees, and were entitled to reinstatement unless as economic strikers their places had been filled.

Specific types of strikes held by the National Labor Relations Board to be within the protection of the act included strikes engaged in before the legal processes of the Board had been invoked, strikes carried on in violation of a State injunction, strikes declared to be illegal under State law, sympathetic strikes, and jurisdictional strikes by a minority union to compel the employer to violate the Wagner Act.

And in one case, the NLRB voluntarily considered a strike in violation of a contract, but did not consider it a ground for discharge. That was corrected later by a Supreme Court decision.

It is apparent, therefore, that the Federal Government's past efforts to equalize bargaining power, created such strength on the side of labor unions as to render true collective bargaining impossible.

No strike should have the protection of law if it involves issues which do not relate to wages, hours or working conditions, or demands which the employer is powerless to grant. Such issues and demands are involved in jurisdictional strikes, sympathy strikes, strikes against the Government, strikes to force employees to ignore or violate the law, strikes to force recognition of an uncertified union, strikes to enforce featherbedding or other work-restrictive demands, or secondary boycotts. The protection of law should not be extended to accomplish those results. There certainly is not any justification in national labor policy for sanctioning the use of strikes in organizational drives or to force union recognition. Government agencies are provided for peaceful settlement of such disputes. Neither industry nor the public should bear the losses resulting from such industrial disputes.

During the past year strikes to compel employers to make concessions which constitute unfair labor practices or which subject the employer to criminal liabilities have been increasing. A sound national labor policy must deal frankly and firmly with this type of abuse.

I would like to point out that on page 10 of my brief we have gone into some detail as to boycotts, and I shall not take up your time to emphasize that further. I just want to quote one paragraph, and I am reading from page 11:

> With one exception, the administration bill would open the door for unions promptly to return to the unrestrained use of secondary boycotts. This single exception would prohibit unions from engaging in secondary boycotts only where the purpose would be to compel an employer to deal with a particular union if another is certified or recognized, or where the purpose would be to compel an employer to assign work contrary to Board award.

That is just one case, and that case could lead to arbitrary decisions and enforced decisions which could control a whole plant as to allocation of work.

Under the Wagner Act there was mass picketing, and company officials were barred from their property; homes were picketed, and local law enforcement had for all practical purposes broken down when confronted with the massed might of organized labor.

Ordinarily, picketing is a vital part of a jurisdictional dispute in which the employer is completely helpless. The picket line normally is also an essential ingredient of the secondary boycott, including the "hot cargo." These weapons in combination are sufficient to force employers either to meet union demands or go out of business.

No individual should be deprived of his right to work at an available job, nor should anybody be permitted to harm or injure the employee, or his family, or his property, at home, at work, or elsewhere. Mass picketing and any other form of coercion or intimidation should be prohibited.

Adequate protection of the individual workers should be a major obligation of the Congress in the formulation of the Nation's labor policy.

Management certainly should not be compelled to bargain collectively with foremen or other representatives of management. I suggest to you that the Taft-Hartley Act reasonably well covered that. There were many disputes, and since the Taft-Hartley Act settled the question by statute, those disputes have practically disappeared. Union spokesmen have made no case nor can they make a case for the return to the uncertainty, confusion and turmoil of the Wagner Act provisions.

Even Mr. William Green of the A. F. of L. testified in 1946 that a line should be drawn between management personnel and rank-and-file union members.

The right to work: One of the fundamental rights recognized under our constitutional system of government is that an individual has a right to work in his chosen trade or profession. Protection of this right is essential to any adequate labor law. However, the right to work was limited through union security provisions encouraged by the Government and protected by the Wagner Act.

That act contained a proviso making closed-shop contracts lawful. Under such contracts no person may be employed unless he is a union member, and unions have the power to exclude from a trade any prospective worker. Moreover, after a person is admitted to membership and permitted to start work, his right to continue work depends almost entirely on retaining good standing in the union. Ordinarily few, if any checks and balances are provided to protect individuals against an autocratic determination of what constitutes good standing.

The basic evil of the closed shop is also present in union shop and maintenance of membership types of union security, since continued employment is conditioned upon membership in good standing. There are cases on that matter, but I shall not bother to quote the exact cases.

The closed shop must be considered in the light of present-day conditions. We now have large international unions possessing such great financial resources and power that they can, and on occasion do, throttle the national economy. While these unions have grown in size and strength, they have compelled employers and the Government to guarantee their continued financial independence and the entrenchment of the union hierarchy, through union security clauses, compulsory check-off of union dues and assessments, and taxes on production through royalty payments.

I suggest that no employee or prospective employee should be required to join or to refrain from joining a union, or to maintain or withdraw his membership in a union, as a condition of employment. Compulsory union membership and interference with voluntary union membership both should be prohibited by law.

At various times during these hearings, the suggestion has been made that perhaps the closed shop could be legalized if its more serious abuses could be abolished, that is, provided certain restrictions or regulations could be established, safeguarding the freedoms of the employer to hire and affording the individual worker adequate protection with respect to access to and retention of his job.

I have given this whole matter a great deal of thought as to whether it is possible to regulate or control the closed shop. I am convinced that adequate regulations or provisions safeguarding the individual employees and employers against the known abuses of this form of union membership would involve such a degree of regimentation and dictation of the internal affairs of labor organizations as to be wholly impractical and probably entirely unacceptable to organized labor. The whole matter comes down to this, that the closed shop is an assignment of monopoly over work opportunity which is contrary to democratic principles, contrary to the public interest, and, as a matter of public policy, should not be permitted either to the employer or a labor union.

The bill before this committee goes much further than the professed desire to reenact the Wagner Act of 1935.

The Wagner Act, in its closed-shop proviso, left to the States their traditional power to legislate with respect to the predominantly local activities of their citizens. The Taft-Hartley Act, in order to avoid any possible doubt, expressly stated that this traditional power of the several States was to remain undisturbed by any actual or presumed exercise of the Federal power over commerce.

H. R. 2032, on the other hand, proposes to have Congress say that the citizens of the sovereign States are to be denied their right to decide whether or not they wish to protect themselves against the abuses and discriminations inherent in the closed shop. Instead of leaving the power in the hands of the people of each State, this bill would delegate to each employer the power to decide whether there can be or should be a closed-shop agreement.

If this proposal is enacted into law, this Congress will nullify the laws of some 16—one-third—of the States of the Union.

The enormity of this proposal is apparent when it is realized that several of the States which have prohibited the closed shop within their boundaries have done so through constitutional amendments ratified by the citizens in a referendum on the precise issue.

Industry-wide bargaining: The Wagner Act promoted unionism in general and provided a basis for extension of industry-wide bargaining. The Clayton Act and the Norris-LaGuardia, at least as interpreted by the Supreme Court, removed labor-union activities from the coverage of the Sherman Act. Thus, union activities on an industry-wide basis, which formerly would have constituted violations of the Sherman Act are now not only permitted but are protected by law.

Labor unionism is, by its very nature, essentially monopolistic.

Professor Charles O. Gregory, formerly Solicitor of the United States Department of Labor, said:

> Now, labor unionism is a frankly monopolistic and anticompetitive institution, even if its major undertakings have been carried on and justified in the name of competition. This has been competition to suppress or combat competition, exactly as it always used to be in big business.

Union activities which restrain trade are congressionally permitted restraints. Congress has granted to private groups the power to impose restraints upon commerce and trade, at the same time denying that power to sovereign States of the Union. No comparable grant of private power exists in our history. Therefore, the question is simply whether Congress shall continue a policy which can and will have a seriously adverse effect upon the public interest. The long-range public interest demands that all trade restraints be outlawed, whether imposed by management or organized labor.

We have heard much about the necessity for legislation to meet national emergencies. We have heard claims of inherent powers residing in the Chief Executive. We have heard arguments for and against injunctions. We have heard proposals for Government seizure of plants and properties. These are but superficial aspects of this whole problem of protection of the public interest in wide-spread industrial strife. Practically without exception, the instances in which the Nation has been confronted with these emergencies have been those involving various degrees of industry-wide bargaining. The basic solution to this problem is not to invest the Government with more autocratic powers over labor and management, but to attack the problem at the source by regulating the practice of collective bargaining on a national industry-wide basis.

Such a shortcoming in national labor policy not only jeopardizes the cause of sound collective bargaining, but opens the way for Government intervention on an ever-increasing scale in the form of injunction, compulsory arbitration, and even Government seizure of private property.

Much has been said in criticism of the injunction feature of the present law as used in emergency cases. It is alleged that the injunction settles nothing, and may encourage the suspension of bargaining and allow a new "heating-up" period.

H. R. 2032 seeks to deal with this problem by use of fact-finding panels or boards, a procedure which not only fails to settle anything, but also which, judging from my experience with ad hoc boards, is even more destructive of bargaining than provisions of existing law. Certainly we have to consider this question: Is this Congress willing to delegate to the unlimited discretion of a temporary board the power to determine the vital economic issues which may be involved in these national emergency cases?

My opinion is that the present law has worked reasonably well. Its weakness may be due largely to the fact that the injunction is for a definite period, thus permitting the parties to gauge the profit and loss involved if agreement is not reached within the 80-day period. Instead of scrapping the injunction, therefore, I would recommend that the courts upon recommendation of the Government be authorized to extend the life of the injunction so long as public health and safety may require.

My suggestion is based on two observations:

First, I have seen little, if any, evidence that Congress is willing to deal with the root of the problem, namely, the monopolistic nature of national, industry-wide collective bargaining; and

Second, no other proposal has been advanced which, based upon experience, can be anywhere near as effective as provisions of existing law.

Gentlemen, I have tried to cover certain basic principles. I hold no brief for the Taft-Hartley Act, as such. What we need is a fair national labor policy.

I have two other points I would like to cover:

As to the biased, unfair administration of the Wagner Act, the record is very long, and I shall not take up your time to cover the points made in the briefs. I just want to refer to certain things that happened in 1939.

The American Federation of Labor endorsed and supported a bill to make it obligatory on the Board to respect the right of craft groups to decide for themselves by majority vote who their bargaining representative shall be; to curtail the assumed power of the Board to invalidate legal contracts between employers and labor organizations; and to correct the Board's procedure so that all parties affected by any case will be given due notice, accorded a fair hearing, protected against abuses of discretion and assured of adequate judicial review of wrongful decrees.

Separation of functions: One of the major factors contributing to loss of respect for the National Labor Relations Board as an impartial agency of government was the lack of separation of its prosecuting and judicial functions, which is a very necessary and vital feature in this situation.

The House committee investigating the Board went into it in considerable detail.

Such a separation of functions has long been advocated for other administrative agencies. For example, President Roosevelt, in transmitting the final report of the Attorney General's Committee on Administrative Procedure in Government Agencies to Congress, said:

> The practice of creating independent regulatory commissions, who perform administrative work in addition to judicial work, threatens to develop a fourth branch of the Government for which there is no sanction in the Constitution.

The plan submitted by the President at that time included the separation of judicial from all other functions performed by any agency, whether an independent board, or commission, or a bureau within an executive department.

I would just like to mention briefly the Conciliation Service. There has been a lot of conflicting testimony, and I want to point out to you it never has been the opinion of management that the Conciliation Service should be under the Department of Labor. They have never had any other opinion than that the Conciliation Service should maintain its independency of thought and action, and not be dominated by one of the other Boards responsible for other affairs. I have gone into that in detail in the brief.

I would like to mention briefly the record of industrial strife under the Wagner Act, on page 26. The figures are the figures of the Department of Labor, and they stand for themselves. The facts are that the annual average number of strikes during the war years, when labor's "no-strike" pledge was in effect, was 4,106—higher even that during the nonwar years immediately preceding. The one-sided nature of the Wagner Act was, in my judgment, largely responsible for creating this situation. The number of strikes and work stoppages has decreased materially from the high point reached in 1946. Bureau of Labor Statistics figures show that since the enactment of the Taft-Hartley Act jurisdictional strikes and rival union strikes have all but disappeared. Much the same is true of strikes involving closed- or union-shop issues which have heretofore always been a fruitful source of labor disputes.

In closing, I would like to summarize. Since the present labor policy was established there is ample evidence of its effectiveness in improving relations between employees and employers in inividual companies. The most important benefits may be summarized briefly as follows:

(1) Recognition by both labor and management of the responsibility they share under law has increased the mutual respect, mutual confidence and the will of both parties to reach agreements across the bargaining table.

(2) The number and frequency of "quickie" or "outlaw" strikes have been materially reduced as the outgrowth of legal responsibility for observance of contracts.

(3) Employers, employees and the community have been afforded badly-needed protection against violence and coercion involved in mass picketing.

(4) Countless employers, employees and communities have been spared the bitterness and losses of jurisdictional strikes.

Testimony has been afforded this committee that in the case of the construction industry and the printing trades jurisdictional strikes have practically ceased since the present national labor policy became effective.

(5) Individual companies and their employees not directly involved in dispute have been protected against interruptions of work and loss of income by reason of the ban imposed on secondary boycotts.

(6) Elimination of Communist leadership in many unions, made possible by the present law, has greatly improved union-management relations and restored the confidence of employers in union motives and objectives.

(7) Safeguards thrown around the rights and privileges of the individual employee have given the worker an opportunity to express his will in the choice of his bargaining agents without fear of coercion or intimidation by unions or employers.

(8) Presidential intervention in national emergency disputes has saved large segments of the American public from losses in production and earnings resulting from inability to secure essential raw materials, supplies or services.

(9) Removal of the employers' legal obligation to recognize and bargain with supervisory groups has had a salutary effect upon the unity and effectiveness of the management group and has improved the supervisors' effectiveness in handling relations with employees.

These are specific benefits in terms of improved relations between labor and management in the plants and individual companies of American industry. For the most part, they never could have been realized under the old Wagner Act. Proposals for revision of present national labor policy now under consideration by this committee would seriously endanger, if not largely nullify, these gains.

Let me repeat my plea to consider improving the present national labor policy rather than go backward to a policy of proven failure. Nothing is more vital than labor peace to our national economy right now when we strive for more and more industrial production to meet the domestic and foreign demands of our nation. The best hope for industrial peace is through preservation of a sound national labor policy.

Mr. KELLEY (presiding). Mr. Mosher, how much did your organization have to do with writing the bill, framing or influencing it, in 1947?

Mr. MOSHER. I would say our organization, as such, sir, had nothing to do with writing the legislation. The principles—which I have tried to give you here in much too brief a form—came into being specifically as the result of the Labor-Management Conference called by President Truman. This is the first opportunity management has had, as a whole, in and outside of the association of manufacturers, to sit down and go over the proposition. It so happens that it was approved by the Congress of American Industry, which had an annual meeting in December of 1945, and it was reaffirmed. It was under continual study, and had been for a good many years.

It was studied and reaffirmed in December 1946. Those positions were made known to all of our members, as a process of education is usually necessary in most of these things. That was made known to all of the organizations that we could reach. As to the actual writing of the bill, we stand on these principles.

I want to point out that a great many of those principles are not in the Taft-Hartley Act. They are much broader than even the Taft-Hartley Act is.

Mr. KELLEY. It is my understanding by "broader," you mean they would have a greater coverage?

Mr. MOSHER. They would have a greater protection for the American public. I think the industry-wide bargaining and the closed-shop issue are the particular ones. We have tried to look at the thing from a broad, over-all, public basis, and not from the standpoint of any particular statute, and certainly not from the standpoint of the Taft-Hartley Act, as such.

Mr. KELLEY. You said you held no brief for the Taft-Hartley Act, as such?

Mr. MOSHER. No, I stand on the principles, 8, 9, or 10, in number, which are broader than the Taft-Hartley Act.

Mr. KELLEY. Do you think it is possible to write a labor bill with as brief a time as a congressional committee or the Congress has to give to it? Do you not think the ramifications and the complexities of the relationship between management and labor is such that it would require more study and investigation than is given to it by Congress?

Mr. MOSHER. Mr. Chairman, I was hesitating and trying to remember what I said 2 years ago this month, in this same chamber, when the question was asked at that time. I had some facts and figures then, but I do not have them now, as to how many thousands and thousands of pages of testimony there were and how many weeks and months had been put into the problem through a great many committees, to answer your question specifically.

You asked me if I think that time would permit a congressional committee to write a labor bill, and I would like to make this answer, that if you are going to write a labor bill, there is only one thing for you to do, and that is to take whatever time it may take to write that bill.

Mr. KELLEY. That leads up to this thought I had, that a commission set up, with certain Members of the House and certain Members from the Senate, along with certain members from management and certain members from labor, to sit down and make a complete survey of management relations and problems, and by doing that they could go out to the grass roots, let us say, and investigate the complaints, complaints that come from labor and complaints that come from management, that I do not think the committee has ever been able to do.

Mr. MOSHER. The thought you express strikes a very responsive cord in me. To be frank, I spent about 4 years on this problem, starting in on it at the beginning of 1945. The Labor-Management Conference of 1945 was the first real attempt made—there were other spasmodic attempts, which were not productive of results for reasons I do not think we need to go into—but that was the first time labor and management ever sat down for a prolonged period to try to arrive at certain conclusions.

The history of that attempt is well known. As a matter of fact, we had no trouble in our various committees arriving at fairly good agreements. They never came into being because there were certain people who did not want labor peace. It is a broad statement, but I will let it stand on the record. We did everything we could to inform the public as to management's stand in those situations. The cold, hard facts are that labor did not want to do anything. That is almost 100 percent true. They just did not want to do anything.

It is true we made our position known to the public through every vehicle we had and, as a matter of fact, I might say that the public wrote the Taft-Hartley Act. There was no association that wrote the Taft-Hartley Act; it was the public who wrote it. It was public demand on Congress that created the Taft-Hartley Act. There can be no other explanation of the situation.

Mr. Kelley. Many people feel the public has also said to Congress, "You have to do something else about it."

Mr. Mosher. That has been one of the most cruel hoaxes pulled on the American public. Through the use of semantics the Taft-Hartley Act has become anathema to nearly everybody just because it is called the slave-labor law, and everybody thinks, a large portion of the public do, and they have not studied the bill, and they do not know the implications of it. When we try to secure from labor leaders themselves definite evidence of unfairness in the various parts of the bill, it is almost impossible to secure it.

Yes, you get a lot of imaginary situations, but they have not happened. I would not say they could not happen under certain circumstances, but they have not happened, and the Taft-Hartley Act has not hurt labor one bit. The labor unions have gained under it, and have continued to gain under it.

Mr. Kelley. Of course, then, the question arises that the bill has not been in effect long enough to really prove the bad features of it.

Mr. Mosher. If it has not been in effect long enough, I would suggest it should not be repealed. It should be allowed to run long enough to prove it is right or wrong. If it is wrong, we certainly should change it.

Mr. Kelley. You said at the conference labor would not do anything?

Mr. Mosher. No, sir.

Mr. Kelley. Maybe labor said management would not do anything. They might say management has asked for too much.

Mr. Mosher. The best answer I can give to you is contained in my statement, that in the eight committees we had, with one exception, according to my recollection—it has been nearly 4 years ago now—we came to a substantial agreement with various union labor leaders only to have those agreements completely upset within the succeeding 24 hours. That is the record.

Mr. Kelley. Of course, the bad thing about that conference was, it was of rather short duration.

Mr. Mosher. Yes, it was of short duration. The President made the suggestion in the summer of 1935, and it took us—I know quite a few of us were involved—it took us at least 2 months, August, September, and October, to plan the details of the conference. I never saw harder work put into anything in my life than went into the planning, and the conference met for substantially 4 weeks.

Mr. Kelley. That is not long enough for a job like that.

Mr. Mosher. With the groups of individuals who were pretty well conversant with the subject—perhaps it was not long enough, but it was quite a long period, and there were certain principles developed. As you will remember, out of the conference came a report that showed right in one column what management wanted, and in the next column what labor wanted, and that was the first time, to my knowledge, that the respective positions of the two sides were ever put down in print like that.

Mr. KELLEY. You said a minute ago that the labor leaders say that it is a slave bill, but the strange part of it is when you go out and meet and talk to the members of organized labor the people who make up the unions, and talk to their families, they are just as bitter about it as the labor leaders are.

Mr. MOSHER. I will refer back to what I said a moment ago, that a job has been done to make that Taft-Hartley Act a very unpopular one. I would not want to refer to polls, particularly in view of certain things that have happened in recent months, but such surveys as have been made prove pretty clearly that the individual union members in this country do not find fault with the bulk of the specific points covered by the Taft-Hartley Act. In other words, they think the Taft-Hartley Act is bad—I agree with you on that, that is the general impression—but when you ask them about all the specific things down the line, they cannot find any fault with those provisions that are in the act. I have talked to a good many union labor leaders, and I have had some of them tell me it was the finest thing ever passed, and that they had made it work. I had one particular one say he had not made anywhere near the progress before the Taft-Hartley Act that he had made since.

Mr. KELLEY. I come in contact with a great many individual members of labor organizations, and I have yet to meet one who says it is any good. They feel it is an attack upon their liberties, and they feel they have been singled out as a group of people and legislated against. That is the way they feel about it.

Mr. MOSHER. You see, I am having a little trouble in answering. I am not quarreling with your statement when you say that is the way they feel. That seems to be so, but that is the result of a terrific amount of propaganda and statements that are not true, statements that are exaggerated, to say the least, and it is just general condemnation of the bill, and they do not go into detail, and the people with whom they talk do not go into detail, either.

Mr. KELLEY. It is a matter of opinion. That is the way you feel about it, but some people do not feel that way, and they are pretty bitter about it, those whom I have seen.

I suppose my time is up.

Mr. BAILEY. Mr. Mosher, you state on page 1 of your testimony, and I quote:

> Two years ago Congress was considering legislation to curb the most prolonged and costly strike siege in the history of this Nation.

Mr. MOSHER. Yes, sir.

Mr. BAILEY. Do you know how many workers were involved in strikes in 1919, a comparable period, after World War I?

Mr. MOSHER. To answer your specific question, no, I do not know what the strike situation was.

I have some figures here from the Department of Labor which show that in 1919 there were 3,630 work stoppages, covering 4,160,000 people, and that is the BLS figure.

In 1946 there were 4,985 work stoppages, covering 4,600,000 people.

Mr. BAILEY. Mr. Chairman, at this time I would like to submit for inclusion in the record three official papers of statistics from the Bureau of Labor Statistics.

The first one is under the caption "Trends in Work Stoppages Following World War I and World War II," and it compares the periods of 1918 and 1948. It gives the number of strikes, the workers involved, and the percentages.

No. 2 is "Work Stoppages for the Year 1948 as Compared with 1935–39" and No. 3 is a series of comparisons on the period following World War I and World War II.

Mr. KELLEY. Without objection, they will be inserted in the record.

(The material referred to is as follows:)

Trends in work stoppages following World War I and World War II

Period	Strikes	Workers involved	Workers involved as percent of total employed [1]
Post-World War I:			
1918	3,353	1,240,000	6.2
1919	3,630	4,160,000	20.8
1920	3,411	1,460,000	7.2
1921	2,385	1,100,000	6.4
Post-World War II:			
1945	4,750	3,470,000	12.2
1946	4,985	4,600,000	14.5
1947	3,693	2,170,000	6.5
1948	3,400	2,000,000	5.6

[1] Excludes self-employed, domestic workers, farm hired hands (on farms employing less than 6 agricultural workers) and Federal and State Government employees.

Work stoppages for the year 1948 as compared with 1935–39 average

	1948 [1]	1935–39 average
1. Number of stoppages	3,300	2,862
2. Workers involved	1,950,000	1,125,000
3. Number of workers involved in strikes as percent of total employed (percent)	5.6	4.4
4. Man-days idle	34,000,000	16,900,000
5. Percent of estimated working time lost in relation to total time worked (percent)	0.4	0.3

[1] Preliminary estimates.

RELATION OF STRIKE ACTIVITY TO SIZE OF LABOR FORCE

Line 3 shows that in 1948 relatively more workers were involved in stoppages (as compared with the total employed) than the average for the 5 years 1935–39.

Line 5 shows that idleness resulting from stoppages in 1948 was somewhat greater (in relation to total time worked) than during the 5 years 1935–39.

STRIKE COMPARISONS

Obviously unfair to base comparisons on unlike periods.

1946 was a year of widespread readjustment, a postwar phenomenon similar to after World War I when industrial unrest was also great. For example, in 1919 (first postwar year), 20.8 percent of all workers were involved in strikes; in 1946 (again a "first" postwar year), only 14.5 percent of workers involved in strikes.

(See table, supra, for strike trends for World War I and World War II.)

A fair comparison is 1935–39 period (following enactment of Wagner Act, and 1947–48 (following passage of Taft-Hartley Act). Such a comparison shows that in the last 18 months under the Taft-Hartley Act:

(*a*) A rise of 8 percent in strikes.

(*b*) A rise of 50 percent in workers involved.

(*c*) A rise of 80 percent in man-days idle.

(*d*) A rise of from 4.4 percent to 5.6 percent in the proportion of all workers involved in strikes.

(*e*) A rise of from 0.3 percent to 0.4 percent in the amount of time lost because of strikes (see table, supra).

Thus, statistics show that Wagner Act (in normal economic period) promoted more peaceful industrial relations than has the Taft-Hartley Act.

Mr. MOSHER. Mr. Chairman, I have here the Bureau of Labor Statistics report on work stoppages in the United States for 1916 to 1948, which I would like to put in the record.

Mr. KELLEY. Without objection, it will be inserted in the record.

(The material referred to is as follows:)

Work stoppages in the United States, 1916 to 1948

Year	Number of stoppages	Workers involved		Man-days idle		
		Number (thousands)[1]	Percent of total employed	Number (thousands)	Percent of estimated working time	Per worker involved
1916[1]	3,789	1,600	8.2	(2)	(2)	(2)
1917	4,450	1,230	6.3	(2)	(2)	(2)
1918	3,353	1,240	6.2	(2)	(2)	(2)
1919	3,630	4,160	20.8	(2)	(2)	(2)
1920	3,411	1,460	7.2	(2)	(2)	(2)
1921	2,385	1,100	6.4	(2)	(2)	(2)
1922	1,112	1,610	8.7	(2)	(2)	(2)
1923	1,553	757	3.5	(2)	(2)	(2)
1924	1,249	655	3.1	(2)	(2)	(2)
1925	1,301	428	2.0	(2)	(2)	(2)
1926	1,035	330	1.5	(2)	(2)	(2)
1927	707	330	1.4	26,200	0.37	79.5
1928	604	314	1.3	12,600	.17	40.2
1929	921	289	1.2	5,350	.07	18.5
1930	637	183	.8	3,320	.05	18.1
1931	810	342	1.6	6,890	.11	20.2
1932	841	324	1.8	10,500	.23	32.4
1933	1,695	1,170	6.3	16,900	.36	14.4
1934	1,856	1,470	7.2	19,600	.38	13.4
1935	2,014	1,120	5.2	15,500	.29	13.8
1936	2,172	789	3.1	13,900	.21	17.6
1937	4,740	1,860	7.2	28,400	.43	15.3
1938	2,772	688	2.8	9,150	.15	13.3
1939	2,613	1,170	4.7	17,800	.28	15.2
1940	2,508	577	2.3	6,700	.10	11.6
1941	4,288	2,360	8.4	23,000	.32	9.8
1942	2,968	840	2.8	4,180	.05	5.0
1943	3,752	1,980	6.9	13,500	.15	6.8
1944	4,956	2,120	7.0	8,720	.09	4.1
1945	4,750	3,470	12.2	38,000	.47	11.0
1946	4,985	4,600	14.5	116,000	1.43	25.2
1947	3,693	2,170	6.5	34,600	.41	15.9
1948[3]	3,300	1,950	5.6	34,000	.4	17.0

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[1] The exact number of workers involved in some strikes which occurred from 1916 to 1926 is not known. The missing information is for the smaller disputes, however, and it is believed that the totals here given are approximate.

[2] Not available.

[3] Preliminary estimates.

Mr. Bailey. Mr. Mosher, on page 2, you begin your case that the Wagner Act was unfair, one-sided, and inadequate.

Mr. Mosher. Yes, sir.

Mr. Bailey. The committee has heard similar testimony from other employers as to the one-sided nature of the Wagner Act, and in this connection I would like to ask if during the operation of the Wagner Act you ever heard of any employee firing his boss or the president of his company?

Mr. Mosher. I am not sure that I follow the question. I am sure I do not know the import of the question. I know there were plenty of attempts made to fire the boss.

Mr. Bailey. Do you know of any instance where a boss or the president of a company was fired?

Mr. Mosher. I would have to go to the record. I would have trouble remembering it.

Mr. Bailey. I think your answer, Mr. Mosher, explains why the Wagner Act gave protection to the worker.

Mr. Mosher. I do not see the connection, Mr. Bailey. I am at a loss.

Mr. Bailey. Well, there is a connection.

Mr. Mosher. I do not see it. I am asking you to explain it to me.

Mr. Bailey. During that period, the employer could fire his employees, but the employee could not get away with firing the employer. That is plain enough; is it not?

Mr. Mosher. Has it ever been so; that an employee could fire his employer? He can quit his employer anytime he wants to and get another one.

Mr. Bailey. You are finding all kinds of fault with the Wagner Act. I wanted to ask you whether you ever heard of it occurring under the Wagner Act?

Mr. Mosher. I do not see the import of your question, sir. I do not see what it means. You asked me if I ever heard of——

Mr. Bailey. I think you get the point.

Mr. Mosher. I simply do not. You will have to take my word for that.

Mr. Bailey. On page 242, you state:

> A return to the discredited procedures followed under the Wagner Act would serve notice that Congress now approves the discredited practices which were sought to be corrected in the Administrative Procedure Act.

Mr. Mosher. Yes, sir.

Mr. Bailey. I would like to ask you if you think there is anything, after reading H. R. 2032, in that act that leads you to believe that any other procedures would be followed other than the procedures set out in the Administrative Procedure Act?

Mr. Mosher. I assume that, under your present House bill, it means the virtual restoration of the Wagner Act, the reenactment of the Wagner Act with certain changes, changes which do not have to do particularly with administration.

Mr. Bailey. I would like to ask you——

Mr. Mosher. I have not answered you, sir.

Mr. Bailey. Go ahead.

Mr. Mosher. I would assume that the conditions which through a period of quite a few years existed under the Wagner Act would come back into being. I have no right to draw any other conclusion.

Mr. BAILEY. Do you know that the NLRB is now the only agency in the Government in which an exception was made to the Administrative Procedure Act under the Taft-Hartley Act?

Mr. MOSHER. It is the only agency where we needed that sort of thing. Our past experience has proved to us that you had to do something, and it was presumably done.

Mr. BAILEY. Why vary, then, from all other legislation? Why follow the Administrative Procedure Act in every case until you come to the Taft-Hartley Act?

Mr. MOSHER. I am inclined to believe that it should be done in any other similar situation. In any other similar Commission, where you have the right of trial and the assessment of damages, the right of investigation, to start with, all carried under one body, it cannot be judicial, and that unfairness arises under those situations, I think it is not a question of changing the Taft-Hartley Act to agree with other administrative procedures, but you ought to change the other administrative procedures to correct the difficulties.

Mr. BAILEY. You think, then, that it should not have been singled out for special treatment?

Mr. MOSHER. No; I did not say that. I said quite the opposite, sir.

Mr. BAILEY. Going back to the matter of statistics, you state on page 26 of your presentation that the annual average of strikes during the war years 1941 to 1945, inclusive, when labor's no-strike pledge was in effect, was 4,106 higher than during the 9 years immediately preceding it. Now, for the record, Mr. Mosher, it should be stated that there were 14,731 strikes between December 8, 1941, and August 14, 1945. This is an annual average of approximately 3,700. You in your statistics evidently included in your figures 4½ months of dislocation after the war was over, including the peak month of September 1945, when there was a total of 572 strikes.

I would just like the record to show that. These figures are official figures from the Bureau of Labor Statistics.

That is all.

Mr. MOSHER. Let me read two sentences. Perhaps I had better read the paragraph:

> Between 1916 and 1935, the average annual number of strikes in the United States in the absence of compulsory collective bargaining of employers was, by Bureau of Labor Statistics figures, 1,867. Between the years 1936 and 1946, inclusive, the annual average amounted to 3,682, an increase of 97 percent. Nor does the fact that World War II intervened to introduce abnormal conditions disturb the trend of these statistics. Between 1935 and 1941, inclusive, nonwar years, the average annual number of strikes was 3,015. The annual average during the war years 1942 to 1945, inclusive, when labor's no-strike pledge was in effect, was 4,160—higher even than during the nonwar years immediately preceding.

Those are from the Bureau of Labor Statistics.

Mr. BAILEY. Apparently there is a difference in the figures as presented.

That is all, Mr. Chairman.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I yield my time to Mr. Jacobs.

Mr. KELLEY. Mr. Jacobs, you have 20 minutes.

Mr. Jacobs. Mr. Mosher, I am somewhat in agreement with you on one proposition, I find; that is, you do not find out much about what is in the law by calling it by name.

Mr. Mosher. No.

Mr. Jacobs. In other words, it was not very revealing to say that it was a slave labor law; was it?

Mr. Mosher. No, sir.

Mr. Jacobs. Do you think it was very revealing to refer to it as a bill of rights for labor?

Mr. Mosher. I think quite a bit more so.

Mr. Jacobs. You think quite a bit more so?

Mr. Mosher. Yes.

Mr. Jacobs. Well, I suppose it depends upon who happens to agree with the particular name; is that right?

Mr. Mosher. That might have something to do with it.

Mr. Jacobs. We used to say every crow thinks its own chick is the blackest, in other words.

You said that there had been a job done last year, and I think I agree with you. I tried to help do the job, in a very small way. But was there not quite an effort to do the job before that? In other words, didn't your organization spend quite a bit of money advertising in favor of this law about the time it was passed?

Mr. Mosher. We had ads as to these labor principles before the Taft-Hartley Act was drafted, according to my best recollection. They had to do with this set of principles which came out of the Labor-Management Conference.

Mr. Jacobs. And at the same time it was pending also; is that not correct?

Mr. Mosher. Let me look in my record, if I may.

Mr. Jacobs. For example, I will ask you if you did not have about a half-page ad in the Indianapolis Star on the 13th day of May 1947 which carried a banner headline and said, "Road to Freedom for the American Worker."

Mr. Mosher. Whether that was in the Indianapolis Star or not, I do not know. It may have been put in by the National Association of Manufacturers, or it might have been put in by any group of people who believed in the same thing. There was an ad published at that time.

Mr. Jacobs. I beg your pardon. The question was as to whether it was by the National Association of Manufacturers. It does bear your name, and I have a copy here.

Mr. Mosher. Then it presumably was NAM's ad.

Mr. Jacobs. There is one thing there that stood out in my mind when I read it, and it sent me to the bill to examine it very carefully, because I happened to have a lawsuit that I was handling at that time, and I thought, "Now, if this is true, this lawsuit is going to be awfully easy to win."

And that is this statement: "The right to speak his own mind regarding his own welfare without fear of being kicked out of the union."

Now, the question I want to put to you, Mr. Mosher, is this. Can you tell me what section of the Taft-Hartley Act you can find that in?

Mr. MOSHER. It is in section 8 (a) (3). I am quoting Mr. Smethurst just now, because I do not know the law that well. It is in the bill.

Mr. JACOBS. That is section 8 (a) (3)?

Mr. MOSHER (reading):

> That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Mr. JACOBS. That is what you refer to in saying that the man cannot be kicked out of the union?

Mr. MOSHER. Yes, sir.

Mr. JACOBS. Does it say——

Mr. MOSHER. He will not lose his job.

Mr. JACOBS. Does it say that he cannot be kicked out of the union?

Mr. MOSHER. He cannot lose his job. He can be kicked out of the union.

Mr. JACOBS. Then, under the Taft-Hartley law, he can be kicked out of the union, and there is no remedy to put him back in the union, is there?

Mr. MOSHER. He cannot lose his job. That is what we are trying to protect.

Mr. JACOBS. I did not ask you that.

Read the question to the witness.

(The question was read to the witness.)

Mr. JACOBS. The question is, Does the Taft-Hartley Law give a man a remedy for reinstatement in the union?

Mr. MOSHER. I think you are trying to pick something out here. Let us read the whole text and see what we are trying to say.

Mr. JACOBS. Just a moment. I do not want you to read anything. My time is limited. I want you to tell me what section of the Taft-Hartley Act prevents—now, I am going to use the very words of your ad as it appeared in the Indianapolis Star on May 13, 1947. What section of the Taft-Hartley law prevents a man, a union member, from "being kicked out of the union"? Now, tell me what section it is.

Mr. MOSHER. Section 8 (a), which reads:

> That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Then the act goes on.

Mr. JACOBS. Is that the section that you refer to which says that a man cannot be kicked out of the union?

Mr. MOSHER. That is right.

Mr. JACOBS. Does it say in that section anywhere that he cannot be kicked out of the union, or does it merely say that he may work without being a member of the union?

Mr. MOSHER. Well, the ad says, "The right to speak his own mind regarding his own welfare without——"

Mr. JACOBS. I am not referring to that, Mr. Mosher. I am talking about "being kicked out of the union."

Let us stay with the one point, because that is the point I was interested in, and your ad caused me to spend a lot of time reading that law looking for that point, and I have never found it yet. I want you to tell me just where it is in that law that it says that a man cannot be kicked out of the union. Let me say this, Mr. Mosher. We are not going to get off the point until you either tell me where it is or admit that it is not there.

Now, let us stick with the point.

Mr. MOSHER. The ad says, and I am reading from it, "Kicked out of the union or fined or fired from his job."

Mr. JACOBS. All right.

Mr. MOSHER. And the intention of this clause 8 (a) as I interpret it just simply indicates that. That is the intent of it.

Mr. JACOBS. To let him work without belonging to the union; is that it?

Mr. MOSHER. That is right; surely.

Mr. JACOBS. All right. Now, does it say anywhere in the law that the man cannot be kicked out of the union?

Mr. MOSHER. Except as I quoted from section 8 (a), I do not know. I have quoted from section 8 (a), which is intended to cover that phase of it, I assume.

Mr. JACOBS. Which allows the man to work without belonging to the union. That is what it does, is it not?

Mr. MOSHER. That is what it does.

Mr. JACOBS. So, if the man had death benefits or pension rights under his union and is kicked out of the union, he could go to work, but it does not protect his pension rights, does it?

Mr. MOSHER. I do not suppose it does.

Mr. JACOBS. No.

Mr. MOSHER. It probably does not go anywhere near far enough. I think the statement should have been a lot broader one.

Mr. JACOBS. And it does not protect his pension rights nor his death benefits nor any other benefits that he might have; is that not right? Do you agree with that?

Mr. SMETHURST. Let me——

Mr. JACOBS. Well, put the microphone over and let the other man answer the question if he wants to.

Mr. MOSHER. No; he is just trying to interpret your language to me. I am not familiar with this law from a legal standpoint, you understand, Mr. Jacobs.

Mr. JACOBS. You are not familiar with it?

Mr. MOSHER. I am not familiar with the law from the legal phraseology that you are using.

Mr. JACOBS. There is not anything that is too technical about kicking a man out of the union and saying that the law will not permit that. I just want those simple words pointed out to me.

If you have anyone with you on your staff that can point it out, I will be glad to receive it from them.

Mr. MOSHER. Well, you have section 302 (a), (b), and (c), the whole section, that has to do with——

Mr. JACOBS. If you can find the language that says that a man cannot be kicked out of a union, I want you to read it to me.

Mr. MOSHER. If I may, I will let Mr. Smethurst answer it. Is that satisfactory, sir?

Mr. JACOBS. If anybody can point that out to me, I shall be very happy to hear it.

Mr. SMETHURST. May I have the permission of the Chair?

Mr. KELLEY. Yes.

Mr. SMETHURST. Apparently we have two questions here now.

Mr. JACOBS. No, Mr. Smethurst. We have only one.

Mr. KELLEY. Will you state your name?

Mr. SMETHURST. Ray Smethurst, counsel for the NAM.

Mr. JACOBS. Now, Mr. Smethurst, we have one question, and not two. The question is a very——

Mr. SMETHURST. May I interrupt a moment?

Mr. JACOBS. Just a moment until I finish.

Mr. SMETHURST. May I have the reporter read the question back?

Mr. JACOBS. Just a moment. I will tell you what the question is.

Mr. SMETHURST. May I have the question read back?

Mr. JACOBS. No; you may not. I will state the question to you exactly as it was before, to point out to me the language in the Taft-Hartley Act which says that a man is protected from "being kicked out of the union," and I am reading from your ad.

Mr. SMETHURST. Well, No. 1: I would not read an ad to learn the law. That would be my first point.

Mr. JACOBS. That would be very good advice. Now, will you answer the question?

Mr. SMETHURST. The second answer is that the ad has to be interpreted and read in the light of the first line, which is talking about a man's losing his job by virtue of being or not being a member of a union.

Mr. JACOBS. In other words——

Mr. SMETHURST. So that the statement——

Mr. JACOBS. I just want to ask you this one question. Can you point out to me the language which says that a man cannot be kicked out of a union? That is what I want. If you can do it, point it out to me. If you cannot, will you please say so?

Mr. SMETHURST. The question is asked without reference to the accuracy of the ad.

Mr. JACOBS. No. I do not want an argument from you. I just want you to tell me whether or not that is in the act and, if it is, point it out to me.

Mr. SMETHURST. May I answer the question without being argumentative?

Mr. JACOBS. Yes; without being argumentative.

Mr. SMETHURST. If you want an answer without reference to the ad, the answer is "No," and the law should be clarified to cover that.

Mr. JACOBS. All right. That answers the question. That is what I was trying to get at all the time.

So we finally arrive at the point where this bill of rights that protected the worker actually protected him in permitting him to work without belonging to the union. That is what it amounts to.

So we will proceed to the next question. I have heard a great deal about the right to work, and I think that a man should have a right to work. I agree with the witness that preceded you, who testified here.

Mr. SMETHURST. Thank you for the compliment.

Mr. JACOBS. I am wondering what becomes of the man's right to work when the man to whom he applies for a job will not hire him. Does he have a right to work then?

Mr. SMETHURST. Is that directed at me?

Mr. JACOBS. Yes; anybody who wants to answer it. Mr. Mosher can answer it.

Mr. SMETHURST. I defer to the witness.

Mr. MOSHER. No; that does not protect him, except as you go by the principles of the union shop as expressed in the Taft-Hartley Act.

Mr. JACOBS. All right. I think that when the Government tried to give a man the right to work back in the early thirties, when there was no work, they invented a word for that, which they called boondoggling.

I want to ask you one more question, Mr. Mosher, about the matter of industry-wide bargaining. And I am dead serious about it, because I think it is a very serious matter. When you get to the end of your delay period, as I understand it, you say that the deficiency of the law is that the injunction should continue.

Let us take a case. Suppose that I was working for you and you and I had a dispute, and it is just assumed that there are enough of us so that it creates a national emergency. And suppose we cannot settle that dispute and it goes to injunction. How long would you continue the injunction until you would have the Government come in and fix my wages? Or would you have me work at the wage that was prevailing at the time the injunction was entered?

Mr. MOSHER. I would provide for your working. Bear in mind that we have no law, and I hope we never have a law, that says a man has got to work at any particular time. I do not advocate under any conditions any law which makes the individual continue to work. The individual has a right to quit work when, as, and if he pleases.

We are talking about concerted action, general strikes, country-wide strikes, strikes that are of such importance as to reach country-wide proportions. I think that an injunction would well be continued until the parties involved have come to an agreement.

Mr. JACOBS. On a tide of rising cost of living, then, you would say this. Take the coal industry. That has been the most drastic example we have had. We will take the coal industry where there are some 400,000 or 450,000 men working. Let us say they are working, just to make it simple, at $1 an hour, and the cost of living increases to almost 180 points. You would say that the injunction would continue, and all these miners would just quit and fade away from the coal mines and seek employment some place else; is that right?

Mr. MOSHER. I do not think that is the history of the coal situation, from what I know about the coal industry.

Mr. JACOBS. I am using an illustration, now. Would you think that would be the proper thing to do?

Mr. MOSHER. No; I do not think under such conditions that would be the proper thing to do, because in the first place, that is not the way it works out in practice.

Mr. JACOBS. But you would continue the injunction in force, forbid the men to strike, without fixing their wages; is that right?

Mr. Mosher. Yes, sir.

Mr. Jacobs. Well, I guess that would not leave much of an argument. You might be able to make this law what the union leaders said it was if you worked it up a little bit further.

Mr. Mosher. I do not think so. I am not proposing and have not insinuated in any way that any individual should be forced to continue at his job. We are talking about national emergencies, in which we have no other recourse. They threatened to assume proportions to tie up the whole country, and it was the management's side of the labor-management conference that agreed that under certain conditions where an emergency was declared by the President, he should be given the right to go certain distances. And out of that general feeling came the provision in the Taft-Hartley Act. I assume it came from that. I do not think it goes far enough.

Mr. Jacobs. I think the legislative history will show that it was a trend that has been going on almost 60 years that has culminated in those provisions.

Mr. Mosher. There is one other point, Mr. Congressman, that we must not lose sight of by any manner of means, and that is that the public was pretty well aroused, and was on the verge of demanding compulsory arbitration of labor-management disputes. And when you get compulsory arbitration, I see no end to that.

Mr. Jacobs. I know what you are talking about. I have thought about that, too. But at the same time, I wonder if a man could possibly conceive of a large number of workers in an industry being enjoined from striking for higher wages permanently without fixing their wages. I wonder how practical that is.

Mr. Mosher. That is a little difficult to say, but I do not think it would happen that way, because the employer is no more anxious to have his plant closed up permanently than the employee is to lose his job. We have two people at interest.

Mr. Jacobs. He is not going to have it closed. You are going to have an injunction.

Mr. Mosher. No. But under your example, he is going to quit, and there is not going to be any industry. That was your example.

Mr. Jacobs. You mean, if the men all fade away.

Mr. Mosher. If the men all fade away, there would be nothing left.

Mr. Jacobs. That is, if they go into another industry.

Mr. Mosher. And you and I as employers do not want to see that happen.

Mr. Jacobs. But it seems to me—and here is where you and I separate—that you are going on the basis of the individual employee making up his mind that he would work for the wage prevailing at the time the dispute arose or he could leave and go somewhere else. You are going on the theory that the individual can cope with or compete with, the employer. I am a little afraid I cannot agree with you.

Mr. Mosher. No, I am not going that far. I am not going that far at all. I think that under actual practice, the employer is just as anxious to keep that business operating as is the employee to work, and their interests to that extent certainly are mutual.

Mr. Jacobs. Of course, as long as the employee was under the injunction, he would not have very much of a choice in the matter, would he, unless the wages fell so utterly low that he would have to seek employment elsewhere?

Mr. MOSHER. You could take injunctions for 90-day periods and continue them, as far as that is concerned.

Mr. JACOBS. Sir?

Mr. MOSHER. If you do not like the idea of the long, permanent injunction, you certainly can do it in steps. This whole subject is relatively——

Mr. JACOBS. You mean, you would make it easy for the dog by cutting his tail off just an inch at a time?

Mr. MOSHER. Well, that happens sometimes. It is a little easier.

Mr. JACOBS. I want to ask you a question about this free speech. I understand that it is your view that section 8 (c) should be retained. I do not believe I will ask you about that. You said that you were not a lawyer and not very well versed in technicalities.

Mr. MOSHER. No, I am not a lawyer.

Mr. JACOBS. Then perhaps this question would not be fair to you.

Mr. MOSHER. All I can say is that I believe in free speech and quote the experience under the law. That is all.

Mr. JACOBS. You do not believe in recognizing the section that we talk about as being a rule of evidence?

Mr. MOSHER. No, sir.

Mr. JACOBS. You do not understand that at all?

Mr. MOSHER. No, sir. I think that I have heard your point, but I am not qualified to discuss that.

Mr. JACOBS. You did make some reference to the financial power of unions, did you not?

Mr. MOSHER. Yes, sir.

Mr. JACOBS. Are you familiar with the total wealth of, say, the first 32 international unions?

Mr. MOSHER. No, I cannot quote that. I have seen the figures at times, but I do not remember what they were.

Mr. JACOBS. I think you will find it in Life magazine. The total is about $220,000,000. That is a right smart lot of money, is it not?

Mr. MOSHER. A lot of money.

Mr. JACOBS. It would be, for me or you. But are you familiar with the value of the first——

Mr. KELLEY. You mean billion, do you not?

Mr. JACOBS. No. I mean million.

The first 32 unions have $220,000,000 in their international treasuries.

Are you familiar with the wealth of some of the largest corporations?

Mr. MOSHER. I have a reasonable acquaintance with those figures.

Mr. JACOBS. The first 50?

Mr. MOSHER. Yes, I have some reasonable idea of what it is.

Mr. JACOBS. What would be your notion?

Mr. MOSHER. Well, it is a fairly large percentage of the total wealth, a matter of——

Mr. JACOBS. Sir?

Mr. MOSHER. Let me get the figures.

Mr. JACOBS. Well, I have them here, if you do not know what they are. They run from $9,500,000,000 down to——

Mr. MOSHER. Of course, the figures are not comparable. There is no degree of comparison.

Mr. JACOBS. No. I think you are right. I agree with you.

Mr. MOSHER. Now, you are assuming that I am saying that they are not comparable because of the vast differences in the figures. That is not what I meant, sir. I say that you cannot take your total assets of all these corporations, bearing in mind what those assets are in, what those assets consist of, and compare that as relative strength. I venture——

Mr. JACOBS. Of course, you will agree with me that money talks, will you not?

Mr. MOSHER. Colloquially, yes, money talks.

Mr. JACOBS. All right. Now, what is $9,500,000,000, we will say, as compared with $220,000,000?

Mr. MOSHER. Suppose we take the amount of cash that might be available for the same purposes for which the $220,000,000 is available, and see what the comparison is. We would get quite a different picture.

Mr. JACOBS. All right. I think that would be fair. Suppose, on the other hand, we take the number of members in the union and divide them into the amount of money we have, and get some comparison that way. It really becomes a rather small amount of money, does it not, when you divide it among them?

Mr. MOSHER. As to what the unions have?

Mr. JACOBS. Yes.

Mr. MOSHER. No, I do not think so. I think it is a very large amount of money for the purposes to which it can be devoted. I think we can compare the number of union members, employees in these organizations, with the number of stockholders you have. That is one good comparison you can make, as to the relative number of people concerned. You can take the amount of money that might be in these corporations available for purposes extraneous to the ordinary operations of the corporations and compare it with the cash.

Mr. JACOBS. Well, let us see about the stockholders. Do you know how many stockholders there are in this country?

Mr. MOSHER. No, I do not remember. I cannot remember those figures.

Mr. JACOBS. I think you will find the figure is 14,000,000.

Mr. MOSHER. All right.

Mr. JACOBS. And do you know how many own over half of the stock?

Mr. MOSHER. The bulk of that 14,000,000—it was 14,000,000, you said?

Mr. JACOBS. Yes, 14,000,000.

Mr. MOSHER. All right. I will take your 14,000,000. They own the bulk of the corporations.

Mr. JACOBS. They own all of it if they own the stock.

Mr. MOSHER. Well——

Mr. JACOBS. How many people does it take in your larger stockholders to own over half of the value of the stock? Do you know?

Mr. MOSHER. No.

Mr. JACOBS. I think you will find it is about 60,000.

Mr. MOSHER. Well, I think you have to question that figure considerably.

Mr. JACOBS. If you find that it is different, will you write me and let me know?

Mr. MOSHER. Yes, sir.

Mr. BAILEY. Mr. Burke? By the way, Mr. Burke, you yielded your time to Mr. Jacobs.

Mr. BURKE. Five minutes.

Mr. BAILEY. All right. You have 5 minutes.

Mr. BURKE. Mr. Mosher, in your verbal statement—I did not check your written statement as you went along—you made the statement that true collective bargaining was impossible under the Wagner Act.

Mr. MOSHER. Yes, sir.

Mr. BURKE. In the light of the many thousands of agreements made between unions and employers during the years the Wagner Act was in effect, it would seem to me rather an extreme statement, would it not?

Mr. MOSHER. No, I do not think it is extreme. I think the record will show very clearly that there was such a tremendous number of cases, the way the agreements were forced on the employer, that he had no recourse except to accept.

Mr. BURKE. I know of a case where probably one of the largest local unions in the country, if not in the world, bargaining with some 70 to 80 employers over a period of 2 years, in those years negotiated probably some 150 agreements without a work stoppage.

Mr. MOSHER. I would assume that is probably true. I will not question your figures.

Mr. BURKE. There again, the employers must have been quite well satisfied.

Mr. MOSHER. There are various situations where the record stands high. There is no question about that.

Mr. BURKE. Then true collective bargaining could not have been impossible.

Mr. MOSHER. Well, going back to before the days of the Wagner Act, we had plenty of collective bargaining back in those days that was successful in a good many ways. The fact still remains, and I think the record will prove it, that under the administration of the Wagner Act, in countless numbers of cases there was no real collective bargaining.

Mr. BURKE. Might it not be, then, that the Wagner Act gave opportunity to many new millions of people to sit down across the bargaining table from their employer, people that did not have the opportunity before?

Mr. MOSHER. As under the Wagner Act, unionization was encouraged, surely there were a great many individuals who came in under collective bargaining contracts who had not been under collective bargaining contracts before. I agree to that. There is not any question about it.

Mr. BURKE. Then we cannot say that true collective bargaining was impossible, absolutely impossible, during those times.

Mr. MOSHER. I rest on the statement that under the Wagner Act as it went through the year and as it was administered, collective bargaining in countless numbers of cases became not only difficult, but quite impossible.

Mr. BURKE. The present House Committee on Education and Labor in the United States Congress has recently had before it two bills affecting what is known as the Fair Labor Standards Act. One of those bills is known as H. R. 858. Several employers and representatives of employers came before that committee and testified that they had a history of 25 years of successful collective bargaining, including the years of the Wagner Act, and they were quite satisfied, and they felt, along with the unions involved, that they had to have some relief in regard to this overtime-on-overtime situation of the Supreme Court in the Bay Ridge decision. They testified to this committee that they were quite satisfied with their collective-bargaining agreements.

Mr. MOSHER. I certainly do not want to render the impression that I do not know of a great many cases where we have had collective bargaining, and very successfully, with certain unions. And the record is very, very good. I still rest on my original statement, which was that under the Wagner Act, collective bargaining was becoming impossible, and it became impossible in countless numbers of cases.

Mr. BURKE. That is all.

Mr. BAILEY. Mr. Sims?

Mr. SIMS. No questions.

Mr. BAILEY. Mr. Wier?

Mr. WIER. Yes.

In the concluding pages of your statement, you made the statement that your interest, or the interest of your association, was one concerned with the public interest.

Mr. MOSHER. Yes, sir.

Mr. WIER. This public interest is the great mass of American people; that is correct, is it not?

Mr. MOSHER. Yes, sir.

Mr. WIER. That is, that you are concerned with.

Mr. MOSHER. Yes, sir.

Mr. WIER. Did we not have a little test on that, about November 2?

Mr. MOSHER. Yes, sir.

Mr. WIER. In one State in particular, it was a real test. I know that you are going to say that a number of advocates of the Taft-Hartley Act returned. That I subscribe to. But there was one State in which the Taft-Hartley Act was the prime issue, and in one election it was the sole issue, and that was in the State of Minnesota, where you had a fair-haired boy. And the campaign, as I remember, for 2 months was devoted entirely to ex-Senator Ball and the Taft-Hartley Act. And the public, or the people of Minnesota, disagreed on the basis of the Taft-Hartley Act. Do you agree to that?

Mr. MOSHER. I do not know your situation in Minnesota.

Mr. WIER. You know that Senator Ball is not back?

Mr. MOSHER. Who was Senator Ball's opponent?

Mr. WIER. Who was what?

Mr. MOSHER. Who was Senator Ball's opponent? I do not even know that.

Mr. WIER. You do not know that?

Mr. MOSHER. No.

Mr. WIER. Well, you have been over in the Senate committee, have you not?

Mr. MOSHER. Yes, sir.

Mr. WIER. You met Senator Humphrey over there, and saw him?

Mr. MOSHER. Yes. He sat behind the bench.

Mr. WIER. Yes. That is the present Senator, in answer to your question.

I raise that question because you have laid a lot of stress upon freeing American workers and defending this act on the basis that it was in the public interest. Are you still satisfied that all of the legislation in the Taft-Hartley Act ought to be continued?

Mr. MOSHER. No. I have not said that. I said quite the opposite.

Mr. WIER. I am asking you a question.

Mr MOSHER To the extent that the Taft-Hartley Act does not cover certain situations, I think the Taft-Hartley Act should be changed.

Mr. WIER. It should be changed?

Mr. MOSHER. Yes, sir.

Mr. WIER. Are there any sections of it that you would take out?

Mr. MOSHER. I am not talking about the act. I am talking about certain labor principles.

Mr. WIER. Well, you have been upholding the act here all night on certain principles.

Mr. MOSHER. I pointed out in considerable detail the extent to which the Taft-Hartley Act covers those general labor principles.

Mr. WIER. Again, I call your attention to the fact that your organization was one of the decriers for freeing the American workers from the labor czars. That is correct, is it not?

Mr. MOSHER. That would be a construction of the situation.

Mr. WIER. That is a construction. It is a good construction. And in spite of that, the act carried the right of the workers to free themselves. It carried a section which gave the workers a right to free themselves from union domination.

Mr. MOSHER. Yes.

Mr. WIER. Are you familiar with the results of your experiment in the desire of the workers to free themselves under union-shop elections?

Mr. MOSHER. Yes, sir.

Mr. WIER. The result has been rather disappointing, has it not?

Mr. MOSHER. No, I do not think so.

Mr. WIER. Well, it did not attain its goal, I will ask you?

Mr. MOSHER. I know now from the way you are asking the question that the goal was to get them out from under the unions. That was at no time the goal.

Mr. WIER. It is the same thing.

Mr. MOSHER. No, sir.

Mr. WIER. In other words, by the experience of the National Labor Relations Board in holding these very disadvantageous elections, it has been demonstrated beyond the shadow of a doubt even to your group and to the people of these United States that the workers still maintained that they want their unions to represent them, and they want union shops; is that not correct?

Mr. MOSHER. I think that is all covered in your Taft-Hartley Act, as a matter of fact, and reasonably adequately covered, except to the extent that we do not believe in the closed shop as such.

Mr. WIER. I am not talking about the closed shop. There is not at present any closed shop.

Mr. MOSHER. You are asking me——

Mr. WIER. About the union shop.

Mr. MOSHER. You are asking me to try to indicate that we were opposing unionization, and that is no part of our program and has not been at any stage in the game. We are firmly on record, and have been——

Mr. WIER. Why was it inserted in the act?

Mr. MOSHER. To give the employees, if they did not want to be run by the union, the chance to get out from under the union.

Mr. WIER. Are you satisfied——

Mr. MOSHER. Now, that is not attacking unions as a whole.

Mr. WIER. That probably gives lip service to the answer. Are you satisfied?

Mr. MOSHER. It is no more lip service than the words that you are trying to put into my mouth.

Mr. WIER. Are you satisfied with the results of the workers' decisions that you led up to?

Mr. MOSHER. I am satisfied to go by what the majority of the workers want. If they want——

Mr. WIER. Then it should be removed, should it not?

Mr. MOSHER. No, sir.

Mr. WIER. You were upholding the contention that that is what the workers wanted.

Mr. MOSHER. The Taft-Hartley Act provides an escape if the union member wants to have it. If he does not want to have it, that is quite O. K.

Mr. WIER. And they gave you the answer, did they not?

Mr. MOSHER. They what?

Mr. WIER. They gave you the answer. They wanted it.

Mr. MOSHER. I do not follow you at all, sir.

Mr. WIER. I say, the workers gave you the answer by this long process of elections that they want the unions; they want the union shop.

Mr. MOSHER. Of course, there are various other facets to this same picture. You are asking me to say that the union people gave me the answer that "We want it."

Now, what do you mean by the answer, "We want it"? Apparently the answer that you think we want is not the answer that we wanted at all.

Mr. WIER. You were trying to paint a picture of the fact that the workers were under union domination and that they were seeking freedom; they were seeking to be relieved of unions; is that correct?

Mr. MOSHER. Not generally speaking; no, sir.

Mr. WIER. Not generally speaking?

Mr. MOSHER. No, sir.

Mr. WIER. Let us go on to free speech, then. That is another one that you defended tonight.

Mr. MOSHER. All right.

Mr. WIER. Free speech. What do you term "free speech" in the Taft-Hartley Act?

Mr. MOSHER. The right of the employer to speak, to tell his side of the story, and not to be guilty of an unfair labor practice by telling the truth.

Mr. WIER. What does the Taft-Hartley Act say in regard to an employer's right under free speech?

Mr. MOSHER. Instead of my guessing at what it said, let us look at the act. I am reading from section 8, clause (c):

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not consti-

tute or be evidence of an unfair labor practice under any of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit.

Mr. WIER. Are you familiar with what has occurred under that provision of the act?

Mr. MOSHER. I think I have a reasonable knowledge of what has occurred, yes, sir.

Mr. WIER. Are you familiar with the fact that the Labor Board has denied most of the cases of unfair labor practices brought to its attention by the unions?

Mr. MOSHER. I think that follows, yes, sir.

Mr. WIER. Because as of today, from practical knowledge, employers have gone much further than the right of free speech. The law is at this time allowing them to use punitive actions.

Mr. MOSHER. I don't think the record shows that, sir.

Mr. WIER. I have had a couple of cases before the Labor Board in which——

Mr. MOSHER. I won't say there haven't been cases. It is a big country, and you have a good many situations running into a hundred thousand or more.

Mr. WIER. A couple may be multiplied by many because I made the inquiry.

Mr. MOSHER. What are the cases to which you refer?

Mr. WIER. Penalties.

Mr. MOSHER. Penalities of what kind?

Mr. WIER. I will refer to one that happened recently, which brought about a strike primarily on the basis of the law, and that was in the case in which an employer, in addition to using his right of free speech, took from the workers employment that they had been enjoying, gave the overtime work to those that he felt were loyal, took away from the workers that were interested in the organization of a union their overtime that they were working continuously.

The union preferred a charge against them, the Labor Board said they couldn't carry through and process it because it wasn't specific enough.

Mr. KELLEY. The gentleman's time is about up.

Mr. WIER. I am not even started yet.

Mr. MOSHER. What has that got to do with free speech?

Mr. WIER. I am trying to point out that the language in that section under the Taft-Hartley Act does not protect the worker against punitive actions.

Mr. MOSHER. What has that got to do with free speech?

Mr. WIER. That is what I want to know.

Mr. MOSHER. You are asking me, and I am saying I don't know what it has to do with free speech.

Mr. KELLEY. The gentleman's time has expired.

Mr. McConnell?

Mr. MCCONNELL. Mr. Mosher, I have a few questions I would like to ask, but before getting into them, I couldn't help but observe certain things, and I would also like to ask your opinion about them.

As I have listened to the complex and diverse discussion here regarding the Taft-Hartley Act, and I listened to some of the legal lights during the last few days discussing the pros and cons of whether we repeal the Taft-Hartley law or whether we do not repeal it; and when

I listen to the excellent plan of my good friend, Mr. Kelley, that we ought to have a commission to study this whole matter and go over it thoroughly in a calm and judicial way, I can't help but wonder why this great haste to repeal the Taft-Hartley law and then reenact another law about which we know very little.

When I think of the procedure in the Senate where you couldn't even amend that particular law, H. R. 2032, I am still at a greater loss to understand what this great haste is all about unless it might be due to the political campaign promises of certain individuals.

Mr. KELLEY. Will the gentleman yield?

Mr. MCCONNELL. I will be glad to yield.

Mr. KELLEY. I think the commission should have been set up before the Taft-Hartley Act, and you wouldn't have the Taft-Hartley Act as it is.

Mr. MCCONNELL. I would have been glad to consider a commission at that time, but even in going over the hearings, as I have, of the Taft-Hartley law, I discovered we took over 2,000,000 words before there was any attempt to sit down and write a bill.

Here we have a bill handed to us, and we are told to shove it right through before we know very much about it. In fact, we work all day in the House and have about four or five roll calls and then we work until 10 or 11 o'clock at night, and I can't figure what all this rush is about.

Mr. MOSHER. I listened to that today while we were waiting.

Mr. KELLEY. Trying to do the same thing as in 1947.

Mr. MOSHER. Except in 1947, using Congressman McConnell's own words, there were over 2,000,000 words. I will have to plead guilty that many of you kept me here so long that there are quite a few pages of my own words in that rather voluminous testimony.

Mr. MCCONNELL. I would like to ask a few questions that bothered me at times. How long should a person out on strike be considered an employee of a company, in your judgment?

Mr. MOSHER. That offers some real difficulty. I don't know quite how to answer it. I will try to answer it in parts.

If he gets another job, he certainly is no longer an employee. If under certain conditions his job is filled, he is no longer an employee.

If he has quit voluntarily in an economic strike situation, no unfair labor practice being involved, I think he has willingly and of his own volition, subject to the union situation, whatever it may be, he is no longer an employee.

As you undoubtedly know, we have had many, many cases under the Wagner Act where employees went on strike for one reason or another, no unfair labor practice being involved in the one I think of, and in many others—those employees continued to meet, in one case they met every week and continued to call a strike when I am told 90 percent of them were working elsewhere and didn't intend to work there again. They intended to close that employer up.

Mr. MCCONNELL. Should bargaining procedure be spelled out?

Mr. MOSHER. No; I do not think so. I think that all we should try to do is provide a framework of equality before the law where the two parties can meet on an equal basis with equal rights, and we have to leave it to labor-management.

The less we try to cover by law all these details, the better off we will be. The sooner we can get labor-management bargaining back to where the work is—and that means back to the plants where the employees know their employer and where the employer knows his employees—the better off we will be. That covers a lot of territory. That covers your Nation-wide bargaining, and many other issues come into that, but that is a fundamental thing we have to strive for: To get this bargaining back just as close to where the work center is as we can get it. We certainly need to get it out of Washington.

Mr. McConnell. Fundamentally I have the feeling when you spell out bargaining procedure, that you are then requiring a sort of strait-jacket type of procedure or bargaining, which breaks it down and takes away a lot of the freedom.

Mr. Mosher. I think that is absolutely true.

Mr. McConnell. Now, on national emergency strikes, you realize that was the result of a compromise, and I have never felt for certain we had solved the problem. We have searched and searched and searched in order to find a good procedure.

I am not entirely sure of what the final answer is. We tried to avoid extremes, as you can see, anything like compulsory arbitration at the end of it or the idea of complete freedom to just go ahead and strike, we tried to strike a balance between them.

Are there parts of the present procedure as outlined for national emergency strikes in the Taft-Hartley law that could be changed to advantage, in your judgment?

Mr. Mosher. I think so.

Mr. McConnell. What parts would they be within that national emergency procedure?

Mr. Mosher. The authority to continue the injunction should be extended. As you indicate, there is no tougher subject than this particular one. By and large, we didn't face it until fairly recent years, and you will remember that we went through the compulsory-arbitration stage.

The public, as I indicated before, was demanding it, and I think the national survey showed that a very large proportion of the public believed in compulsory arbitration. I have to say I don't think they understood the implication of it.

You remember about that time it was proposed that we draft people into the Army. I am happy to say I opposed that measure and it never came into being.

I don't pretend to know the answer to this national picture. I don't want to see compulsory arbitration. I don't want to see people told they have to work. I don't want anybody to tell me I have to work there for that much money and that is all. I want the right to work where I choose.

But this national economy of ours is so complex and certain individuals, at least, or certain groups of individuals, undertake at times to tell this whole country what it has got to do, and they have gotten themselves into positions where they can pretty well control this country, rather, be a controlling factor in the economy—they can't control the whole economy, but they can be a controlling factor.

Some way has to be found to curb that. When you go to such things as fact-finding boards with power of recommendation, you get the same results you get in a little individual case. I don't care whether employer or employee, it makes no difference, the side that thinks it has the advantage in front of that august body up above will not collectively bargain, they will wait and let it go. We have seen it work both ways. I am not putting the blame on the union or on the employers' side of the table, either one. Management will take the same advantage if you leave it to a fact-finding board with power of recommendation.

Under this 80-day clause under the Taft-Hartley Act they will measure the weight and estimate the advantage, and if they think there is an advantage in letting it go through to a settlement on that basis, they will let it go. Otherwise, we have to force them back to the collective-bargaining table.

Mr. McConnell. We speak of equalizing bargaining power and then usually quote the size of big corporations. Isn't it a fact that you find many a small manufacturer or businessman who really does not have equal bargaining power with some of these big union set-ups? I have observed that in my own community.

Mr. Mosher. We have this situation and very definitely so. You have to bear in mind the big bulk of the companies in this country, 3,300,000 business enterprises in this country, something like that. There are only a few of them in this big class which is quoted from time to time. Of course, the bulk of our businesses are small companies.

Eighty-odd percent of the membership of NAM has less than 500 employees. Seventy-odd percent, I think it is, have less than 250.

Now, the trouble with all of the situations is that the big fellow somehow or other gets by. He seems to get by. He may make the public pay a high price for it, and he happens to be in a position to do it. When I say "big fellow," I am talking about big employer and big union.

It is the little fellow who makes up the bulk of our whole business. I represent several very small companies, and I am keenly aware of those situations.

Mr. Kelley. Mr. Smith?

Mr. Smith. Mr. Mosher, a lot of your testimony tonight dwelt upon the idea of the public interest in all those matters.

Mr. Mosher. Yes, sir.

Mr. Smith. Now, isn't it true—and this is a generalization and they are generally faulty—but haven't we got ourselves in this country to the point where we are likely to disregard facts? Facts don't mean much to us in this country about anything.

Mr. Mosher. We go by opinions, which have little to back them up on too many occasions.

Mr. Smith. And we have adopted the smear technique as seeming to be the most successful way to get things over.

Mr. Mosher. All I can say is I have had the displeasure of being in that position not very long ago.

Mr. Smith. When we call the Taft-Hartley Act a slave-labor act, that is the old technique of smear.

Now, isn't it true that we have devoted too much of our time in this country to talking about 15,000,000 workers and disregarding the rights and benefits of 60,000,000 workers?

Mr. Mosher. I believe I was quoted today, something like 63½ million people, some 60½ or 61 million being at work. It is true—it is my opinion—that we spend altogether too much time trying to protect certain interests, special interests, if you will use the slang phrase, and no trying to protect the whole picture.

It is why I put my emphasis on certain broad labor principles, and I do not hold any briefs for any particular law. I stand on those principles as I think they are for the interest of everyone concerned and not for any special interests.

Mr. SMITH. I would like to direct this question to Mr. Smethurst. Have you made any study of the matter of strikes affecting the broad general public interest like the coal strike, railroad, or telephone strike?

Mr. SMETHURST. I wonder if you mean as to the extent of the man-days lost or the economic loss flowing from those.

Mr. SMITH. I have this in mind: Do you think that the present law we are considering here is adequate to protect the public in those kinds of strikes?

Mr. SMETHURST. No, sir; for 80 days, and that is all.

Mr. SMITH. Do you think that this provision, this inherent right of the President to settle these things, do you subscribe to the doctrine that he has that power?

Mr. SMETHURST. I think if he ever had the power, the Congress repealed it by enacting the Norris-LaGuardia Act in 1932. In other words, in that law the Congress put limitations on the power of the courts to issue injunctions, whether they are requested by the Presiden or by any private party.

Mr. SMITH. That law was repealed.

Mr. SMETHURST. The Norris-LaGuardia Act is still the law of the land.

Mr. SMITH. They can use that?

Mr. SMETHURST. That is a limitation on the power of the court so that the President, in my opinion——.

Mr. SMITH. Do you think that President Truman has any more or less power than President Roosevelt had?

Mr. SMETHURST. In this specific connection I would say "No."

Mr. SMITH. In other words, President Roosevelt had the same power that President Truman has?

Mr. SMETHURST. Right.

Mr. SMITH. And you know of nothing that has changed that?

Mr. SMETHURST. No, sir.

Mr. SMITH. And I will ask you whether or not you would take judicial knowledge of the fact that President Roosevelt was very prone and tried to help the cause of labor.

Mr. SMETHURST. I would agree with that.

Mr. SMITH. Now, this is a personal statement. I was in the Army, stationed at Little Rock, Ark., in the fall of 1941, and there was a coal strike on.

There was a division of men down there, 20,000. That division was told to get ready and, as a battalion commander, I was told as to the exact point in West Virginia that I was going to take my troops and that I would have certain jobs to protect certain mines; that division was going to be taken out of the camp at Little Rock, Ark., and sent there to open up those mines.

Now, if President Roosevelt didn't have the power and was going to take that method, I fail to see where the President has got sufficient power to stop a strike or control a strike that affects the general public interest.

That is all, Mr. Chairman.

Mr. KELLEY. Thank you, Mr. Mosher and Mr. Smethurst. Thank you for coming tonight.

Mr. MOSHER. Thank you, sir. And in view of the fact that I only summarized my statement, I ask that the complete statement, exclusive of the opening, introductory remarks, be inserted in the record.

Mr. KELLEY. Without objection, that will be done.

(The remainder of Mr. Mosher's prepared statement is as follows:)

WAGNER ACT UNFAIR, ONE-SIDED, AND INADEQUATE

Good faith bargaining not required of unions.—The Wagner Act provided procedures for the selection and designation of employee representatives and made it an unfair labor practice for an employer to refuse to bargain collectively in good faith with the representative chosen by his employees. As an outstanding example of its one-sidedness no comparable responsibility of good-faith dealing was imposed upon employee representatives.

Thus, for example, the Board held that the employer must bargain even though the thing demanded of him is something which he cannot do. Mere rejection of the demand was not enough. He must explain his reasons for rejection, and usually must offer counterproposals on the points in dispute. He must bargain even during the existence of a strike, whether or not the strike is called to exert bargaining pressure and even though the union previously has broken its contract.

Since there was no comparable requirement of good-faith bargaining, a union was under no obligation to explain its demands, or to modify them. Nor did NLRB impose any administrative requirements of good faith. Some demands were presented on a take-it-or-leave-it basis, and, upon the employer's refusal or inability to accede, he was often charged with a refusal to bargain. There was nothing in the Wagner Act which discouraged a union from being arbitrary in its actions or extravagant in its demands.

A union was under no obligation to make counterproposals and thus retreat from its original demands, but could strike with impunity if they were not met. This was demonstrated in December 1945 and January 1946, when the CIO steelworkers presented wage demands to over 100 steel-fabricating companies. In most instances, no negotiations or conferences were permitted by the union. Similar employer tactics, would have violated the Wagner Act.

On February 18, 1947, during hearings on proposed amendments to the Wagner Act, the National Labor Relations Board somewhat belatedly announced a concept which somewhat changed the position of unions in the bargaining process. In the Times Publishing Company case, the Board stated "The test of good faith in bargaining that the act requires of an employer is not a rigid but a fluctuating one, and is dependent in part upon how a reasonable man might be expected to react to the bargaining attitude displayed by those across the table." To what extent this view would have become a reality without the Taft-Hartley Act is open to question. It is, however, an admission of an existing inequality which could only be remedied permanently by appropriate legislation.

True collective bargaining cannot exist where only one party must act in good faith. The purpose of the act was to equalize bargaining power—to enable the individual employee to meet his employer on a level of equal economic strength. The result, instead, was to permit the pendulum of economic power to swing far on the side of labor organizations.

To me it is only simple justice and almost axiomatic that any national labor policy should include the principle that "Unions as well as employers should be obligated, by law, to bargain collectively in good faith, provided that a majority of the employees in an appropriate unit wish to be represented by a union."

If there is to be a legal obligation on the part of employers to bargain collectively in good faith, this obligation should apply equally to organized labor. Any national labor policy which imposes the obligation to bargain on only one of the parties is violating the basic principle of equity and jeopardizing the whole process of collective bargaining as a basis for adjustment of industrial disputes by peaceful means.

Labor leaders do not quarrel with the principle here involved. Their quarrel is with the method Congress adopted to try and make this equality a reality. They have offered no substitute, however, except a return to the Wagner Act which imposed upon them no obligation whatever.

Labor does not deny that good faith bargaining by both sides is a necessary first step toward harmonious industrial relations. Yet they are unwilling to be bound by the same statutory requirements they would require of employers. Despite a long record of industrial disputes—some national in scope—caused solely by union demands presented on a take-it-or-leave-it basis they would have you eliminate even this modest requirement.

Bargaining agreements unenforceable against unions.—Under the Wagner Act the terms agreed upon during bargaining negotiations must be reduced to a written contract if requested by the union. Since the law required contracts it would be assumed that they would be legally enforceable. Contracts have always been enforceable against employers but our one-sided labor laws failed to recognize that contract responsibility must work both ways if stability of industrial relations was to be achieved.

Neither the Wagner Act nor any other Federal statute made unions legally responsible for their contract obligations.

In the absence of a statute, unincorporated labor organizations were, in this particular, largely governed by State laws. State laws too frequently provided so many obstacles to effective action that unions enjoyed practical immunity from legal responsibility under collective agreements.

In addition to these practical difficulties, however, the NLBR further discouraged contract responsibility by ruling that employers could not insist upon a union posting a performance bond, even though such employer was willing to post a similar bond.

The seriousness of this inequitable siituation was recognized by President Truman in opening the Labor-Management Conference in November 1945.

In the following language he made it clear that collective agreements should be mutually binding on both parties to the contract:

"We shall have to find methods not only of peaceful negotiation of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out."

The inevitable result was to encourage unions to disregard collective agreements whenever expediency would thus be served. Consequently, no stability of relationship was assured and one of the purposes of the Wagner Act was defeated.

Any objective, rational consideration of sound labor legislation must include the principle that "Unions as well as employers should be obligated by law to adhere to the terms of collective-bargaining agreements" and that "collective-bargaining agreements should provide that disputes arising over the meaning and interpretation of a provision should be settled by peaceful procedures."

Once parties have reached agreement, there is no reason why they should not resolve any dispute concerning the meaning of that agreement by submitting it to a competent arbitrator. In this case the arbitrator does not determine for the parties what their employment relations shall be. He simply interprets the agreement which they have both signed. It is becoming more and more common for the parties to include in their collective-bargaining agreement a provision that disputes as to interpretation shall be submitted to impartial arbitration. These and other methods of peaceful solution of interpretation disputes should be encouraged.

I must point out, however, that an arbitration award is of little value unless the union is legally obligated to live up to that award. In fact, it can be confidently predicted that the use of voluntary arbitration rather than strikes will be greatly expanded if unions are made responsible for living up to their agreements.

Charges have been made that liability of unions for violation of collective-bargaining contracts would open the way to court action and lawsuits on the part of employers to crush unions. This accusation is in no way supported by experience under the present law. There is no evidence in the record that this provision has been used by employers as an antiunion device. During the time this principle has been a part of national labor policy, there is record of only 37 suits having been lodged against unions and only 19 cases where suits have been processed against employers. In no instance, so far, has judgment for damages been rendered against either party. In most cases the suits have been dismissed after a settlement by mutual agreement or the conclusion of a strike. The very fact that this remedy is available has been a stimulus to and an encouragement of a deepened sense of responsibility on the part of both unions and employers. It has steadied and supported the efforts of union leaders seeking to achieve higher standards of accountability and responsibility in their own unions. This principle of equal responsibility for observance of collective-bargaining contracts is essential to the success of any national labor policy.

The chief argument against the Taft-Hartley provision making unions responsible for contract commitments was that it was unnecessary since they were already responsible under State laws wherever they operated. Strangely enough, one of the first developments after the Taft-Hartley law became effective was for unions to demand contract clauses designed to nullify this statutory provision. The inconsistency here is obvious. Yet with no justification whatever union spokesmen are demanding that you reestablish their freedom from contract responsibility as it existed under the Wagner Act. I urge the Congress to consider this demand carefully in the light of the record. There can be no doubt as to the answer if equality under law is to be genuinely accepted.

Employers denied freedom of speech.—Outstanding among the inequalities brought about by overzealous administration of the Wagner Act was the denial of free speech to employers in communicating with employees. The Supreme Court in 1941, after 6 years of the Wagner Act, stated the basic principle that the right of free speech extended even to an employer, and that he could express his views on labor problems or policy, provided only that he did not threaten or coerce his employees. Despite this mandate, however, NLRB denied employers such freedom of expression.

It would hardly seem debatable that "Employees and employers, should both be protected in their right to express their respective positions."

This right was not protected under the Wagner Act and Board decisions, in fact, unfairly circumscribed the right so far as employers were concerned.

With the exception of spokesmen for the CIO, I believe even most labor union leaders are willing that employers should have their right of free speech protected to the same extent that right is protected for other citizens.

The administration's proposal now before this committee, however, without justification or rationalization of any sort, seeks a return to that era in industrial relations when unions, their officers, and agents were the only ones permitted full exercise of their first amendment right of free speech.

No protection against unlawful strikes.—The right to strike, under the Wagner Act, included not only the right to quit work as a group, but also the right to return to work if and when desired. Strikers retained their status as employees and were entitled to reinstatement unless as economic strikers their places had been filled.

Specific types of strikes held by NLRB to be within the protection of the act included strikes engaged in before the legal processes of the Board had been invoked; strikes carried on in violation of a State injunction; strikes declared to be illegal under State law; sympathetic strikes; and jurisdictional strikes by a minority union to compel the employer to violate the Wagner Act. Nor did NLRB voluntarily consider a strike in violation of contract a ground for discharge until February 21, 1946, although the Supreme Court on February 27, 1939, 7 years earlier, ruled that "the act does not prohibit an effective discharge for repudiation by the employee of his agreement, any more than it prohibits such discharge for a tort committed against the employer." The Board, thus for 7 years chose to ignore the clear mandate of the Nation's highest court.

In contradistinction to the employees' unhampered right to strike was the complete ban imposed by the Wagner Act on employer lock-outs.

It is apparent, therefore, that the Federal Government's past efforts to equalize bargaining power created such strength on the side of labor unions as to render true collective bargaining impossible. The union was free to order employees to strike if it could not gain its demands through legitimate collective bargaining. On the other hand, the employer was denied any remedy against strikes and must continue to bargain. There was no economic coercion on strikers since in most instances they would be reinstated with back pay.

The Norris-LaGuardia Act and the Wagner Act in combination were in effect charters of freedom for the indulgence of union pressure in the form of strikes. The one-sided, inadequate character of our labor laws is nowhere better illustrated than in their lack of protection against unwarranted strikes.

In the light of experience, I suggest the following principle as being a sound, fair, and reasonable guide to any legislation designed to regulate strikes in the public interest.

"No strike should have the protection of law if it involves issues which do not relate to wages, hours, or working conditions, or demands which the employer is powerless to grant. Such issues and demands are involved in jurisdictional strikes, sympathy strikes, strikes against the Government, strikes to force employers to ignore or violate the law, strikes to force recognition of an uncertified union, strikes to enforce featherbedding or other work restrictive demands, or secondary boycotts."

The right to strike is a perfectly normal and legitimate function of the collective-bargaining process but as a matter of principle it should be exercised subject to the overriding and paramount interests of the public. This means that in the interests of the public, certain well-recognized and defined abuses of this right should be forbidden as a matter of sound national labor policy. The protection of law should not be extended to strikes called to compel an employer to grant demands which in themselves are in violation of law. There is no justification for the use of the strike to enforce jurisdictional demands, to enforce secondary boycotts, to carry on sympathy strikes, to engage in political conflict with the Government.

Nor is there any justification in national labor policy for sanctioning the use of strikes in organizational drives or to force union recognition. Government agencies are provided for peaceful settlement of such disputes. Neither industry nor the public should bear the losses resulting from such industrial disputes.

During the past year, strikes to compel employers to make concessions which constitute unfair labor practices or which subject the employer to criminal liabilities have been on the increase. A sound national labor policy must deal frankly and firmly with abuses of this character.

One of the most conspicuous abuses of power on the part of organized labor is use of the secondary boycott. The utilization of secondary boycotts, together with closed shop and industry-wide agreements in basic industries, permitted the exercise of vast monopolistic power by unions.

The Joint Committee on Labor-Management Relations report briefly describes 29 cases involving various illegal forms of the secondary boycott by unions.

Nineteen, or 65 percent, of these were cases where unions engaged in secondary boycotts to prevent one employer from doing business with others and although this type of boycott represented the majority, the underlying purposes of the unions were directed to a variety of objectives.

These objectives included—

(1) Boycotts to force an employer to recognize an uncertified union.

(2) Boycotts to compel employers to give work to members of a particular union.

(3) Boycotts to compel employers to recognize closed-shop union as bargaining agent for employees prior to their employment.

(4) Boycott to compel employers to employ members of a particular union.

(5) Boycotts in dispute over terms of employment.

(6) Boycotts to compel employers to pay for work not performed.

With one exception, the administration bill would open the door for unions promptly to return to the unrestrained use of secondary boycotts. This exception would prohibit unions from engaging in secondary boycotts only where the purpose would be to compel an employer to deal with a particular union if another is certified or recognized or where the purpose would be to compel an employer to assign work contrary to Board award.

Orderly collective bargaining with properly certified unions was immeasurably advanced by the Labor-Management Relations Act which outlawed this device when used by unions for the purposes set forth above.

The effectiveness of this change in bringing about better collective bargaining is shown by the report of the Joint Committee on Labor-Management Relations of the Congress which states, in part—

"The mere filing of a charge and the beginning of an investigation is serving to stop the secondary boycotts."

Thus, it is evident that the process of collective bargaining which is the cornerstone of our national labor policy has been largely freed from obstructions in the form of secondary boycotts.

No protection against mass picketing, boycotts, force, or violence.—Another shortcoming of the Wagner Act constituting an obstacle to good-faith collective bargaining was the lack of any legal restrictions against picketing. Unions were free under Federal law to picket at any time and under any circumstances, even where no dispute existed between an employer and his employees.

Mass picketing became commonplace. Company officials were barred from their property. Homes were picketed. Local law enforcement had for all practical purposes broken down when confronted with the massed might of organized labor. This condition was aggravated by the existence of State anti-injunction statutes, patterned after the Federal Norris-LaGuardia Act.

Ordinarily, picketing is a vital part of a jurisdictional dispute in which the employer is completely helpless. The picket line normally is also an essential ingredient of the secondary boycott, including the "hot cargo." These weapons in combination are sufficient to force employers either to meet union demands or go out of business. No remedy was available either to the public, the employer, or injured third parties. With such power at its command there was little incentive for unions to negotiate sincerely for the purpose of reaching an agreement. The result, of course, was dictation of terms by one party to the negotiations.

What possible objection can there be to legislation which fairly embodies the principle that "No individual should be deprived of his right to work at an available job, nor should anybody be permitted to harm or injure the employee, or his family, or his property, at home, at work or elsewhere. Mass picketing and any other form of coercion or intimidation should be prohibited."

Adequate protection of the individual worker should be a major obligation of the Congress in the formulation of the Nation's labor policy. The basic freedoms of the individual as a citizen are empty benefits without assurance of the right to work and access to a job. Without adequate protection by public policy, individual rights are at the mercy of the unscrupulous union. The record of industrial disputes during recent years reveals an increased dependence on mass and coercive picketing and the use of violence both with respect to the person and property of employees and of the company.

These basic rights of individuals can be assured only through prohibitions of compulsory union membership and all forms of coercion and intimidation as unfair labor practices backed up by effective penalties.

Labor spokesmen make no defense of unlawful tactics such as violent and mass picketing, threats of force, coercion and other intimadation against employees or a company. Yet under the Wagner Act they were a frequent, almost routine occurrence.

Taft-Hartley Act provisions dealing with such matters are deficient in important particulars. They have, nevertheless, made a contribution toward minimizing such unlawful practices. In the face of the record to date it is unthinkable that the Congress would remove even these modest restraints and return to the intolerable conditions which existed under the Wagner Act.

Management compelled to bargain with its own representatives, such as foremen.—Distortion of the basic objective of the Wagner Act further evidencing its unfair and inadequate character was nowhere more evident than in the Board's interpretation that foremen were employees within the meaning of the act. This, in effect, put the union on both sides of the bargaining table. In no sense can there be equality of bargaining power in such circumstances.

At one time unions generally and NLRB barred foremen from collective-bargaining units, but later the Board changed its mind.

In 1942 it held foremen to be employees under the act. In 1943, the Board reversed itself, denying foremen collective-bargaining rights under the act except in the maritime and printing trades. In 1945, a second reversal sanctioned foremen representation by independent foremen unions. In 1946 NLRB took the final step by holding that foremen may be represented by an affiliate of a rank-and-file union. Thus, in centravention of every principle against conflicting interests, foremen were held able to serve two masters.

Management's first line of contact with its employees is through its foremen and supervisors. To permit foremen to become subject to the pressure which can be exerted by the rank-and-file union is to strip management of its power effectively to select its own representatives.

Experience has demonstrated the soundness of the principle that "Employers should not be required to bargain collectively with foremen or other representatives of management."

In accordance with this principle, no national labor policy should subject an employer to the legal obligation to bargain with representatives of his own management group. A contrary policy is destructive of the fundamental integrity of management and disruptive of the collective-bargaining process itself.

The question of unionization of foremen was one of the most fruitful sources of labor disputes under the Wagner Act. As indicated earlier the Board has gone both ways on the matter at one time holding them not to be protected employees and later that they were within the protection of the act.

The Taft-Hartley Act settled the question by statute and disputes over this issue have all but disappeared. Union spokesmen have made no case nor can they make a case for a return to the uncertainty, confusion, and turmoil of the Wagner Act provisions.

Even Mr. William Green of the AFL testified in 1946 that a line should be drawn between management personnel and rank-and-file union members. His only disagreement was over where that line was drawn. Without arguing the precise location of the line of demarcation, I submit that the principle here is sound and the Congress should be slow to eliminate a provision which has clearly worked in the interest of industrial peace.

Right to work not protected.—One of the fundamental rights recognized under our constitutional system of Government is that an individual has a right to work in his chosen trade or profession. Protection of this right is essential to any adequate labor law. However, the right to work, was limited through union-security provisions encouraged by the Government and protected by the Wagner Act.

That act contained a proviso making closed-shop contracts lawful. Under such contracts, no person may be employed unless he is a union member and unions have the power to exclude from a trade any prospective worker. He has no appeal from such union action. Moreover, after a person is admitted to membership and permitted to start work, his right to continue work depends almost entirely on retaining good standing in the union. Ordinarily, few, if any, checks and balances are provided to protect individuals against an autocratic determination of what constitutes good standing. Thus, the union has absolute and unrestricted control over his right to work.

The basic evil of the closed shop is also present in union shop and maintenance-of-membership types of union security since continued employment is conditiond upon membership in good standing.

Records of your committee hearings contain many illustrations of how employees have been deprived of jobs because of expulsion from a union. In 1942, Mr. Thurman Arnold, then Assistant Attorney General, testified before a subcommittee of the House Judiciary Committee that two men from Chicago had called upon his office for assistance. They had been expelled from a union in Chicago merely because they requested information concerning union management. Each union membership was worth about $5,000 because of the union's old-age-benefit fund. The expelled members fought the expulsion in court but were unsuccessful. Thereafter, they came to Washington and secured other jobs in their trade only to lose them when the Chicago local learned their whereabouts and demanded and secured their discharge.

It must be understood that blacksmithing, such as that illustrated in Mr. Arnold's testimony, deprives individuals of their right to earn a living. The enormity of this power is apparent when it is realized that no court of the United States has authority to enjoin individuals from working at their chosen occupation. Yet in the past we have granted the power to deprive men of their right to work to private organizations some of which do not even accord the accused member an opportunity to defend himself.

The closed shop must be considered in the light of present-day conditions. We now have large international unions possessing such great financial resources and power that they can, and on occasion do, throttle the national economy. While these unions have grown in size and strength, they have compelled employers and the Government to guarantee their continued financial independence and the entrenchment of the union hierarchy through (1) uniform-security clauses, (2) compulsory check-off of union dues and assessments, and (3) taxes on production through royalty payments.

In my judgment, as a matter of principle and sound public policy, "no employee or prospective employee should be required to join or to refrain from joining a union, or to maintain or withdraw his membership in a union, as a condition of employment. Compulsory union membership and interference with voluntary union membership both should be prohibited by law."

As a matter of public policy, individual employees should be free in their decisions as to membership or nonmembership in their unions and with respect to their union activities. There is ample experience to show that this is the only basis on which there can be a democratic and responsible labor movement in this country. In addition, there is overwhelming evidence that the closed shop, together with all other forms of compulsory union membership, is a major device for the coercion and intimidation of individual union members by their own unions.

Union leaders insist that the closed shop is necessary to enable them to maintain discipline among the members and to leave them free to improve worker morale, handle grievances, assist in stepping up production, and all the many other functions normally associated with trade-unionism. Unfortunately the record does not show improved discipline, worker morale, or increased production. Assurance of full compulsory union membership has too frequently led to a break-down of plant discipline and loss to the employer of control of work force and work schedules.

At various times during these hearings the suggestion has been made that possibly the closed shop could be legalized if its more serious abuses could be abolished; that is, provided certain restrictions or regulations could be established, safeguarding the freedoms of the employer to hire and affording the individual worker adequate protection with respect to access to and retention of his job.

I have given this whole matter of whether it is possible to regulate or control the closed shop most careful study. I am convinced that adequate regulations or provisions safeguarding the individual employees and employers against the known abuses of this form of union membership would involve such a degree of regimentation and dictation of the internal affairs of labor organizations as to be wholly impractical and probably entirely unacceptable to organized labor. The whole matter comes down to this—that the closed shop is an assignment of monopoly over work opportunity which is contrary to democratic principles, contrary to the public interest, and, as a matter of public policy, should not be permitted either to the employer or a labor union.

The bill now before this committee would go much farther than the professed desire to reenact the Wagner Act of 1935.

The Wagner Act, in its closed-shop proviso, left to the States their traditional power to legislate with respect to the predominantly local activities of their citizens. The Taft-Hartley Act, in order to avoid any possible doubt expressly stated that this traditional power of the several States was to remain undisturbed by any actual or presumed exercise of the Federal power over commerce.

H. R. 2032, on the other hand, proposes to have Congress say that the citizens of the sovereign States are to be denied their right to decide whether or not they wish to protect themselves against the abuses and discrimination inherent in the closed shop. Instead of leaving the power in the hands of the people of each State, this bill would delegate to each employer the power to decide whether there can or should be a closed-shop agreement.

If this proposal is enacted into law, this Congress will nullify the laws of some 16 (one-third) of the States in the Union. Under the guise of regulating commerce, the sponsors of this measure propose not only to blot out the public policy adopted by the one-third of the citizens who have expressed themselves on this specific issue, but also to disenfranchise the entire populations of each of the 48 States on this question.

The enormity of this proposal is apparent when it is realized that several of the States which have prohibited the closed shop within their boundaries have done so through constitutional amendments ratified by the citizens in a referendum on the precise issue.

Industry-wide bargaining.—The Wagner Act promoted unionism in general and provided a basis for extension of industry-wide bargaining. The Clayton Act and the Norris-LaGuardia Act, at least as interpreted by the Supreme Court, removed labor-union activities from the coverage of the Sherman Act. Thus union activities on an industry-wide basis which formerly would have constituted violations of the Sherman Act are now not only permitted but are protected by law.

It must be recognized that labor unionism is, by its very nature, essentially monopolistic. Like any other monopoly is cannot stand, or stand for, competition.

According to Prof. Charles O. Gregory, formerly Solicitor of the United States Department of Labor:

"Now labor unionism is a frankly monopolistic and anticompetitive institution, even if its major undertakings have been carried on and justified in the name of competition. This has been competition to suppress or combat competition, exactly as it always used to be in big business" (Labor and the Law).

Union activities which restrain trade are congressionally permitted restraints. Congress has granted to private groups the power to impose restraints upon commerce and trade, at the same time denying that power to sovereign States of the Union. No comparable grant of private power exists in our history. Therefore, the question is simply whether Congress shall continue a policy which can and will have a seriously adverse effect upon the public interest. The long-range public interest demands that all trade restraints be outlawed, whether imposed by management or organized labor.

As a matter of principle it seems clear that "monopolistic practices in restraint of trade are inherently contrary to the public interest and should be prohibited to labor unions as well as to employers. It is just as contrary to the public interest for a union or unions representing the workers of two or more employers to take joint wage action or engage in other monopolistic practices as it is for two or more employers to take joint price action or engage in other monopolistic practices."

Collective bargaining functions best when carried on at the plant or company level. The growing trend of industry-wide bargaining on a national scale is primarily responsible for the Nation's most critical national emergencies and the threat of increased Government intervention.

Much has been heard recently about the necessity for legislation to meet national emergencies. We have heard claims of inherent powers residing in the Chief Executive. We have heard arguments for and against injunctions. We have heard proposals for Government seizure of plants and properties. These are but superficial aspects of this whole problem of protection of the public interest in widespread industrial strife. Practically without exception the instances in which the Nation has been confronted with these emergencies have been those involving various degrees of industry-wide bargaining. The basic solution to this problem is not to invest the Government with more autocratic powers over labor and management but to attack the problem at the source by regulating the practice of collective bargaining on a national industry-wide basis.

Such a shortcoming in national labor policy not only jeopardizes the cause of sound collective bargaining but opens the way for Government intervention on an ever-increasing scale in the form of injunction, compulsory arbitration, and even Government seizure of private property.

Much has been said in criticism of the injunction features of the present law as used in emergency cases. It is alleged that the injunction settles nothing and may encourage the suspension of bargaining and allow a new "heating-up" period.

H. R. 2032 seeks to deal with this problem by use of fact-finding panels or boards, a procedure which not only fails to settle anything, but also which, judging from my experience with "ad hoc" boards, is even more destructive of bargaining than provisions of existing law. More important, is this Congress willing to delegate to the unlimited discretion of a temporary board the power to determine the vital economic issues which may be involved in these national emergency cases?

My opinion is that the present law has worked reasonably well. Its weakness may be due largely to the fact that the injunction is for a definite period, thus permitting the parties to gauge the profit and loss involved if agreement is not reached within the 80-day period. Instead of scrapping the injunction, therefore, I would recommend that the courts, upon recommendation of the Government, be authorized to extend the life of the injunction so long as public health and safety may require.

I am not wedded to the injunction, but my suggestion is based on two observations: First, I have seen little, if any, evidence that Congress is willing to deal with the root of the problem, namely, the monopolistic nature of national, industry-wide collective bargaining and, second, no other proposal has been advanced, which based upon experience, can be anywhere near as effective as provisions of existing law.

BIASED, UNFAIR ADMINISTRATION OF WAGNER ACT

Previously, I have specified how the unbalanced, one-sided nature of the Wagner Act fomented discord and strife—not labor peace or genuine collective bargaining. This defect in the law itself was made even more serious by its unjust and biased administration, and this biased administration was due to the absence of safeguards in the law itself, as well as to the crusading, pro-CIO personnel of the Board.

Considering the latter first, a special committee of this House was established in 1939 to make a full and complete investigation of the National Labor Relations Board and its administration of the Wagner Act. After exhaustive hearings in 1939–40 this committee in 1941 submitted a report which documented in detail the conclusions it reached. On the basis of this evidence and testimony, the committee concluded that the NLRB has been "unfair and biased in its conduct, its decisions, and its interpretation of the law." Further, that it had been "grossly partisan in its attitude toward certain labor unions, and most deplorably biased in its relations to employers and employees."

In commenting upon the effect of the act in increasing or decreasing disputes between employers and employees, the committee found that "the solicitation of litigation by the Board, the favoritism displayed by it toward the CIO, and the deliberate use of dilatory methods * * *" had induced and protracted many industrial disputes. It also found the Board remiss in its duty to promote equitable employer-employee relations through, among other things, its "refusal to grant full and fair hearings and the distortion of evidence."

This committee found ample evidence to support the conclusion that the Board had in a number of instances "exceeded its authority by arbitrarily substituting its autocratic judgment for the congressional mandate." Further, that "certain regulations and instructions promulgated by the Board, and many of its decisions, have been without any color of legal authority."

The committee then went on to summarize some of these Board practices, all documented in the hearings and report, which included: (1) blacklisting litigants before it: (2) promoting boycotts against parties whose cases were to be adjudicated; (3) denial to legitimate organizations the opportunity to appear and be defended in litigation which may destroy them; (4) refusing employees the privilege of testifying in their own cases; (5) requiring reinstatement of employees never employed and back pay to persons never on the payroll and even to some who never applied for employment.

In the light of such a record it is small wonder that a great friend of labor, the late Senator David I. Walsh of Massachusetts, with the endorsement and support of the American Federation of Labor was constrained to introduce a bill in 1939 (S. 1000) designed to amend the Wagner Act. In introducing this measure, Senator Walsh explained his purpose in these words:

"* * * These amendments, grouped in an omnibus bill, have one main objective—to guarantee fair and equitable administration of the law by the National Labor Relations Board. They propose:

"(1) To make it obligatory on the Board to respect the right of craft groups to decide for themselves by majority vote who their bargaining representative shall be.

"(2) To curtail the assumed power of the Board to invalidate legal contracts between employers and labor organizations.

"(3) To correct the Board's procedure so that all parties affected by any case will be given due notice, accorded a fair hearing, protected against abuses of discretion and assured of adequate judicial review of wrongful decrees."

Separation of functions.—One of the major factors contributing to loss of respect for the NLRB as an impartial agency of government was the lack of separation of its prosecuting and judicial functions.

The House committee investigating the Board recognized a separation of administrative functions from those of a judicial character as "the very cornerstone of our democracy" and recommended legislation to bring about such a change in the NLRB.

Such a separation of functions had long been advocated for other administrative agencies. For example, President Roosevelt, in transmitting the final report of the Attorney General's committee on administrative procedure in Government agencies to Congress, said:

"* * * The practice of creating independent regulatory commissions, who perform administrative work in addition to judicial work, threatens to develop a 'fourth branch' of the Government for which there is no sanction in the Constitution." (Sen. Doc. No. 8, 77th Cong., 1st sess.)

The plan submitted by the President at that time included the separation of judicial from all other functions performed by any agency, whether an independent board or commission or a bureau within an executive department.

Further commenting on this lack of separation of functions in administrative agencies, the report of the Attorney General's committee noted the conflict of principles involved in their make-up and functions. It was noted that in most instances they were vested with duties of administration and at the same time given important judicial work. The evils resulting from this confusion of principles were said to be insidious and far reaching" for the following reasons:

"* * * Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalization of the preliminary findings which the Commission, in the role of prosecutor, presented to itself."

Certainly if this was true of such agencies as the Federal Power Commission, the Federal Trade Commission, the SEC, and others engaging in what might be considered essentially as licensing functions in the conduct of business operations, it would be even more true in the case of an agency such as the NLRB, regulating as it does the most delicate employer-employee relationships to a large extent fixing a course of conduct for the employer as well as the employees affected by its decisions.

The separation of functions achieved in the Taft-Hartley Act has tended to remove this most obvious feature of the Wagner Act which destroyed confidence in the Board as an impartial agency of the Government. It is likewise in recognition of the long-considered policy, now established by the Administrative Procedure Act, that the investigating, prosecuting, and judicial functions of the administrative agencies should not be under the same direction and control.

A return to the discredited procedures followed under the Wagner Act would serve notice that Congress now approves the discredited practices which were sought to be corrected in the Administrative Procedures Act and the I. M. R. A.

Conciliation Service.—Impartiality is equally important in the work performed by the Federal Mediation Service, which H. R. 2032 would once again place under the control of the Secretary of Labor.

In asking that the Conciliation Service be placed under the Department of Labor, the Secretary of Labor, in his recent testimony before the Senate Education and Labor Committee, relied heavily on the action of the employer delegates to the President's Labor-Management Conference of 1945, agreeing that the Conciliation Service should remain in the Department of Labor. As a cochairman of that conference and as one familiar with the discussions and views of the management group, I would like to make it clear that this agreement was strictly a compromise and in no way represents the opinion of employers, then or now.

Management's proposals as dealing specifically with the independence of the Conciliation Service were recorded as follows in the official minutes of the employer delegates meeting:

"To assure impartiality, the United States Conciliation Service should be an independent agency. As a part of the Department of Labor it does not assure impartiality.

"The purpose of the Labor Department as stated by law is 'to foster, promote, and develop the welfare of the wage earners.' The Service belongs no more in the Department of Labor than in the Department of Commerce."

Due to the adamant attitude of the labor representatives and in the interest of securing some measure of agreement, management was faced with the necessity of giving way on its initial proposal. I cannot emphasize too strongly that agreement on the matter of the Conciliation Service was a compromise made as a matter of expediency and in no way represented the considered judgment of the management group of the President's Labor-Management Conference.

In the light of experience of employers with the United States Conciliation and Mediation Service since its establishment as an independent agency, there is, I believe, general agreement among employers that it is now operated in a truly independent, impartial manner and has made an altogether new and unprecedented contribution toward industrial peace and labor-management relations.

During this same period, it has likewise become clear that the United States Department of Labor has become an exponent and supporter of organized labor. While this may be a valid objection, it certainly does not qualify it as an agency of the Government to be entrusted with the delicate functions of conciliation and mediation. Should the Conciliation Service be returned to the United States Department of Labor, I do not see how industry could have any confidence in its impartial administration, and if this is done, I fear that its usefulness as an agency for industrial peace will be seriously undermined if not eventually ended.

RECORD OF INDUSTRIAL STRIFE UNDER WAGNER ACT

The foregoing will indicate some of the reasons why the record, under the Wagner Act, was an era of almost unparalleled labor strife and unrest throughout the country. The figures reveal the extent of this industrial unrest.

Between 1916 and 1935 the average annual number of strikes in the United States, in the absence of compulsory collective bargaining of employers, was, by Bureau of Labor Statistics figures, 1,867. Between the years 1936 and 1946, inclusive, the annual average amounted to 2,682, an increase of 97 percent. Nor does the fact that World War II intervened to introduce abnormal conditions, disturb the tread of these statistics. Between 1935 and 1941, inclusive, nonwar years, the average annual number of strikes was 3,015. The annual average during the war years, 1941–45, inclusive, when labor's "no strike" pledge was in effect was 4,106 higher even than during the nonwar years immediately preceding.

The one-sided nature of the Wagner Act was, in my judgment, largely responsible for creating this situation. That law, more than any other factor, promoted the growth of powerful unions free from any comparable responsibility. That law, too, was chiefly responsible for stripping employers of effective methods for restraining excesses of organized labor.

Your committee is already familiar with the steady progress toward industrial peace since passage of the Taft-Hartley law. The number of strikes and work stoppages have decreased materially from the high point reached in 1946. Bureau of Labor Statistics figures show that since enactment of the Taft-Hartley Act jurisdictional strikes and rival union strikes have all but disappeared. Much the same is true of strikes involving closed or union shop issues which have heretofore always been a fruitful source of labor disputes.

Summary and conclusion.—Since the present national labor policy was established, there is ample evidence of its effectiveness in improving relations between employees and employers in individual companies. The most important benefits may be summarized briefly as follows:

(1) Recognition by both labor and management of the responsibility they share under law has increased the mutual respect, mutual confidence and the will of both parties to reach agreements across the bargaining table.

(2) The number and frequency of quickie or outlaw strikes have been materially reduced as outgrowths of legal responsibility for observance of contracts.

(3) Employers, employees and the community have been afforded badly needed protection against violence and coercion involved in mass picketing.

(4) Countless employers, employees and communities have been spared the bitterness and losses of jurisdictional strikes. Testimony has been offered this committee that in the case of the construction industry and the printing trades jurisdictional strikes have practically ceased since the present national labor policy became effective.

(5) Individual companies and their employees, not directly involved in a dispute, have been protected against interruptions of work and loss of income by reason of the ban imposed on secondary boycotts.

(6) Elimination of Communist leadership in many labor unions, made possible by the present law, has greatly improved union-management relations and restored the confidence of employers in union motives and objectives.

(7) Safeguards thrown around the rights and privileges of the individual employee have given the worker an opportunity to express his will in the choice of his bargaining agents without fear of coercion or intimidation by unions or employers.

(8) Presidential intervention in national emergency disputes has saved large segments of the American public from the losses in production and earnings resulting from inability to secure essential raw materials, supplies or services.

(9) Removal of the employers' legal obligation to recognize and bargain with supervisory groups has had a salutary effect upon the unity and effectiveness of the management group and has improved the supervisors' effectiveness in handling relations with employees.

These are specific benefits in terms of improved relations between labor and management in the plants and individual companies of American industry. For the most part, they never could have been realized under the old Wagner Act. Proposals for revision of present national labor policy now under consideration by this committee would seriously endanger, if not largely nullify, these gains.

Let me repeat my plea to consider improving our present national labor policy rather than go backward to a policy of proven failure. Nothing is more vital than labor peace to our national economy right now when we strive for more and more industrial production to meet the domestic and foreign demands on our Nation. The best hope for industrial peace is through preservation of a sound national labor policy.

Mr. Kelley. The next witness will be Mr. Charles E. Wilson, president of the General Electric Co.

TESTIMONY OF CHARLES E. WILSON, PRESIDENT, ACCOMPANIED BY L. R. BOULWARE, VICE PRESIDENT, EMPLOYEE RELATIONS; VIRGIL B. DAY, ASSISTANT MANAGER, EMPLOYEE RELATIONS; AND RAY H. LUEBBE, VICE PRESIDENT AND GENERAL COUNSEL, GENERAL ELECTRIC CO.

Mr. Kelley. Mr. Wilson, I notice you have a rather large statement. Do you intend to read it or summarize it?

Mr. Wilson. I would like to read what is not a very long statement, and then if you want to give Mr. Boulware an opportunity to simply summarize his statement or to ask him questions about it, that would be satisfactory. We have tried to divide it up between us.

Mr. Kelley. Very well.

Mr. Wilson. I began my testimony before the Senate Subcommittee on Labor and Public Welfare a few weeks ago with this statement:

> My assumption is that what we all seek here is labor law that serves the public interest—that is fair to employees, to unions, to employers—while adequately protecting innocent bystanders and the whole public.
>
> Three years ago, when I testified on this same subject before this committee in the Seventy-ninth Congress, I stated my belief that in this country we have passed the era of considering the interest of either management or unions as being preeminent. I urged then that the interest of the whole public should be accepted as paramount. I urge it again today.

I again urge here that the interest of the whole public be accepted by us all as paramount in the matter before us. I recognize that an employer, and especially a large one, can rarely expect to be credited with true objectivity in such an emotional field as employee and union relations—and I suppose it is only fair to say that no interested party is ever completely objective, no matter how hard he tries.

But I do want to assure you that, so far as it is possible, we have tried to be completely objective in our approach to our employee and union relations problems back home and to the problem you gentlemen have as to what are the various ingredients or provisions that should be included in a labor law you will pass with the intention of its serving equitably the best interest of employees and employers, and at the same time protect the paramount public interest.

To as great a degree as is possible then, I am here sincerely trying to offer such of our experiences and observations as may afford you some help toward the formulation of a labor law that will be fair to all. My company and I have no other interest than a law that is good for the whole public, while being fair to both employees and employers. And let me say that I do not think such a position needs to be dictated by good citizenship alone. I think enlightened selfishness on the part of an employer requires that he seek no unintelligent, selfish, temporary advantage, but that he seek that minimum regulation of both parties that will insure fairness and make certain the public interest is being served.

I think it is highly commendable that Congress is now reexamining present-day conditions and experiences under the present law less than 2 years after its enactment. If experience to date should show that amendments to the present law are desirable, I hope that constructive amendments will be enacted promptly now rather than waiting for some 12 years to improve our basic Federal labor laws, as was done in the case of the Wagner Act.

I further feel that it will be very profitable if Congress will hold periodically such hearings as these to supplement their own individual experience and knowledge of existing conditions with testimony as to the experiences of others with current labor laws and as to any changes in the conditions to which those laws apply.

Experience is our best teacher. Just as hindsight is necessarily more infallible than the foresight of even the most unprejudiced and wisest men in all matters, actual experience in the matter of employee-employer relations, and of the rules of conduct with respect thereto embodied in our labor laws, should not be disregarded lightly for prophecy.

In 1935 Congress found certain conditions which experience had demonstrated needed to be corrected. The result was the passage of the Wagner Act, designed to protect the public interest in the light of the then existing conditions. Certainly it cannot be said that the conditions existing in 1947, at the time the present law was enacted, could be reasonably regarded as the same as those prevailing at the time the Wagner Act was passed.

We have been dealing with unions of various kinds and strength for over 40 years in General Electric, and we now have forty-odd contracts with unions affiliated with the principal national and international organizations. One of our present contracts is with a union that has uninterruptedly represented employees in that plant since as early as 1903.

Our experience with unions has thus been long, and it has been generally favorable. Our relations, despite some admittedly trying circumstances, have in the main been characterized by mutual tolerance, understanding, and peace. We are proud of our record of no major strike in more than 25 years prior to 1946, when for some 9 weeks we were caught in the middle between two tremendously powerful and for the duration of that period, unyielding forces. On the one hand were the big unions demanding wage increases that would have been ruinous without price increases; on the other was the Government supporting the unions' demands but hesitating to modify its regulations against price increases.

When some of the newer national unions were being formed in the mid-1930's, we were among the first, if not the first, of the larger companies to be genuinely receptive without resistance. It has been our general policy to consent to representation elections rather than to insist that the unions try to obtain a determination by the National Labor Relations Board that there should be such an election. This has been our policy because of our desire that the majority of our employees be free to select at any time any desired representative that the Board would certify to us.

We believe that fair, able, and independent representation of employees by unions is thoroughly in keeping with the principles and actualities of such a highly industrial republic as ours. We think unions should be strong and sound, and we thoroughly recognize that it is within their very proper province to agree or disagree with us in whole or in part on problem after problem from time to time. At the same time we do not feel the law should aid unions in reaching such positions of improper power as to jeopardize the interests of the public as a whole.

Although I necessarily do not have the opportunity to get into the intimate details of even our own employee relations matters, I know that our experience, and I am of the impression that the experience of the country generally, indicates that the present law is a substantial improvement over the Wagner Act. I think there may well be room already for some improvement in the present law. I hope that we can continue always to improve all of our laws. But I do not think that in the process we should recklessly give up what seem to me unmistakable advances under the present law.

Increased production, and accompanying increase in real purchasing power, are the most important factors contributing to an improved standard of living. During periods of scarcity in housing and so many consumer goods, additional production becomes increasingly important both to supply the actual needs and to offset other forces making for inflation.

Experience has indicated that the present law has not reduced overall production through increased strikes as labor leaders and other opponents of the law predicted. I am told United States Department of Labor figures show that during the first year under the present law, the number of strikes decreased 38 percent, the number of employees involved in strikes decreased 46 percent, and the number of man-days of idleness due to strikes decreased 35 percent, as compared with the preceding 12 months. These same figures indicate that if the first 12 months under the act are compared with the year 1946, strikes are down 43 percent, employees involved are down 62 percent, and man-days of idleness due to strikes are down 72 percent—representing an increase of 84 million man-days of production.

This decline in strikes under the present law and this greatly decreased number of workers involved in strike—from 450,000 in June 1947, the last month prior to the present law, to 79,000 in September 1947, the first month after the present law became fully effective—appear to be more than purely coincidental. Eighty-four million man days of added production are not insubstantial during such periods of scarcity and inflation as we were experiencing in 1947. Our own loss of production, due to the one strike I have indicated we had in 1946, amounted to 7,000,000 man-days as compared with a loss of not more than 5,000 man-days during the first 12 months under the present law.

The intent of the present law was to reduce industrial strife by equalizing the responsibilities of labor organizations and employers, and especially to reduce the costly strikes that had been, and were then, so prevalent. The opponents of the present law predicted more strikes as a result of this law. But, when strikes declined sharply in accordance with the intent of the law, these opponents quickly shifted ground to claim that the law had nothing to do with the reduction in strikes. Yet unions continued their growth, employees continued to get increases, although these were now much more often achieved peaceably than by striking. If there had been an increase in strikes to accommodate the predictions of the opponents of the present law, I believe we can be relatively sure that these opponents would have loudly blamed the increase in strikes on the law rather than on any reverse of any other conditions now claimed as the cause of fewer strikes.

But perhaps far more significant than the reduction in the regular run of economic strikes has been the substantial, if not complete, elimination of the national emergency strike under the power or influence of the present law. Perhaps just as important as such additional protection from national paralysis has been the substantial elimination of jurisdictional strikes, which have no defenders, and the substantial reduction in secondary boycotts and featherbedding, thus greatly reducing the human and economic waste that had been so prevalent from these sources before the passage of the present law.

Yet certainly American workers have not lost the freedom to strike. I am informed that more than 1,500,000 workers participated in 2,800 strikes during the first year under the present law, even though this is a substantial reduction from the 4,600,000 workers who participated in 5,000 strikes during 1946.

Of course, it would not be in the public interest to obtain these reductions in strikes and even the great advantages of additional production and increased purchasing power if it resulted in the loss of freedom of the workers.

Freedom to work or not to work, freedom of speech, freedom from human and economic waste, and freedom from national paralysis, must certainly be jealously safeguarded. It seems to me that employees, as well as all other segments of our society, have enjoyed such freedoms to a constantly improving extent under the present law—in sharp contract to what they did under the Wagner Act or to what they would under the proposals to return to that act with only such amendments as I understand are proposed in the bill under consideration by your committee. Provisions of the present law protecting a man against the loss of his job due to some offense to those in power in his union certainly is a step in the direction of increasing the freedom to work.

The provisions of the present law protecting the employees against reprisals for daring to oppose those in power in his union, as well as the freedom given equally to employers and unions to express themselves, providing they are not accompanied by threats, force, or bribes, has certainly contributed to freedom of speech.

Employees have certainly not suffered the wage cuts or loss of jobs which some opponents of the present law predicted. On the contrary, employees, including union members, have enjoyed the most favorable wage settlements and highest periods of employment in our history. Average weekly earnings in American industry rose from $49.44 in August 1947, to $54.52 in September 1948, an all-time high. This was an increase of 9.5 percent, as compared with a cost-of-living increase of 8.9 percent. Contrary to the normal tendencies in inflationary periods, the increase in wages actually exceeded the rise in prices. Employment reached an all-time peak of 61,000,000, with more than 16,000,000 employed in manufacturing alone, as compared with 10,000,000 in 1939. In our own case, employment has increased by over 20,000 people during the 1947–48 period.

Union membership certainly has not suffered under the present law or its ban on the closed shop, as so many predicted. The contention of some union leaders that the ban on the closed shop would destroy unions is not supported either by experience under the present law or the Railway Labor Act under which I am told not only the closed shop, but any form of compulsory union membership, has been banned for many years, and under which the Brotherhood of Railroad Trainmen has become one of the biggest, richest, and strongest unions. That unions should have continued to so increase their membership substantially is particularly significant in view of the degree to which the larger industrial units had been organized previously and the degree to which new membership has had to come in such smaller individual increments. Union membership among our own employees, as evidenced by the number for whom we check off dues, has continued to increase.

Unions have also continued to win new bargaining units through NLRB elections and otherwise. Here again the continuance of the steady growth of bargaining units is in the face of a declining opportunity in the typical area of organization, the industrial unit, because such a high percentage of the industrial units have already been organized. While it may or may not be especially significant, since the passage of the present law there have been in our own case three bargaining elections for new units that were successful for the unions, and there have been two where the unions were unsuccessful; whereas in the 6 months preceding the passage of the Taft-Hartley Act the unions had lost six straight elections.

Our own experience has certainly indicated a substantially increased sense of responsibility by many of the unions with which we deal, which I understand has been the experience generally. Although we have not sued any of the unions with which we deal, and have been sued only once since the enactment of the present law by one of our unions, and that as a result of action which we undertook in compliance with an order of the Atomic Energy Commission, the increased responsibility of unions has been notable, both at the bargaining table and in their subsequent conduct, due, we believe, to the fact that under the present law, for the first time, both sides are required to bargain in good faith, can file unfair labor practice charges, can sue or be sued in Federal courts, and are responsible for the acts of their agents. There has been a substantial reduction in the number of wildcat strikes, both in our own experience and, we understand, generally.

The prediction of the opponents of the law that the injunction provision would be abused has not been borne out, I believe, by experience. I am told the statistics of the Board show that out of nearly 4,000 strikes occurring since the present law became effective, only 43 injunctions have been sought and the courts have granted only 24. In national emergency strikes, however, the Government itself has six times requested injunctions against a labor organization and in each case the restraining order has been granted. I believe the facts show that in only six-tenths of 1 percent of the strikes occurring under the present law have injunctions been granted.

I think the charge was frequently made that unions would be harassed under the present law as to seriously reduce their effectiveness in representing employees. Let's again look at the experience with respect to this prediction. I am told the record of the NLRB shows that in the first 15 months under the present law 5,324 unfair labor practice cases were brought to the Board. Of these 4,136, or nearly 80 percent were instituted by unions against employers. Unions and individual workers filed 528 of the remaining cases against other unions. Employers brought only 668 cases or about 13 percent of the total number against unions.

One would have to be naive indeed to believe the affidavit requirement would solve the Communist problem some unions apparently have. Yet we think we see, at various places, some examples of members in unions having been aided—by the non-Communist affidavit requirement—in making progress toward purging their unions of what they feel may be Communist leadership. Certainly, the very wonder by union members at some officials' refusal to sign has led to a great deal of new local consideration of the national problem. In a great many cases they have elected new officers where the determining factor seemed to be the belief of the membership that it would be getting new leadership with less Communist taint or certainly with less public suspicion of that taint.

As I testified before the Senate committee a few weeks ago, I feel that any adequate and fair labor law, by whatever name, should, in my opinion, provide at least the following:

(1) Protection of the public.

(2) Protection of the rights of individual employees from abuses either by employers or unions.

(3) Protection of legitimate rights of both unions and employers.

(4) Requirement of equal responsibility on the part of both employers and unions.

(5) Protection of free speech for both employers and unions.

(6) Protection of freedom to earn a livelihood.

We have some eliminations to suggest from the present law, we have some additions and some strengthening to suggest, and we want especially to suggest the continuance of some particular provisions of the present law where the experience under those provisions has seemed to us to be an improvement.

I would now like Mr. L. R. Boulware, who is our vice president directly responsible for employee and union matters, to make these specific recommendations to you based on our experience. In view of the late hour, he will move to that.

Mr. Bailey (presiding). You may proceed.

Mr. Boulware. I presume you want this as brief as possible. The eliminations about which Mr. Wilson spoke are two principal ones in number.

We think the vote in the union-shop election might very easily be eliminated. We think the vote on the last offer in national emergencies might very easily be eliminated from the present law.

Added to the present law we think should be an affidavit by employers as well as employees and that the affidavit, the non-Communist affidavit, should be extended to bargaining agents both of the employer and of the employee so that salaried people other than officers in the unions and among the employers are covered.

We think there should be some strengthening of the mass picketing and violence provisions of the present act. We think there should be some strengthening of the "featherbedding" to cover made work as well as work not done, although we recognize the problem of identifying that.

I do not mention it in the summary that was prepared here, but Mr. Jacobs in a letter to us gave a very interesting bill of rights, which I think could properly be explored for consideration now or later.

That is, secret elections, remedy for fraud and duress in these elections, right to inspect or audit books, keeping national officers from enslaving the local or imposing on the locals, remedies for capricious imposition of heavy penalties.

The things that we think ought to be continued that are in the present law, which developed out of the Taft-Hartley and the Wagner combination is: First, we think the ban on the closed shop should be continued; second, we think the present regulation about jurisdictional strikes should be continued, and the same applies to secondary boycotts; third, we think the "featherbedding" should be broadened, if it is possible to do it clearly; next, we think the provision about national emergency strikes as it is in the present law is good. We would not extend that. We think we need one more round of experience with that before taking anything more drastic even in the face of the threat.

I mentioned that we think mass picketing, the present provision should be kept and strengthened, and the anti-Communist affidavit should be kept and broadened to cover the employer in order to get away from the one-sided nature of that.

We think that the present provision in regard to free speech should be kept if there is any difficulty about the wording or some problem about the evidence, but I am not a lawyer and not competent in that field, but we think the idea behind the present free-speech provision is good.

We like mutual responsibility provisions in the present act and the provisions against political contributions that are not authorized separately, and the separation of the advocate and judge in the conciliation and in the counsel and the exception of supervision from unions. Those are the principal things that we mentioned. There are others that we could cover.

Mr. Bailey. Does that end your formal presentation?

Mr. Boulware. That is all in the formal presentation, sir, except the only thing that I added was Mr. Jacobs' bill of rights, which we think you may not get to this time, but which we think are very worthy of consideration.

Mr. Bailey. Mr. Wilson, at this time I would like to inquire what has been the experience of your company under the Wagner Act? Did you ever have any strikes for recognition under the Wagner Act?

Mr. Wilson. Strikes for recognition? No; I think we had none. We always consented to the election.

Mr. Bailey. The bargaining agent there for the General Electric is UE-CIO, I believe.

Mr. Wilson. We have some 40 unions in our plants.

Mr. Bailey. I believe you have about 75 plants affected; have you not?

Mr. Wilson. We have at least that that have these 40 unions in them. Forty contracts, to make it clear.

Mr. Bailey. Did the General Electric Co. ever suffer any strikes to require them to bargain with a particular union in the face of an NLRB certification of another union?

Mr. Wilson. No; I think not.

Mr. Boulware. No.

Mr. Bailey. The company says that the Taft-Hartley law has produced an increase in responsibility on the part of unions to bargain in good faith. GE does not tell us here as members of the committee that since the Taft-Hartley Act has been in effect that it has refused to accept arbitration as a method of settling grievances, as provided in the contract with the union, and has resorted to legal moves to block these arbitration awards. Is that true?

Mr. Wilson. I will let Mr. Boulware answer that. No; it is not true.

Mr. Boulware. We are in arbitration in several cases now, sir.

Mr. Bailey. Let me have placed in the record this quotation from your existing contract with UE-CIO, and I quote:

> In the event no agreement is reached on any matter involving the application or interpretation of any provision of this contract, such matter shall be submitted to arbitration on request of either the union or the company. The arbitration decision shall be final and binding on both parties.

Mr. Boulware. That is interpretation of the contract provision, sir.

Mr. Bailey. Now, under this contract the UE has in the past year taken two cases to arbitration. The arbitrator ruled against General Electric in both cases, and in both instances the company had gone to court and engaged in extensive litigation to have those arbitration awards set aside. That is true. I can give you the citation of your court action.

Mr. Boulware. My assistant says—I am not familiar with the language, the wording, but that is not an accurate interpretation of the findings.

Mr. Bailey. But you did go to court to have the award set aside?

Mr. Boulware. Yes.

Mr. Bailey. I want to ask you why you don't bargain in good faith. That is a part of your contract.

Mr. Boulware. We agree, to the best of our belief, sir, we agree to bargain in good faith, but we had not agreed to arbitrate those questions that were brought into those two cases.

Mr. Bailey. Is there any doubt about what I read there out of that contract that says it shall be left to arbitration and the decision of the arbitrator shall be final and binding, which means without appeal, and yet you appealed.

Mr. Boulware. That was as to the interpretation of the contract, sir, and other elements were brought in.

Mr. Bailey. Is it not true that you took advantage of the provision of the Taft-Hartley Act where the union has no right of appeal and the company has? They have no right of redress and you took advantage of that and instituted these suits because the Taft-Hartley law permits you to do so and gives them no redress of grievance whatever.

Mr. Boulware. I don't think we took any advantage of anything, sir.

Mr. Bailey. What is the meaning of those suits, then?

Mr. Wilson. This is a legal question and I do not think either of us can answer it. We will let the lawyer answer it.

Mr. Day. My name is Day, Mr. Chairman.

In these instances of which you speak there is a controversy between the union and the company as to whether or not this specific issue was arbitrable.

Two cases went to arbitration. One arbiter ruled in favor of the company's contention that the specific subject matter was not arbitrable under our contract. If you are familiar with those clauses, sir, I think you will recognize that that particular clause very clearly is restricted to questions concerning the application and interpretation of the contract.

Now, these were issues which were not covered in the contract, according to the company. The union took a diverse view.

The arbiter in the other case ruled in favor of the union's contention. The union went into court in one case. The union went into court to have the award of its favorable decision confirmed.

The company went into court, conversely, to have its favorable decision confirmed. At the present time both of those cases are still pending.

Mr. BAILEY. I still cannot understand why, in the face of that provision in the contract, there is any necessity for court action, on either the part of the company or the union.

Mr. DAY. I think you are fairly familiar with the fundamental principle of law that no individual can be forced to arbitrate without clearly consenting to do so.

Mr. BAILEY. You mean, you did not consent under that provision?

Mr. DAY. Precisely.

Mr. BAILEY. Why?

Mr. DAY. We think certain subjects matters are properly the subject for arbitration, but after a union and a company had agreed on a contract, we think that it is very proper, in the interest of industrial peace, to arbitrate on the interpretation of the contract, but we think it is highly improper and undercuts collective bargaining to hand it over to a third person, the making of a contract between the company and the union.

Mr. BAILEY. Let me ask you this question: If the Taft-Hartley law remains on the statute books, and the time comes around when you draft a new contract with GE-CIO, will you write that same provision in the contract that is in there now, as to arbitration?

Mr. DAY. We have had no difference—I think I am stating this correctly, sir—we have had no difference of opinion between the company and the union in this instance, or in the case of our many other unions, as to the propriety of arbitration of matters involving the application or interpretation of any contract.

Mr. BAILEY. I would like to ask this question directly of Mr. Wilson:

Yours is a right sizable concern? I am reading now from an article from the New York Times, under date of March 11, in which it states that the profits of your company for 1948 were $216,535,316 before taxes. There were $123,000,000 after taxes.

That is a 30-percent increase over your 1947 figures.

Is that true?

Mr. WILSON. That is right.

Mr. BAILEY. And the profit for each individual employed by the company was $1,102 before taxes, and $620 after taxes, and your wage increases granted in 1948 were $239 per employee, is that true?

Mr. WILSON. I do not know whether that is true.

Mr. BAILEY. I am asking you these questions, Mr. Wilson.

Mr. WILSON. Give me time, and I will figure it out for you. You come too fast with those questions, and I cannot answer them that fast. I will tell you the first figure was right, $123,000,000.

Mr. BAILEY. $123,000,000.

Mr. Wilson. $123,000,000, that is right; and I will tell you how much we had in the pay roll, but if you ask me how much per employee, I do not know. I cannot figure that out per employee. I am no mental arithmetician.

Mr. Bailey. I take it the figures were released to the newspaper?

Mr. Wilson. Those figures were released from the union, or by the union. They were not in the paper.

Mr. Bailey. The reason for asking you this question is this: This committee heard testimony from a gentleman the other day, and he was discussing the emergency provision set up in section 302 of the proposed act of H. R. 2032.

He brought pretty forcibly to the committee's attention the fact that not all the parties interested would be brought into this conference, this Presidential conference, as the final resort, after your injunction had expired, and your 30 days coverage period had expired—this national Presidential emergency board—and he insisted it was not strong enough in that it did not make provision for bringing into this conference, this conference of last resort, all of the interested parties.

For instance, in the case of General Electric, you have members on the General Electric board of directors who are directors, and, in some cases, officers in 107 other corporations. They are directors or officers in 10 banks, 12 trust companies, 3 investment banking houses, 17 insurance companies, 7 railroads, 1 steamship line, 4 public utilities, 3 mail-order houses, and 49 industrial companies.

What is the use of having a conference if you can only bring in one party? How can you settle any dispute affecting the national welfare unless the provisions of the act are strong enough to bring in all the parties concerned? He suggested that the proposed legislation should be strengthened by the addition of another subsection that would provide and make it possible to bring into that conference every party of interest in connection with any industrial concern that they might care to bring in. What do you think about the suggestion?

Mr. Wilson. I do not understand what the proposal is. I do not know what this conference is, to be frank with you.

Mr. Bailey. It is the conference provided under section 302 of the proposed H. R. 2032. It is the conference of last resort after your injunction procedure is entered.

Mr. Wilson. And you propose——

Mr. Bailey. He proposes.

Mr. Wilson. Who is "he"?

Mr. Bailey. Mr. Beirne, I believe, who is connected with the telephone group.

Mr. Wilson. The employer, or the union, or what?

Mr. Bailey. The representative of the employees.

I am asking you if you think that this section 302—and I assume you have read it—whether it should be so strengthened.

Mr. Wilson. I have not any opinion on it.

Mr. Bailey. That is all.

Mr. Kelley. You know the American Federation of Radio Artists is affiliated with the American Federation of Labor. I have a correspondence from A. Frank Reel, National Assistant Executive Secretary of the American Federation of Radio Artists, in which he says in the letter that his organization had had amicable relations with the

General Electric Co. until the advent of the Taft-Hartley Act, and then he goes on to say what his relationship has been, and explains his relationship.

He says:

> The vicious and uncalled for action of the General Electric Co. in the WGY case has had no result other than to make possible the calling of a strike which, although originally involving only 10 announcers in this unit, might well result in a disastrous tie-up of the entire General Electric plant or plants. We recognize that such a strike would do no one any good, except that it would dramatically show the American people just exactly how the Taft-Hartley law has wrecked decent labor relations.

Do you know anything about that?

Mr. WILSON. No; I do not. The chances are that Mr. Boulware could answer that.

Mr. BOULWARE. That is where we had negotiations, and they formerly had a closed shop, which was illegal under the Taft-Hartley Act; and we have settled with them as to hours and working conditions, and everything else, to their satisfaction. These are the announcers, I believe?

Mr. KELLEY. That is right.

Mr. BOULWARE. And the union man from New York wanted a union shop, and we have no union shop in the Schenectady works.

Mr. KELLEY. Apparently the relationship is not good today, because he complains about it here, and he says it resulted in a strike.

Mr. BOULWARE. What is the date of the letter?

Mr. KELLEY. March 14.

Mr. BOULWARE. That was unquestionably from a gentleman in New York. The people in Schenectady are working very happily now, so far as we can tell. He was trying to get them to go out on strike, to have a union shop, as we get it; but they are working along all right, now.

Mr. KELLEY. He refers here to your appearance before the Senate Committee in which you told them the relationship is very good, and he says it is not.

Mr. BOULWARE. We said generally it is very good. We would never go any further than that.

Mr. WILSON. We have 200,000 employees, sir, and there are only 10 in the Schenectady works.

Mr. KELLEY. That is the WGY station?

Mr. WILSON. That is right. The station is located at Schenectady. It is a separate union from our shop union.

Mr. KELLEY. It is an American Federation of Labor affiliate?

Mr. WILSON. Yes.

Mr. KELLEY. Without objection, I will put this letter in the record.

(The letter referred to is as follows:)

AMERICAN FEDERATION OF RADIO ARTISTS,
New York 19, N. Y., March 14, 1949.

Hon. JOHN LESINSKI,
Chairman House Labor Committee,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN LESINSKI: I have been informed that you intend to call Mr. Charles E. Wilson, president of the General Electric Co., as a witness in the hearings on the Taft-Hartley law. I also notice that my good friend, Gerard D. Reilly, appeared before the subcommittee headed by Congressman Augustine B. Kelley on March 12, stating that among others, he represented the General Electric Co.

I do not know whether Mr. Wilson will appear, nor do I know what Mr. Reilly said on his behalf, but in this connection I believe you should have the following information which I sent in the form of a letter to Senator Thomas, chairman of the Senate Labor and Public Welfare Committee, after Mr. Wilson testified before that body.

My letter was dated February 18, 1949. It read as follows:

"Today's New York Times reports that Mr. Charles E. Wilson, president of the General Electric Co., and his labor relations aide, Vice President L. R. Boulware, appeared before the Senate Labor and Public Welfare Committee yesterday in support of retention of the Taft-Hartley law. These gentlemen are reported as having made the claim that the Taft-Hartley law has brought about a balance between labor and management, and Mr. Wilson is quoted as saying:

" 'There is a spirit of unity or we are now on the road to get it, as a result of the improved relationship in the last year.'

"If the Senate Labor and Public Welfare Committee wishes to find an example of how false that statement on the part of the General Electric executives is, they need look no further than Mr. Wilson's own shop, and Mr. Boulware's own department in Schenectady.

"The American Federation of Radio Artists prides itself on being a good, clean, democratically run union that represents the performers in the radio field. For many years we have represented all of the staff announcers at General Electric's own radio station in Schenectady, WGY. For many years we have enjoyed very pleasant and peaceful relations with the General Electric Co.

"Starting in 1940, a series of collective-bargaining agreements between AFRA and General Electric covering the WGY announcers have been executed and regularly renewed. Those contracts had a union shop provision which allowed the employer to hire anybody it chose, and which simply required that membership in the union after 30 days of employment was a condition precedent to continued employment. Those contracts also provided that even if an announcer was suspended or expelled by AFRA, the company could retain him for as long as necessary for the company to fulfill all obligations or commitments made by the company prior to notice from the union that the member was suspended or expelled. These contracts further provided that AFRA agreed that it would not impose unreasonable entrance fees, dues, or assessments.

"All this was encompassed in the so-called union shop clause that is part of all AFRA agreements, and that practically all employers in this industry agree is fair. General Electric apparently thought it was fair—until the Taft-Hartley law was passed.

"Negotiations were undertaken for a new contract in the fall of 1948. As usual, the AFRA representatives negotiated with the managers of Station WGY. As they had many times in the past, they came to an agreement on the essential terms of the contract which of course, included the union shop as above described, which had in fact existed at WGY for many years. The agreement reached was subject to check by the legal department of General Electric.

"Much to our astonishment, this year the new agreement was not approved by the industrial relations department of General Electric. I personally made three trips to Schenectady. I had one conference with a Mr. Burnison, and two conferences with a Mr. Pfeif, both of whom are in Mr. Boulwar's division. On all three occasions these men stated in front of witnesses that there had never been any trouble with AFRA over the union shop, that there had never been a case of any man refusing to join the union or indicating that he was averse to joining the union. They also admitted that relations with AFRA had always been very friendly.

"At the last conference, in response to my question as to why the General Electric Co. was now insisting upon upsetting this hitherto splendid relationship, Mr. Pfeif stated that the change in attitude resulted from the existence of the Taft-Hartley law.

"AFRA has always complied fully with the Taft-Hartley law. Under the law we had a union authorization election at WGY on January 14. AFRA won that election by a vote of 9 to 1, with all members of the unit voting; not a bare majority of those eligible to vote, as required by the Taft-Hartley law, but 90 percent of those eligible to vote voted for the union shop clause, as permitted by the Taft-Hartley law. Mr. Pfeif insisted that these elections meant nothing to the General Electric Co.

"For these fine gentlemen to tell you that the Taft-Hartley law has improved labor relations is the sheerest hypocrisy, in view of the fact that they have used this law as an excuse to destroy what have been decent labor relations with this union for many years.

"The vicious and uncalled for action of the General Electric Co. in the WGY case has had no result other than to make possible the calling of a strike which, although originally involving only 10 announcers in this unit, might well result in a disastrous tie-up of the entire General Electric plant or plants. We recognize that such a strike would do no one any good, except that it would dramatically show the American people just exactly how the Taft-Hartley law has wrecked decent labor relations.

"I am willing to appear, at my own expense, before your committee, at any time, to swear to the truth of the statements above made and, if necessary, I can produce witnesses who would also swear to the truth of the statements above made, all to their personal knowledge."

May I repeat the same offer to you, to your committee, and to the subcommittee. In addition, there are a number of hidden, unpublicized "jokers" in the Taft-Hartley law that have wreaked uncalculable harm to unprotected radio employees, that, if given the opportunity, I should like to bring to your attention.

Sincerely,

A. FRANK REEL,
National Assistant Executive Secretary.

Mr. KELLEY. That is all I have.

Mr. BAILEY (presiding). Mr. Irving?

Mr. IRVING. I just want to take a very short time, and then I want to yield my time to Mr. Jacobs.

Mr. BAILEY. Proceed.

Mr. IRVING. I would like to say that my purpose is to be constructive, and my attitude is to be neutral, as much as possible.

I feel that this act has not had a full opportunity to show whether it is good or bad. From experience I know that back in 1945 and 1946 the general attitude of the employers whom I know was that we are going to have a law whereby we can give labor a dose of their own medicine, or we can kick them back a little bit, and we can do a lot of things to labor that we have not been able to do in the past few years, and I of course think that was a bad attitude on the part of the employer, if that was the complete or general attitude of all the employers. It certainly would not lead to better labor relations.

I think that just before the enactment of the law many of the unions were advised to get contracts signed that would not be in violation of the law. I think if a contract was signed before June of 1947, that was no violation of a closed shop. I know in Chicago the building trades signed contracts for a period of 5 years, and other contracts had 1, 2 and 3 years to go. And, therefore, I think generally that the unions were satisfied with their closed-shop agreement, and a lot of the employers were satisfied, and wanted those agreements, and the full impact of the act has not yet been felt.

I also feel that possibly the 1948 political situation had something to do with the employers not invoking the more oppressive part of the act. The campaign had much to do with the Taft-Hartley Act.

I think the general instructions went out to the employers to modify their desires to invoke all of the act, and to take it easy. At least I have been told that, and then after the election results I think there was a hesitancy upon the employer to use the act, or that is my opinion, and it was the purpose of it. My confident opinion is that the act was to weaken and destroy unions, contrary to all of the testimony that has been given here.

And I again want to repeat that my approach and my purpose is to be constructive, and I am attempting to be as neutral as possible, and I want to bring that out that I do not think that the act has fully had an opporunity to show what the possibilities of it are. I think that is the great fear of the unions, and the union people, that a little later on they will feel to a much greater extent the full precedence and the full strength of this act.

I am bringing that out because perhaps the employers do not realize why the unions fear this act, and if they have that fear it is of no value to good labor relations. I think personally they feel like the soldier does who has gotten lousy, and he wants to get deloused as soon as possible, and that is the way they feel about this act, and they fear it greatly.

I understand Mr. Jacobs has given a great deal of study to some questionnaire, and has had some correspondence with Mr. Wilson personally, and I will yield the balance of my time to him.

Mr. Wilson. Thank you, sir.

Mr. Bailey. Mr. Jacobs?

You have at your disposal your own time, plus 5½ minutes of Mr. Irving's time, and 5 minutes of my time, making a total of 21½ minutes.

Mr. Jacobs. It is getting pretty late to use that much time, Mr. Chairman. It will soon be early tomorrow.

I want to say, Mr. Chairman, that at the conclusion of the examination of Mr. Wilson, and the gentlemen who are with him, I want to request the permission to put in the record a copy of his answer to a communication I addressed to him. I started to do it the other day, but it was in the midst of testimony, and somehow it got back in my files, so I will put it in at the conclusion of his testimony, if there is no objection.

Mr. Bailey. If there is no objection, the correspondence will be entered in the record, as referred to by Mr. Jacobs.

(The letter referred to was transferred to follow the previous correspondence between Mr. Jacobs and Mr. Wilson, to preserve continuity of the subject. See p. 224.)

Mr. Jacobs. That is only fair, inasmuch as my communication to him was placed in the record.

I first want to refer, Mr. Wilson, to the first paragraph on page 2 of your letter, which indicates to me that the questionnaire, concerning which we have heard so much, was not drafted for the purpose of sustaining the Taft-Hartley law.

Mr. Wilson. It was just drafted for the purpose of trying to get facts for the benefit of the people to whom it was suggested that it be sent.

Mr. Jacobs. Specifically, it was not drafted for the purpose of sustaining the Taft-Hartley law, as such?

Mr. Wilson. As such, that is right.

Mr. Jacobs. I have here a copy of your questions; that is, the questions from your questionnaire, and I am going to ask that it be handed down so that you may see it.

Mr. Wilson. I have one here.

Mr. Jacobs. You do not have what I have, Mr. Wilson. I not only have your questionnaire, but also the questionnaire of Mr. Fulton Lewis, Jr.

Mr. Wilson. I see.

Mr. Jacobs. Your questions are placed first, and then Mr. Lewis' questions follow.

Mr. Wilson. I see.

Mr. Jacobs. And will you examine the first two or three questions, and state for the record whether or not you recognize that your questions and his questions are subtantially the same?

Mr. Wilson. Will you give me time to study this? I have never seen Mr. Lewis' questions.

Mr. Jacobs. Let us not waste time on it.

Mr. Wilson. I have never seen it, but if you will give me time to study it I will be glad to answer you.

Mr. Boulware. We will accept your statement as to whether they are similar.

Mr. Jacobs. We will put that copy in the record, if there is no objection.

Mr. Bailey. Is there any objection to the request of the Congressman to include it in the record?

It will be included in the record.

(The combined questionnaires are as follows:)

1. (General Electric) Do you believe that labor laws should, in general, preserve the employee's right to strike?

1. (Fulton Lewis, Jr.) Do you believe that the law should preserve the worker's right to strike?

2. (General Electric) Do you believe labor laws should give the President of the United States the right to seek, through courts of law, to delay a strike that would cause a national emergency endangering the health and safety of the entire country?

2. (Fulton Lewis, Jr.) In the case of a strike that would cause a national emergency, endangering the health and safety of the Nation—should the President be empowered to get a court injunction to delay such a strike?

3. (General Electric) When two or more unions are fighting each other over who shall do a job or who shall represent the employees, and a strike is called to compel an employer to give to the members of one union the work or recognition being given to the other union—that is a jurisdictional strike. Should labor laws prohibit such strikes?

3. (Fulton Lewis, Jr.) When two or more unions are fighting each other, over who is to do a job or who is to represent the workers, and a strike is called to get for one union the work or the recognition—that is a jurisdictional strike. Should the law prohibit strikes of that kind?

4. (General Electric) Should labor laws prohibit secondary boycotts—that is, prevent an employer and his employees, where there is no labor dispute, from being damaged by a union seeking to coerce another employer having a labor dispute?

4. (Fulton Lewis, Jr.) When a union is engaged in a labor dispute with an employer, and seeks to coerce that employer, indirectly, by interfering with the business of other companies where there is no dispute between the management and the workers, but which merely do business with the employer who is being struck—that is a secondary boycott. Do you believe the law should prohibit such boycotts?

5. (General Electric) Should labor laws provide that an employer cannot deduct union dues or assessments from wages unless the employee gives his personal O. K.?

5. (Fulton Lewis, Jr.) Should the law forbid management to deduct union dues and assessment from the worker's pay envelope, except when the worker gives his personal O. K.?

6. (General Electric) Do you believe labor laws should see to it that both employers and unions be required to bargain in good faith?

6. (Fulton Lewis, Jr.) Do you believe the law should require both unions and management to bargain in god faith?

7. (General Electric) Should labor laws give to both employees and employers the freedom to express their own points of view on employee-relations problems—provided such views, or arguments, or opinions do not promise bribes or threaten reprisals?

7. (Fulton Lewis, Jr.) Should the law guarantee to management and workers alike, the freedom to express their respective points of view on labor-management problems, provided there are no promises of bribes, or threats of reprisals—direct or implied?

8. (General Electric) Should labor laws protect the employee against unfair practices by unions and management?

8. (Fulton Lewis, Jr.) Should the law protect the worker against unfair practices by unions or by management?

9. (General Electric) Do you believe that labor laws should require both union officials and company officials to swear they are not Communists or Fascists or members of any party or organization which plans to overthrow the Government of the United States by force and violence?

9. (Fulton Lewis, Jr.) Do you believe the law should require union officials and company officials alike, to swear that they are not Communists, or Fascists, or members of any group which advocates the overthrow of the United States Government by force and violence?

10. (General Electric) Do you believe labor laws should require unions to make appropriate reports to members and Government as to handling of funds—just as companies are required to make appropriate reports to owners and Governments?

10. (Fulton Lewis, Jr.) Should the law require unions to make financial reports to members and to Government, just as companies are required to make the same reports to stockholders and the Government?

11. (General Electric) Should labor laws make it clear that a collective-bargaining contract must be honored by both parties? And that each has an equal right to sue the other for breaking the contract?

11. (Fulton Lewis, Jr.) Should the law require that a collective-bargaining contract must be honored by both parties? And that each party has an equal right to sue the other party, for breaking the contract?

12. (General Electric) Do you believe labor laws should make it unlawful for a union to compel an employer to engage in featherbedding; that is, to pay money for work which hasn't been done or won't be done?

12. (Fulton Lewis, Jr.) When a union requires an employer to pay money for work that has not been done, and will not be done, that is called "featherbedding." Do you believe the law should forbid "featherbedding"?

13. (General Electric) Should labor laws permit the forcing of an employer to hire only workers who belong to a given union?

13. (Fulton Lewis, Jr.) When a union, by contract or otherwise, requires an employer to hire only members of that union—that is a closed shop. Do you believe the law should permit such a "closed shop"?

14. (General Electric) Do you believe it should be unlawful for an employee to be prevented from working by the use of violence, force, or intimidation?

14. (Fulton Lewis, Jr.) Do you believe it should be unlawful for a worker to be prevented from performing his job by the use of violence, force, or intimidation?

15. (General Electric) Do you believe foremen and other supervisors could properly perform their management duties of serving the balanced best interests of employees, customers and owners alike, if bargaining for supervisors by unions should be included in the labor laws?

15. (Fulton Lewis, Jr.) Do you believe that foremen and supervisors, who have a divided responsibility to management which hires them and to the workers under them, should be permitted to have unions of their own?

16. (General Electric) Do you believe labor laws should protect individual workers in the right to join or not to join a union—to remain or not to remain members—just as they individually wish?

16. (Fulton Lewis, Jr.) Do you believe the law should guarantee to every worker the right to join or not to join a union—to remain or not to remain a member—just as the individual worker wishes?

17. (General Electric) Should labor laws make clear that both unions and employers can now so affect the public for good or ill that the labor-management relations of both should be regulated equally by law?

17. (Fulton Lewis, Jr) Do you believe that unions and employers alike can now so affect the public interest for good or ill that the law should state, as a matter of national policy, that the relationships of each with the other shall be regulated equally by law?

18. (General Electric) Should labor laws provide that a striker who has been replaced in the course of an economic strike—not involving any unfair labor

practice—be permitted to vote in an election to choose a bargaining agent at the conclusion of the strike?

18. (Fulton Lewis, Jr.) Suppose that an economic strike—one that does not involve any unfair labor practices—is under way, and a given striker has been replaced by a new worker in his job. An election is held to decide what union, if any, is to represent the workers if and when the strike has finally been settled. Should the law permit this worker, who is out on strike, to vote in that election?

19. (General Electric) No question 19.

19. (Fulton Lewis, Jr.) Should the law place unions under the same prohibition against political activity or making political contributions in election campaigns, that applies to corporations?

Mr. Jacobs. I will give you another copy.

Mr. Wilson. I would like to have them. I have never read them.

Mr. Jacobs. What I want to ask is this: Did you know Mr. Lewis was using your questions on the air?

Mr. Wilson. I did not know that he was using the questions, no.

Mr. Jacobs. When did you first know it?

Mr. Wilson. It was after he went on the air about it. I think the morning after, when I came down on the train in the morning, a dozen people told me they had heard Lewis over the air, and they were all steamed up about the questions, and some of them knew about General Electric's questionnaire we put out, so they were quite excited.

Mr. Jacobs. Could you tell me how many copies of your questionnaire you had printed?

Mr. Wilson. I can find out for you.

Mr. Boulware. I cannot tell you exactly, but somewhere around 750,000. We produced 200,000 for the employees, and we sent them to neighbors and customers, and we have had a lot of repeat requests for it, but other people have started reproducing it, so we do not know the total of it.

Mr. Jacobs. Would you be able to tell me what it cost the General Electric?

Mr. Boulware. About $40,000.

Mr. Jacobs. And yet, I believe, Mr. Boulware, you list here one of the things you think should be in the labor law as being a prohibition against political contributions; is that right?

Mr. Boulware. We do not think that is political. That is raising the question.

Mr. Jacobs. It has had considerable political aspects from the viewpoint here in Congress, but that is neither here nor there.

Mr. Wilson. I would like to ask you a question in regard to free speech. Which one of your questions is that?

Mr. Boulware. No. 7.

Mr. Jacobs. Do you realize, Mr. Wilson, that the section in the Taft-Hartley law not only provides that a statement shall not constitute an unfair labor practice, but it shall not be evidence of an unfair labor practice? Since you received my letter are you aware of that fact?

Mr. Wilson. Yes.

Mr. Jacobs. Do you have an opinion as to whether or not those four words "shall not be evidence" of an unfair labor practice should remain in the law?

Mr. Wilson. I will ask counsel to answer that one.

Mr. Jacobs. Wait a minute before you ask counsel. We will come back to that in a moment.

You have two lawyers there with you?

Mr. Wilson. I have the general counsel of the company. He is my lawyer. And Mr. Boulware has his lawyer—his labor department lawyer.

Mr. Jacobs. You are the president of the company?

Mr. Wilson. That is right.

Mr. Jacobs. And Mr. Boulware is the vice president in charge of labor relations?

Mr. Wilson. That is right.

Mr. Jacobs. And each one of you has a lawyer?

Mr. Wilson. That is right.

Mr. Jacobs. I see a number of people back in the room. I see my good friend Mr. Reilly and, I believe, he is a lawyer for General Electric?

Mr. Wilson. That is right.

Mr. Jacobs. And I see Mr. Cherry, whom I have met and made friends with; what is his position?

Mr. Wilson. He is not a lawyer.

Mr. Jacobs. But he is an employee?

Mr. Wilson. Yes. It is very complimentary to you, sir, that we have to bring all this legal talent. We did that after meeting with you last night.

Mr. Jacobs. We had a very pleasant talk last night, and this examination is going to be very pleasant. There are certain things I want to develop for the record.

How many General Electric employees do you have here in this room now, besides the three lawyers and you two gentlemen?

Mr. Wilson. There are four General Electric employees here.

Mr. Jacobs. That is, besides——

Mr. Wilson. We four.

Mr. Jacobs. You four who are up at the table now?

Mr. Wilson. That is right.

Mr. Jacobs. Four, including Mr. Reilly?

Mr. Wilson. That is right.

Mr. Jacobs. Then there are three lawyers, the president and vice president, and three other employees?

Mr. Wilson. That is right.

Mr. Jacobs. Now we have the record straight.

I want to ask you this question before we have the counsel answer the question in reference to question No. 7:

You came down here, of course, knowing that you would be questioned in regard to your questionnaire, did you not?

Mr. Wilson. I hoped it would not be confined to the questionnaire, because I think that is the least important of the matters we came down on, Mr. Congressman. That is something we hoped would be helpful to you gentlemen of the committee and of the other Members of Congress.

Mr. Jacobs. Our point is this: Your views are fairly well covered by the questionnaire, I assume, are they not?

Mr. Wilson. Our views are fairly well covered by the statement I made, and I hope are reasonably well covered by this letter I tried to write you in answer to your very enlightening letter that you sent me.

What was it, 23 pages?

Mr. Jacobs. Twenty-two.

Mr. Wilson. Twenty-two. I struggled with that.

Mr. Jacobs. I will say this: You and Mr. Boulware, in ganging up on me, did me better, because you wrote me 61 pages.

Mr. Wilson. I would not pretend that I could answer it as well as you asked the questions.

Mr. Jacobs. That brings us up to the point where I asked you a question in reference to question 7 on your questionnaire.

Mr. Wilson. Yes.

Mr. Jacobs. And that is one of the questions——

Mr. Wilson. Those four words.

Mr. Jacobs. No, I am getting at another point, and we will come to the four words in a few minutes.

Mr. Wilson. Pardon me.

Mr. Jacobs. That comes to the point of question 7 which was sent out by General Electric to the general public to answer "Yes" or "No."

Mr. Wilson. That is right.

Mr. Jacobs. And you have three lawyers, your vice president in charge of labor relations, and four other employees here, and when I asked you the question in reference to it, you called on your general counsel to answer it.

We have the record straight now; that is correct, is it not?

Mr. Wilson. That is right. You have set the set the stage beautifully. I do not know what it proves, but it is all right. You have stated it very well.

Mr. Jacobs. Then, before we actually put the question in reference to No. 7, and get an answer to it, I want to ask you if you do not think that maybe some of these questions involving legal propositions were a little complex for the general public just to check off "Yes" or "No?".

Mr. Wilson. I do not know whether that is so or not. I would think it was not, Mr. Congressman, by the reaction of the many people that I know who filled these in. They seemed to think they could give the answers intelligently, and they were just ordinary people, not attorneys or lawyers, you know, who have the extraordinary powers; but just fellows like myself.

Mr. Jacobs. But you, who are the president of a billion dollar corporation, turn to your general counsel to answer a relatively——

Mr. Wilson. I wanted to try to find the gimmick in your question. I knew since you asked it there must be a gimmick in it, and I was trying to find it.

Mr. Jacobs. I will confess I figured you would ask the lawyer when I asked the question.

Mr. Wilson. You bet. I found out last night you are a very keen gentleman.

Mr. Jacobs. You flatter me a lot. I have not progressed nearly as much as you people have.

Mr. Wilson. You have not? I am a good deal older than you are.

Mr. Jacobs. But I age faster than some people do.

Mr. Wilson. If you keep on keeping hours like this you will. I have 500 miles to go when I leave here, before morning, so I will age right along with you tomorrow.

Mr. Jacobs. I will move along as rapidly as I can.

Mr. Wilson. That is all right, sir.

Mr. JACOBS. At any rate, we are at the point where we are trying to get an answer to one question, and that is No. 7, so I will defer now to the lawyer and ask him whether or not he believes that those words "or be evidence of" in section 8 (c) should be stricken out?

Mr. LUEBBE. No.

Mr. JACOBS. I will ask you two or three questions in view of your answer.

You are under the impression, are you, that in the matter of evidence, what one man says in reference to another that might disclose his attitude, should be received in evidence when his treatment of the other fellow is under judicial inquiry?

Mr. LUEBBE. Generally, yes.

Mr. JACOBS. But you do not not think it should be in employer relations?

Mr. LUEBBE. As I understand, the reason the provision was put in the Taft-Hartley——

Mr. JACOBS. The point is this—I have a limited amount of time—you folks sent out a questionnaire in which you asked the public to answer "Yes" or "No," but I will not try to make you answer it "Yes" or "No." But just answer my question.

Mr. LUEBBE. I will answer "Yes," I think the provision in the Taft-Hartley law in this respect is a sound one.

Mr. JACOBS. Let us take a case. Let us suppose that I am an employer, and I make a speech in which I say that I think that the union is a bad thing for the people who are working for me. I have a right to do that, and there is no policeman going to tap me on the shoulder and take me to jail when I say it, but suppose the next morning I go down and I fire all the union officers, and there is an unfair labor practice charge filed against me. The question is whether I fired them because they belonged to a union, or whether I fired them because they were not performing their work properly, is it not?

Mr. LUEBBE. That is right.

Mr. JACOBS. Do you not think it would cast some light upon the subject, the fact that I had expressed myself in opposition to the union, and then fired the union officers?

Mr. LUEBBE. No.

Mr. JACOBS. In a similar let of circumstances, we will say where the same issue was being tried in a court of law, or in any other type of proceedings, do you not think that evidence would be admissible?

Mr. LUEBBE. Yes.

Mr. JACOBS. But do you agree with me it is not admissible in the case I stated?

Mr. LUEBBE. Yes; I agree with you.

Mr. JACOBS. I think that is all the questions I want to ask on that point.

Mr. Boulware, I want to ask you a question, because you and I had a talk last night, and I gave you a question to study to see if you could get an answer for me.

In reference to section 8 (b) (4) (D), which is the jurisdictional dispute in crafts, I believe I asked you if you could tell me last night whether or not, if an award was made under section 10 (k), there was any provision whereby the union could enforce that award. Is that substantially the question I asked you when I was talking to you last night?

Mr. BOULWARE. As well as I understood it, and I got no comfort from discussing this with the lawyers when I got home, sir, so I—because, as I explained to you, I was not a lawyer, so I would like to pass that question to Mr. Day for such discussion as you want, Mr. Jacobs, although——

Mr. JACOBS. I am sorry, I cannot hear you.

Mr. BOULWARE. I would like to pass the question to Mr. Day.

Mr. JACOBS. But before you do I want to pursue it just a little further.

Mr. BOULWARE. All right.

Mr. JACOBS. The question was put to you last night, and put to you fairly clearly, was it not?

Mr. BOULWARE. That is right.

Mr. JACOBS. And I laid it out to you last night, and told you I was going to ask you about it today?

Mr. BOULWARE. You told me to look it up. I had the natural assumption you would ask me about it, yes.

Mr. JACOBS. You have talked to the lawyers about it and you are not ready to answer it yourself, but you want to hand it over to the lawyer to answer; is that right?

Mr. BOULWARE. That is right.

Mr. JACOBS. But you recognize, do you not, that that very question is definitely involved in your question No. 3, which calls for a "Yes" or "No" answer from the public? You will admit that, will you not, Mr. Boulware?

Mr. BOULWARE. That is a secondary boycott there, in No.——

Mr. JACOBS. Did I say No. 3?

Mr. WILSON. No. 3, you said.

Mr. JACOBS. That is it, is it not? Your secondary boycott is No. 4; your jurisdictional strike is No. 3. I am talking about the jurisdictional strike in the craft set-up: That is under section 8 (b) (4) (D), is it not?

Mr. BOULWARE. I do not remember it.

Mr. JACOBS. Well, take it from me that that is the jurisdictional strike in the craft. But after conferring with the lawyers, you are not prepared to answer that question now yourself; is that right?

Mr. BOULWARE. No. We are going to the principle here and to the objective of labor laws as to what the people would like to see tried to be accomplished. And we are sticking to the principle there as to whether or not people would like to see this sort of thing accomplished, and we think it is perfectly right to ask them if they want some kind of objective or not, and when it gets down to the issue in the law, then we will have to call on you experts to do that.

Mr. JACOBS. I agree with you, Mr. Boulware. I agree with you 100 percent. You have a perfect right to ask the question. And I have a perfect right to point out to the people that there are so many complicated things involved in those questions that they could not be answered yes or no. Do you not think that we both have those respective rights?

Mr. BOULWARE. Yes, indeed. But we disagree there. I think this question can be answered for the purpose for which it was sent out, to see if people had some ideas about what they would like to have accomplished. And if we get into complications such as the history of the law and things like that, they lead me astray awfully fast.

Mr. JACOBS. All right. Now, let us have Mr. Day go into this. We have the second lawyer. If we could get Mr. Reilly up here now, maybe we can go ahead.

Give me the answer to my question.

Mr. DAY. I would like to suggest, Mr. Jacobs, that I think your question is absolutely immaterial to the question that is listed in our questionnaire.

Mr. JACOBS. Now, let me——

Mr. DAY. Just if you will permit me to finish, sir——

Mr. JACOBS. Permit me, Mr. Day, to say that I will have to be the judge as to whether my question is immaterial.

Mr. DAY. I would say that you have not shown its materiality. Now, whether or not, Mr. Jacobs, if I may suggest it, or regardless of what the answer to the question you asked may be, it seems to me it is very clear that question No. 3, like question No. 7, relating to free speech, involves only the principle at issue. Of course, the technicians and, of course, your committee must consider the ramifications of each of these principles. But in stimulating thought as to the principles involved, that was the purpose of this questionnaire. The purpose was not to sustain the present law at all.

Mr. JACOBS. Mr. Day, you have taken up considerable of my time telling me that I should not have asked the question. But I still press the question now, and I am going to state it again. The question is this. A jurisdictional strike of a craft nature is forbidden in section 8 (b) (4) (D) of the Taft-Hartley law. Section 10 (k) provides for an award in such a dispute in the event there is not a settlement.

Now, the question is whether or not you can point out any section in the Taft-Hartley law that gives the union or the employees the right to enforce that award. If you know what section it is, I would like to have the information.

Mr. DAY. I think I would agree with the answer given by the attorney for the union representative earlier this evening, when he pointed out that by reading the statute, plus the rules and regulations of the Board, which, of course, they are authorized to adopt, it seems rather clear that the answer is this, that if a jurisdictional dispute goes to the stage where you finally do have the Board award, and then there is a failure to live up to the award, an unfair labor practice would result, and presumably, in fact, very clearly, I think, under the Board rules—I do not happen to have them with me at the time—there would be the right to file an unfair labor practice charge. And the normal procedures of the Board following through sections 9 and 10, I believe, would then permit eventually the Board to go through to the circuit court of appeals for an enforcement.

Mr. JACOBS. We are getting too far away. I am not satisfied that we have an unfair labor practice charge yet. And we surely cannot get to the circuit court of appeals until we do.

What I want to know is this. Under what section can you file an unfair labor practice charge against the employer? You certainly cannot——

Mr. DAY. Well, any person——

Mr. JACOBS. Wait just a minute. I am not through. I do not want to be discourteous, but I am not through.

Mr. Day. I beg your pardon, sir.

Mr. Jacobs. Under section 8 (b) (4) (D), you certainly cannot do it, because that is a provision against the union only.

Mr. Bailey. The gentleman has 3½ minutes remaining.

Mr. Burke. Mr. Chairman, I yield 7 minutes.

Mr. Day. If I may have a moment, Mr. Jacobs, I have not examined this question in some time.

Mr. Jacobs. Suppose you look that up while we go ahead with another question.

Mr. Day. I can state from my general knowledge, however, that any aggrieved person could file a charge with respect to an unfair labor practice under the act.

Mr. Jacobs. Now, define where that is going to be an unfair labor practice, for the employer to fail to live up to that award.

While you are looking for that, we will go on to another question. I want to ask this question of Mr. Wilson.

You, of course, are familiar with the questionnaire, naturally, that your company put out.

Mr. Wilson. Yes; that is right.

Mr. Jacobs. Tell me this, Mr. Wilson. And I certainly would not ask you this question if I did not think you were a pretty fair and honest man, because you could give me the wrong answer. But I want to see what your answer would be. Do you think that those questions, those 18 questions there, would be fair to be read on the radio show with people asked to answer them yes or no without having the question in front of them?

Mr. Wilson. Do you mean to say that he did not read the questions to them?

Mr. Jacobs. No. I mean, would it be fair to ask people to answer those questions yes or no by just merely reading them on the radio?

Mr. Wilson. Did I not understand that he asked them to take the questions down and then to——

Mr. Jacobs. No. They were not asked to do that.

Mr. Wilson. I do not know. I did not hear that.

Mr. Jacobs. No. They were just asked to write down the certain numbers and then to check them off yes or no. You remember what I told you last night about some of the returns I got.

Mr. Boulware. Yes, definitely.

Mr. Wilson. The test would be in the person's ability to memorize the question as it was taken down. That would be a test of ability.

Mr. Jacobs. Do you think there might be some test in the person's ability to give them out clearly, too?

Mr. Wilson. I presume he read the questions. Whether it was these questions or not, I do not know. And he could easily have given them out just reading them off, Mr. Jacobs.

Mr. Jacobs. You assume my question is that the questions were just read on the radio and people expected to check them off, 1, 2, 3, and so forth. You could assume that.

Mr. Wilson. Yes, sir.

Mr. Jacobs. Do you think that would be a fair way to take a poll?

Mr. Wilson. I would not think it was nearly as good a way as to get hold of a ballot and sit down and study it. And I think I could personally do a much better job if I sat down and studied it.

Mr. Jacobs. We have had enough trouble with these questions here with three lawyers and your vice president sitting here without just listening to them on the radio.

Mr. Wilson. That is right.

Mr. Jacobs. And if the announcer happened to be a fellow who fumbles a little bit now and then, it makes it that much worse, does it not?

Mr. Wilson. Yes; I believe that would add to the confusion, if he fumbles.

Mr. Jacobs. Now, let us take question 18, for example. We will examine question No. 18 for a minute. I do not know who wants to answer this. But I want to read it in the record first:

> Should labor laws provide that a striker who has been replaced in the course of an economic strike—not involving any unfair labor practice—be permitted to vote in an election to choose a bargaining agent at the conclusion of the strike?

Mr Wilson. This is one of Mr. Boulware's subjects. He can answer that.

Mr. Jacobs. You are aware of the fact that the election can be held during the strike under the Taft-Hartley law?

Mr. Wilson. Can be what?

Mr. Jacobs. Such an election can be held during the strike. Did the fact that your question stated "at the conclusion of the strike" indicate an opinion on your part that such bargaining elections should not be held during the strike?

Mr. Wilson. I think the answer is "No," is it not?

Mr. Boulware. No. We were simply trying to put the question in the simplest form that would indicate the time when it was most likely to be——

Mr. Jacobs. Take the microphone over with you, Mr. Boulware.

Mr. Boulware. I am sorry, sir. We were simply making up these questions, and we were simply trying to state them in the simplest form so that we felt they would fit the most characteristic circumstances that we thought would prevail any place.

Mr. Jacobs. Now, you have worse confusion than there was. Just keep the microphone. I will have to get clarified on this.

Your question certainly does not square with the Taft-Hartley law. We can agree on that, can we not? Question No. 18 does not square with the Taft-Hartley law. Will you agree to that?

Mr. Boulware. You mean, as to the words, "at the conclusion," we should have stated other cases? This is not all-inclusive; I certainly would agree to that.

Mr. Jacobs. At any rate, the Taft-Hartley law permits the election during a strike; that is correct, is it not?

Mr. Boulware. That is what I understand.

Mr. Jacobs. But this "at the conclusion of the strike" is a little different, and it does not mean that you think that the Taft-Hartley law in that regard should be changed. I understand that correctly, do I?

Mr. Boulware. That is right.

Mr. Jacobs. All right. Do you not think that there was a slight possibility that the public might assume from your use of the words, "how would you revise our labor laws?" that these questions were drawn up pretty much in line with the provisions of the Taft-Hartley law, and therefore the public would get the impression that the election could not be held during a strike?

Do you not think it could have had that effect, whether you intended it or not?

Mr. Boulware. Well, I will say that, first of all, we certainly did not intend it. And secondly, I have no opinion as to whether we might think it or not. I assume we might get all kinds of replies.

Mr. Jacobs. Let us just start, then, from the beginning again. "How would you revise our labor laws?" would certainly indicate that you were referring to the Taft-Hartley law, because that is our current law now.

Mr. Boulware. The current law on the books. We do not mention the Taft-Harley Act or the Wagner Act or any other law, because we were trying to get it on the basis that we were going to get a new labor law. So what we were trying to put in here was to start some thinking on what might be the ingredients.

Mr. Jacobs. Now, look. Let us not go tiptoeing through the buttercups about this thing. We are not so naive that we do not know that the employers generally are supposed to be upholding the Taft-Hartley law.

Mr. Boulware. We have said here in our testimony that we substantially endorse it with some changes and some additions.

Mr. Jacobs. That is generally known. So when this questionnaire went out, "How would you revise our labor laws?" do you not think—let us just be honest and objective about it—Mr. Wilson, do you not think that the public probably understood or believed that that was an effort to uphold the Taft-Hartley law?

Mr. Wilson. The present law. Of course, I think myself, Mr. Congressman, that the vast majority of the people who may have gotten this, our own employees, have very little understanding, simply because they have not studied what is in the Taft-Hartley law.

Mr. Jacobs. What is in the Taft-Hartley law?

Mr. Wilson. Of what is in it, or what is in the Wagner Act.

Mr. Jacobs. I agree with you on that, Mr. Wilson.

Mr. Wilson. That is what we had found out.

Mr. Jacobs. And when they received this questionnaire with those words, "How would you revise our labor laws?" and they read about boycotts and jurisdictional strikes and emergency strikes, and then the voting to decertify, and so forth, they probably assumed——

Mr. Wilson. Some would, I am sure.

Mr. Jacobs. Do you not think the vast majority of them would? Just honestly, do you not think that is true?

Mr. Wilson. I do not know what the point is of my agreeing with you, but I am sure I would think it did, Mr. Congressman. I suppose those that were the most understanding of the thing might question that it did refer to it. But undoubtedly, a great many people would think that. I think that is reasonable.

Mr. Jacobs. There is no gimmick in it. I am not trying to put a gimmick in it.

Mr. Wilson. No. I have no idea that you are, Mr. Congressman.

Mr. Jacobs. The point I am making, Mr. Wilson, is this, that it might give a rather false impression in reference to this one point in regard to decertification, which is certainly a highly technical question, I think, as you will concede.

Mr. WILSON. I think the highly technical points of it are awfully difficult questions to cover on any questionnaire.

Mr. BAILEY. The gentleman has used about 36 minutes of the 38½ minutes allocated to him.

Mr. WIER. He has another 10 minutes, if he will give us some action here.

Mr. JACOBS. The point that I am making is this, Mr. Wilson. I think that your question No. 18 really goes to the heart of the Taft-Hartley law, the main complaints that have been made of the Taft-Hartley law. I believe counsel would agree on that, would you not?

Mr. LUEBBE. No.

Mr. JACOBS. I thought you would agree with me.

Mr. LUEBBE. That is just one of them.

Mr. JACOBS. At least from this viewpoint, it refers, of course, first of all to 9 (c) (1), where there can be a petition for decertification. I mean, we can agree to that, can we not?

Mr. LUEBBE. That is right.

Mr. JACOBS. We are making headway, anyway.

And after the decertification takes place, we, of course, go back to 8 (b) (4) (C), where any further concerted action becomes an unfair labor practice because the union is decertified; is that correct?

Mr. LUEBBE. That is right.

Mr. JACOBS. Have you read the Life magazine editorial of November 29, 1948?

Mr. LUEBBE. I do not recall it.

Mr. JACOBS. It dealt with that. I wonder whether Mr. Wilson might have read it, because it referred to this as a gimmick in the Taft-Hartley law.

Mr. WILSON. No. I have not.

Mr. JACOBS. You suspected, Mr. Wilson, that you read it.

Mr. WILSON. No. In New York, we bring in the gimmicks.

Mr. JACOBS. But this is referred to as a gimmick in the Taft-Hartley law by Life magazine. I believe that the reply stated that you did read Business Week for December 18, 1948; is that correct?

Mr. WILSON. Are you asking me?

Mr. JACOBS. Someone did, whoever wrote that letter. Did all of you write me that 61-page letter?

Mr. WILSON. Yes; that is right.

Mr. JACOBS. Well, then, somebody read Business Week. And did anyone here in your group read Fortune magazine, which referred to the gimmick, in the November 1948 issue, the same gimmick?

Mr. BOULWARE. I did not.

Mr. JACOBS. At any rate, we then go, do we not, to 10 (l), which provides for mandatory injunction under section 8 (b) (4) (C).

Is that right, Mr. Counsel?

Mr. LUEBBE. I do not know, offhand.

Mr. JACOBS. Pardon me?

Mr. LUEBBE. I do not know, offhand. I have to check this.

Mr. JACOBS. Well, it is a mandatory injunction feature. It does not make any difference what the section is. It does apply to that particular unfair labor practice; does it?

Mr. LUEBBE. Yes.

Mr. Jacobs. All right. Now, then, will you agree to this, then, that question No. 18 on the General Electric questionnaire involves the interpretation of at least 3 different sections of the Taft-Hartley law?

Mr. Luebbe. No. I think question No. 18 is simply a question as to one point, or one situation, that might be involved in the application of the provision that you refer to.

Mr. Jacobs. You do not think that the average person who would read question No. 18 would understand that the decertification, the consequent unfair labor practice, and the mandatory injunction were involved in that?

Mr. Luebbe. It was involved, but not necessarily limited to this period.

Mr. Jacobs. Oh, involved, but not necessarily limited?

Mr. Luebbe. Yes.

Mr. Jacobs. In other words, if we get 10,000 or 15,000 of these questionnaires on our desk and they are marked "yes" or "no," and so forth, how far can we rely upon them if we do not take into account the other features of the law which have a bearing upon the same subject? In your judgment, how far can we rely upon them?

Mr. Luebbe. To the extent that they are covered in the language of the questionnaire.

Mr. Boulware. Isn't there another question there, Mr. Congressman? That is, the folks who reply to this assigned you all a job to accomplish this for them in this way, it seems to me.

Mr. Jacobs. I think that is right. Of course, I have said this to many people that I have written to, that one letter—probably I said it in a letter I wrote to Mr. Wilson.

Mr. Wilson. That is right, sir. You did.

Mr. Jacobs. One letter, reasoned out, would make more of an impression on me than 1,000,000 poll sheets.

Mr. Boulware. We agree with you.

Mr. Wilson. There are all kinds of people, Mr. Congressman.

Mr. Jacobs. We had a witness in here the other day from the Farm Grange who had a question put to him. We asked him what he thought about that, and he said, "I say that would indicate that you are against sin."

Now, I would say that if this questionnaire was answered "Yes" all the way through, with the exception of 13 and 15, and then if the fellow would make a fair guess on question No. 18, it would indicate that he was "against sin."

Mr. Wilson. If it stimulated thinking, Mr. Congressman, maybe it served some good purpose for you. If it did, we are glad to that extent.

Mr. Boulware. Mr. Congressman, I know you are keeping in mind that we asked for comments, too, for anybody that wanted to go beyond it.

Mr. Jacobs. Sir?

Mr. Boulware. You are keeping in mind that we asked for comments, rather than just the yes or no.

Mr. Jacobs. Oh, yes. I want to say that I had a few constituents that did write some comments on it.

Mr. Wilson. Did they paste it on with asbestos?

Mr. Jacobs. No. I was agreeably surprised at some of the rather intelligent comments that were on some of them.

Mr. Wilson. Good.

Mr. Jacobs. I want to read into the record at this time from the current issue of United States News, "Newsgram":

> A flood of letters is coming in—

referring to Congressmen—

> in opposition to giving labor leaders what they ask.

This next is very significant:

> These letters are stimulated by a radio and advertising campaign. * * *
> Workers are writing in some volume, favoring a higher minimum wage and extension of the minimum wage to employees not now covered.

I think that I have substantially established what I hoped to establish, and that is that these questions are not quite as simple as they were made to appear to the public. That was the main object. I really did not intend to go into the law too deeply at this point. I wanted to establish what I think is a very obvious fact, that these questions are not as easy to answer as it would appear.

That is all.

Mr. Bailey. Mr. Burke, you have 3 minutes of your time that you did not award to Mr. Jacobs.

Mr. Burke. Yes.

I would like to ask Mr. Boulware a question, for two reasons: First, something that appeared in his statement; and second, I think that, after all these legal terms, you and I can talk in shop language.

Mr. Boulware. We will try, anyway.

Mr. Burke. I want to refer, on page B–4, to your featherbedding statement. You say, "We get practically all our advances in production from incentive-inspired and owner-provided technological improvements that lengthen man's arms."

I quite agree with the latter part of that statement, and probably most of it. In our process of industrial evolution the hand tool was the extension of the man's hand, and the machine tool was the extension of the hand tool.

Now, do I understand your statement here to mean that simply because increase in production through technological improvement is, first, incentive-inspired, and, next, the technological improvement is owner-provided, then any challenge that the worker might make to the production standard that the owner of the machine tool might desire would be in the nature of featherbedding?

Mr. Boulware. Oh, no, indeed. We feel that the fair day's work as to the combination of skill, care, interest, and effort is something that should be going up all the time in the skill and care and interest, and should perhaps be going down as to physical effort, as we know how to take the work out of the work.

Mr. Burke. I understand.

Mr. Boulware. And we do not——

Mr. Burke. I have only 3 minutes, sir.

Mr. Boulware. What we are saying here is that this is the way we can provide—I do not know, but maybe a 4-day week.

Mr. Burke. I understand that the theory of mass production is that the idea is to take the load off the man's back as much as possible.

Now, in writing a law, you would advocate, then, that that law provide that the setting of production standards shall not be subject to the process of collective bargaining?

Mr. Boulware. Oh, no, indeed. What we are after here is this: You have a full day's work, by reasonable modern standards. That is the way we describe it, a full day's work content. And what we are after here is that you cannot come in and by force set up the situation where a fellow is going to do a half day's work just because of some power involved, when it is unfair, palpably unfair, to other people. There are plenty of irregularities in a day's work. You cannot regulate the machines that well.

Mr. Burke. But production standards can properly be subject to the processes of collective bargaining.

Mr. Boulware. That is right.

Mr. Burke. That is all.

Mr. Bailey. Mr. McConnell?

Mr. McConnell. Mr. Wilson, were you not the chairman of the Civil Rights Commission appointed by President Truman?

Mr. Wilson. Yes; I was, Mr. McConnell.

Mr. McConnell. That is what I thought. There are two Wilsons.

Mr. Wilson. That is right.

Mr. McConnell. Frankly, the battle of statistics and questionnaires and polls and letters and the late hours have sort of worn me out physically and mentally, and I was wondering if you gentlemen would just accept a draw and let it go at that.

Mr. Wilson. Mr. McConnell, may I just say one thing? I am deeply impressed with certain parts of the testimony of Mr. Mitchell, who happened to be on at 7 o'clock when we came in. I would just like to express, if I may, for the benefit of the committee, my approval—that is not exactly the word, but put it that way—of his hope that you would find some way to minimize the discrimination of which he was complaining.

I mention that because of my interest in the civil-rights program, in which I had the privilege of having some very small part. But I felt Mr. Mitchell's points were very well taken, not with respect to the Taft-Hartley law or the Wagner Act or anything else, but just the point that this committee provide steps against discrimination.

I thought it was well taken, and I would like to have the opportunity of noting that fact to you.

Mr. McConnell. I want to express my personal appreciation to your reference, not only in the field of civil rights and better relationships and so on, but I would also like to compliment you on a genuine effort to stir an interest in any possible changes in our labor laws. I think that is a fine type of procedure.

Mr. Wilson. Thank you, sir.

Mr. Bailey. Is that all?

Mr. McConnell. No questions, Mr. Chairman.

Mr. Bailey. Mr. Smith?

Mr. Smith. Mr. Chairman, it looks as though we were starting to count witnesses here and count spectators. I want the privilege tomorrow to be able to count, and put in the record, the number of people in the company of William Green when he is here to testify.

Mr. Bailey. We will certainly accord you that privilege.

Mr. Jacobs. Will the gentleman yield?

Mr. Smith. Yes.

Mr. Jacobs. I have not received any questionnaires from Mr. Green yet that ask for a "Yes" or "No" answer, but I do want to say this, if the gentlemen will yield further, that I have enjoyed my correspondence with Mr. Wilson and Mr. Boulware. I had the occasion to meet them last night when they came down to see me, and I found them very pleasant gentlement to talk to, and I enjoyed it very much. I trust that they will not feel that there was anything personal in my attempting to dramatize the fact that these questions could not be answered yes or no, but that there was a whole lot more involved in them.

Mr. WILSON. It was a pleasure, Mr. Jacobs.

Mr. BOULWARE. We are for you 1,000 percent.

Mr. BAILEY. Now, the Chair would like to request both Mr. Wilson and Mr. Boulware that they make a formal request that their statements be incorporated in the record.

Mr. WILSON. It is so requested.

Mr. SMITH. I have not finished yet.

Mr. BAILEY. Pardon me.

Mr. WILSON. Pardon me, Mr. Smith.

Mr. SMITH. Now, I am supposed to come from that part of the country that is commonly and sneeringly referred to as the Bible belt, and is also on the kerosene circuit.

I have in my hands here a questionnaire, and I want the privilege of putting into the record how the people of my district voted on this questionnaire.

On the third question, they voted: Yes, 430; no, 10.

On question No. 7, they voted: Yes, 433; no, 3.

On question 18, they voted: Yes, 85; no, 345.

That is all, Mr. Chairman.

Mr. BAILEY. If there are no objections, we will accept Mr. Boulware's prepared statement for insertion in the record.

Mr. WILSON. Thank you, sir.

(The statement is as follows:)

STATEMENT OF L. R. BOULWARE, VICE PRESIDENT, EMPLOYEE RELATIONS, GENERAL ELECTRIC CO.

1. *The closed shop.*—We believe the closed shop violates the right of free choice—as to jobs, as to association, as to free movement, as to buying and selling goods and services. We believe it makes for poor value in goods and services, arrests technological advances, and hinders a rising standard of living.

The closed shop begins by being wrong in its power over the individual employee and the employer. But that soon fades into insignificance as the power increases over individuals, or a trade, or a community, or an industry, or indirectly the whole country in such a situation as we see this week.

But the closed shop is not the agency in itself that performs all these antisocial deeds. It is the generator, the rallying point, the consolidator of that misuse of power often so evilly exercised against the public interest in jurisdictional strikes, boycotts, featherbedding, resistance to technological improvement. It is the classroom for teaching the disciplines of fear, force and prejudice, which are manifested in all these troublesome and wasteful situations.

Closed-shop unions help keep prices up and help minimize competition. The plain truth is that a businessman can get done through this type of union arrangement what he would be put in jail for doing directly.

2. *Jurisdictional strikes.*—General Electric has had experience with this type of strike. We believe this type of trouble springs largely from the closed-shop influence. Just one recent instance concerned a dispute between two unions at a research laboratory of ours being prepared for secret United States Navy work. Under the present act there was quick relief from the NLRB. The settlement precipitated by this was, as usually happens, exactly in accordance with past practices in the community. Without the law, serious damage would have

resulted to the company, to many workers, and to the Nation; and the final answer would have been no different. Our company has experienced and is experiencing instance after instance of this, at Schenectady, Syracuse, Jersey City, in California and Kentucky, and practically all over the Nation. I'll be glad to detail some of these if the committee should want to hear of them later in a question period.

But General Electric's experience is not unusual, as you know. The committee will recall testimony as to the CIO-AFL soft-drink strike on D-day in Detroit; the port-closing longshoremen and sailors' union strike in Oregon which lasted 6 months; the AFL-CIO cannery strike in California when 25,000 tons of fresh vegetables rotted; the bomb-throwing, window-smashing, man-beating CIO-AFL Pittsburgh "teamsters' war"; and other instances of terrorism.

3. *Secondary boycotts.*—Let me tell you of a shocking but typical case of secondary boycott.

General Electric has a service shop in San Diego which is staffed by 12 employees. We were put on the so-called unfair list of the IBEW because our employees were not represented by their union. In February 1947 this situation came to a head. Our customers were repeatedly advised by the IBEW that if any motors, and so forth, were sent to our shop for repair they would refuse to install them when they were returned. Many of our customers deserted us, and we have steadily lost business since then. In 1948 the IBEW won a representation election and immediately demanded a union shop. A security election was held as required by law, but the union failed to obtain a majority vote approving union security. Since that time the union has apparently dropped the entire matter of bargaining, and our employees are working without a contract. Although our employees are IBEW members, the shop is still on the unfair list. The union has such a strong domination over the San Diego business community that we have never been able to make any headway against the boycott, and accordingly we are accordingly forced to close the service shop as of April 1, 1949. We have many more cases of this kind.

I urgently recommend that any new revised law give protection to the innocent third party or other bystander who, with his employees, ought to be allowed to go about the providing of jobs and his other legitimate business unmolested by force. Any cases of collaboration between two employers to break a strike, such as were cited before the Senate committee, are now amply taken care of, I believe, under the present law through the rulings that they are primary boycotts or primary strikes, due to the community of interest, and therefore do not fall under the ban on secondary boycotts.

General Electric cannot sell certain types of electrical goods in New York unless these products are completely and uselessly rewired by the local union. A typical instance is that of an electrical supplier—not General Electric—who was refused the contract because his product "did not bear the (local) union label" despite its having been made in a union shop elsewhere. The order went to a local union manufacturer at a price of $110,000, just $54,000 higher. This situation continues to exist in New York today. For example, when General Electric manufactures control equipment for use in the New York area, it is assembled and tested by CIO union members in Schenectady or Philadelphia or Pittsfield, and it is then ready for use. However, in certain cases General Electric has been forced to disassemble this equipment, ship the components into New York all tagged for the guidance of the less experienced local union men here, and have it reassembled by this local union. More than double the original assembly work has again been paid for as pure waste.

The reason Federal legislation is needed is because of the power that unions have acquired in this area. Human beings just can't stand too much unchecked power. That has been found true of the businessman, the military officer, the Government official, and even the Government itself. It is true of the union and the union official. The same scrutiny, the same correctives, and the same further preventive powers are needed—and needed in the public interest. The time is now.

4. "*Featherbedding*".—Production is the secret of our ever-rising American standard of living. We have only what we produce. To be sure, we get practically all our advances in production from incentive-inspired and owner-provided technological improvements that lengthen man's arms. But to the exact degree that we let "make-believe" work limit the amount of production otherwise available from our national work force, just to that degree do the rest of us needlessly pay, feed, and encourage more nonproducers, thus lowering the standard of living otherwise available to all. This is obviously unfair to the people

who do work. "Featherbedding" is morally bad and economically feeble-minded.

We have had considerable experience with the types of "featherbedding" practice which are not presently covered by the law, unless coupled with an illegal secondary boycott (and the difficulties of proof of threatened boycott are almost insurmountable). Here is just one example which occurred right here in Washington last year:

During 1948, the medical clinic of Drs. Croover, Christie, and Merritt, radiologists, purchased X-ray equipment for installation in their new additional quarters in the Columbia Medical Building Annex, Washington, D. C.

This equipment was purchased by them for a price which included installation. Other building renovations were being made at the time installation of the X-ray equipment was going on, and the union threatened to boycott and strike the entire job unless permitted to do the work of also installing the X-ray equipment. Because of pressure exerted on the company by the customer, to avoid a serious delay in installation and a boycott of the entire renovation job, and their willingness to assume the extra cost, the job was done by the union.

This procedure cost the purchasers approximately $4,000 more than they had contracted to pay. It was agreed in the purchase contract that in the event the manufacturer's personnel was not allowed to make the installation, the purchasers would defray the costs of hiring outside labor.

I urge you to permit me later to describe our Sherman Creek turbine case, for instance, and many others. Meanwhile I urge that the present law be strengthened to cover needless work as well as work not performed. Again, the reason for Federal legislation is to be found in the power of the unions present in such situations.

5. *National emergency strikes.*—We believe the right to strike must be preserved except where the consequences of a strike to the many are out of all proportion to the issues involved for the few. National paralysis just ought not to be available as an economic instrument to any selfish individual group. We simply must calmly devise a means, or earnestly learn how, to settle these things equitably in the interests of both parties to the dispute while at the same time safeguarding the interest of the whole public. The entire Nation—innocent bystander to the dispute—suffers almost at once from these national paralysis strikes.

Public opinion and requests by the President have proved ineffective in the past to protect the public against a powerful union organization or official in a recalcitrant mood. And I can't imagine a Presidential proclamation doing any good with the characters involved when the chips are down. I can't imagine the President thinks so, either, in view of his resort on at least six occasions to the injunctive remedy in the present law, and his earlier appeal to Congress for authority to draft the railway workers.

We are against compulsory settlement, but we do urge that the President continue to have available some positive statutory power to delay such a strike while he and the Congress and others involved, as well as the public, are making up their minds what must be done to be fair to the parties and the public.

In this connection, I cannot understand why various people in and out of unions and Government should any longer feel a peculiar reluctance about having the injunction processes of the law apply equally to any needed situation in union affairs, just as it applies to all other private and public institutions and individuals. To be sure, the very subject has come over the years to be a great emotional rallying point and a political hot potato. But we are all much more mature now in union-management affairs. The courts and public officials can certainly not be regarded as having anything but the most tolerant, and even indulgent, attitude toward the practices of union officials in organizing and striking.

The injunction is an honorable device for use in the public interest. Unions have become the most influential and powerful political and economic factors in community after community as well as in the Nation. Why must anyone feel that the public must be deprived of the availability of this demonstrably needed protection, when businessess and businessmen, governments and government officials—even Cabinet members—are subject to being enjoined by the people's courts?

If we try now to sidestep this issue on emotional grounds in both national and jurisdictional strikes, are we not confessing that already the power of union officials has grown to the point where we are too afraid of it even to act like we think there is any conceivable instance where this power may, or does, need to to be questioned in the public interest?

6. *Mass picketing and violence.*—General Electric is very proud of its comparatively peaceful union-relations history. However, even our employees have had some mass-picketing troubles:

At Schenectady in 1946 our research scientists, our salaried engineers and pay-roll people—innocent bystanders, not members of the union on strike and not even included in the bargaining unit—were forcibly prevented by mass picketing and violence from engaging in activities of immediate and long-range benefits to the employees. This was in defiance of a court order which the Schenectady police force said they could not enforce.

At Lexington, Ky., in 1948, there was abusive mass picketing of the plant and employees' homes, dousing with skunk oil, smashed cars, cut telephone wires, acid shot at girl employees, tear gas thrown in a crowded bus, roughing up by imported pickets—all in an attempt to gain union recognition by force instead of through an NLRB election. Here, as in the New York and New Jersey truck cases and countless others, we witness threats of violence from self-appointed private union "police" who, in full view of and in defiance of uniformed public police, assert their superpower over city, State, and Nation, as well as just over management and employees.

Since the Federal Government has aided the growth of these unions to powerful giant size, and since local police are proving less and less able to cope with the situations described, the Federal law should provide employees, management, and public with relief from violence and coercive mass picketing.

7. *Communism.*—Not only as a private employer, but as a contractor for the Atomic Energy Commission, we believe the labor law should require affidavits of both company and union officials and bargaining representatives that they do not belong to the Communist Party or to any party which plans, teaches, or advocates the use of force or violence to overthrow the Government of the United States. The affidavit is no cure in itself, but we believe we see at various places some examples of members in unions having been aided by the non-Communist affidavti requirement in making progress toward better local and top leadership in their unions.

Certainly the very wonder by union members at some officials' refusal to sign has led to a great deal of new local consideration of the national problem. In a great many cases they have elected new officers where the determining factor seemed to be the belief of the membership that it would be getting new leadership with less Communist taint or certainty with less public suspicion of that taint. There have been published reports, I believe, of such instances at Schenectady; Fort Wayne; Pittsfield; Dayton; Pittsburgh; Lima, Ohio; Fairmount, W. Va.; to mention only a very few.

I strongly urge that the non-Communist affidavit requirement be extended to all union officials from top officers to stewards and, in order to prevent circumvention, to all paid representatives of the unions, and likewise to all corporate officials and company representatives who meet them in bargaining. The employer should be expressly excused from dealing with the representatives of a union which has not met these non-Communist affidavit requirements, as well as those about filing of financial and other information.

8. *Free speech.*—We believe the provision of the present act is wise and should be retained. Prior to the present law an employer's right to free speech was severely curtailed by the way the Board interpreted the former law. Even though no threats of reprisal or promises of benefits were held out, an employer's expression of views with regard to the union was so often held to be a violation of the law that most employers were afraid to open their mouths at all.

Consequently, in many cases the unions felt free to abuse their own privilege of free speech without any fear of having their story contradicted by the employer. Of course, neither side should be permitted to make unfair promises of benefits or threats of reprisals. But the employee is entitled to hear both sides speak up in order that he may freely judge and exercise an informed choice.

You are familiar with the doubts cast on this subject by some NLRB interpretations under the Wagner Act. It took considerable courage for us, in some situations where our employees were being misinformed, to speak up. But we simply felt we would be a party to this deception if, knowing the truth, we did not tell it to our employees.

But, under the pressure of union threats and of the one-sided administration of the one-sided Wagner Act, most employers were very understandably persuaded as to the prudence of keeping still. In certain organizing campaigns we have had our employees report to us that union organizers had threatened them with the choice of either "paying a moderate initiation fee now or, if they didn't join now, a very large initiation fee later," promising the employees that all of them would be "forced to join the union" as soon as the organizing campaign was completed. We have also experienced the wildest form of misstatements being made in the course of a union organizing campaign and a most unwarranted type of promise as to benefits the union was going to obtain. We think an employer should feel perfectly free to speak without fear of having an unfair labor practice lodged against him so long as he doesn't step over the bounds of propriety.

Free speech doesn't have to be legislated out of existence. It can be "intimated" or "hinted" or "indicated" or "nudged' out of existence by a hostile Government administration. To a large extent this had already happened here in America so far as the employer speaking up in union matters was concerned.

Our citizens need positive declaration by Government in the form of a clear law that the right of free speech applies in the management-union relations field as elsewhere.

And incidentally, if employers could be encouraged to speak up as to what they believe to be the truth not only in organization matters but on all the issues and on the basic economics back of the issues, I sincerely believe the discussion thereby generated would fast lead not only to a more sober understanding of the facts but to a growing area of voluntary agreement. Also, I believe it would bring genuine comfort to many sincere union leaders and many leaders in public life. Too often now both find themselves doing what they really believe to be unsound just because they feel the folks down the line or back home would not understand if the sound things were done.

9. *Mutual responsibility of employers and unions.*—Since enactment of the present law, we feel we have experienced a noticeable change in the sense of genuine responsibility exhibited by many of the forty-odd unions with which General Electric has contracts. This change is evident both at the bargaining table and in subsequent conduct. We believe this new sense of responsibility derives from at least four features of the present law:

(1) Both sides are required to bargain in good faith.

(2) Either side can file unfair labor practice charges with the NLRB in the case of abuse.

(3) Both can sue or be sued in Federal court for breach of contract obligations.

(4) Both are now responsible under normal rules of agency for the acts of their agents.

We have had numerous instances of contract violations which have been quickly and fairly settled in good faith by union leaders under the influence of the present law. Neither side, of course, wants to resort to legal weapons in their relations to each other, but it is surprising how the availability of adequate remedies under a fair law helps people act sensibly in the labor field as in the commercial and other fields. We urge the retention of the present provisions in any new law.

10. *Political contributions.*—Any restrictions on political contributions, we believe, should apply equally to employers and unions. Employers and unions alike should be forbidden to use other than voluntary means to raise money for political purposes.

The present law, of course, permits unions to solicit voluntary contributions through subsidiary union organizations. We think this is perfectly proper since an individual making such a contribution is reasonably sure that this money will be used in accordance with his own personal political wishes. The present law prohibits direct contributions out of the union treasury which would, of course, constitute an assessment upon each and every member of the union regardless of his political beliefs and of his personal desire or lack of it to contribute to a political campaign.

11. *Separation of functions of advocate and judge.*—The Department of Labor—in theory and practice—is the advocate of the unions. The law creating the Department required that. In practice it was found not the proper home for the Conciliation Service. To be sure a given individual as Secretary of Labor or as head of the Conciliation Service could make a difference in degree either way. But it would be only in degree. Human nature dictates that an impartial tribunal cannot exist as the agent of an interested party. Although we have had no occasion to call on the Conciliation Service, we believe strongly it should retain independent status.

Likewise, we belive the counsel and the Board should be kept separate—and for the same reasons. Here again we believe it goes against all human experience to try to have an interested advocate be at the same time an impartial judge.

12. *Exemption of supervisors.*—As representatives of management responsible for production and shop discipline, supervisory employees who join a union are put in the untenable position of attempting to serve two masters.

Supervisors are management. If they are unionized their unions will—as shown in the congressional hearings conducted a couple of years ago and again at the recent Senate hearings—become associated with, collaborate with, and even be dominated by, the unions representing the working force that they are supposed to lead and manage. The spirit of management goes, and the foremen become unable to properly guide the employees in the latter's own interest. The foremen tend to become simply another group of workers, instead of a true part of management. The union may discipline, fine, suspend, expel—and under the old form of union shop—actually fire these men from their jobs for merely doing their work properly and carrying out the orders issued to them by the employer.

In the debates at the time that the present law was adopted, the situation was aptly summarized as follows:

"* * * When the foremen unionize, even in a union that claims to be independent of the union of the rank and file, they are subject to influence and control by the rank and file union, and, instead of their bossing the rank and file, the rank and file bosses them. The evidence shows that rank and file unions have done much of the actual organizing of foremen, even when the foremen's union professes to be 'independent.' Without any question, this is why the unions seek to organize the foremen.

* * * * * * *

"The evidence further shows that rank-and-file unions tell the foremen's union when the foremen may strike and when they may not, what duties the foremen may do and what ones they may not, what plants the foremen's union may organize and what ones it may not. It shows that rank-and-file unions have helped foremen's unions, not for the benefit of the foremen, but for the benefit of the rank and file, at the expense of the foremen's fidelity in doing his duties."

Foremen and other supervisors—who are all a vital part of management—cannot fairly do their job if they are subject to the crossfire pressures of conflicting interests. I think the testimony before this committee 2 years ago amply bears this out. I urge that the present provisions as to bargaining with supervisory unions be retained in the law.

Mr. BAILEY. The Chair wishes to thank you for your patience.

Mr. WILSON. Thank you for your courtesy.

Mr. JACOBS. Mr. Chairman, I have already offered for the record Mr. Wilson's and Mr. Boulware's answer to my letter, and I should like also to state for the record that of the first 91 questionnaires that I received from Mr. Fulton Lewis' poll, there were 70 that voted "No" to question 14 and 21 that voted "Yes," the question being translated as follows, that 70 opposed the laws that condemned violence, just as a matter of clarity, Mr. Chairman, of the radio poll.

Mr. BAILEY. The members of the committee will please take their briefs with them this evening, for tomorrow's meeting, which will be called for 10 o'clock, and will be in the regular committee meeting room, 429.

The committee is now adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:15 a. m., the subcommittee adjourned until 10 a. m. Wednesday, March 16, 1949.)

APPENDIX

The statements referred to by Mr. Bailey and Mr. Kelley are as follows:

Statement of William T. Gossett, Vice President and General Counsel of Ford Motor Co.

My name is William T. Gossett. I am vice president and general counsel of Ford Motor Co., Dearborn, Mich.

The single question I would like to discuss today is whether the Federal Government should impose upon management mandatory collective bargaining with unions of supervisory employees.

It is our conviction that it should not.

Ford Motor Co. not only has explored thoroughly the pros and cons of the unionization of foremen, it has submitted the idea to exhaustive test. The Foreman's Association of America was founded at Ford in 1941. We were the first company to give this union formal recognition, and we bargained with it over a longer period of time than any other company.

Our conviction, therefore, is not based on speculation or theory; it is founded on years of experience—virtually all of it unhappy—with an organization of supervisory workers.

The problem of supervisory unions is often characterized as a "labor" problem. This is a fundamental error of great importance. The question involved is, rather, the ability of management to perform its functions.

I am here, therefore, not as a lawyer to comment on the legal aspects of the matter, but as a spokesman for the management of Ford Motor Co. to discuss, as a problem in management, our long experience with a foremen's union.

Throughout this statement I shall be discussing the foremen at Ford solely from the standpoint of our relations with them as union men. I want to make it clear that my remarks are in no way intended to reflect on their individual ability or loyalty. The foremen at Ford are capable, experienced, and loyal. They have been with the company an average of almost 21 years.

I was not with Ford during all of the period involved. This is perhaps an advantage, because I have been able to review the record with considerably more objectivity than might otherwise be the case.

This review discloses the following facts:

In November 1941, when Ford was first asked to consider this question, the company, in common with most of American industry, was rapidly expanding its labor force to meet national defense requirements. Many rank-and-file employees were suddenly promoted to foreman status. The company in mid-1941 had signed its first contract with UAW-CIO. At the same time, the demands of the national emergency for all-out efficient production threw into bold relief management problems, many of them at the foreman level.

Therefore, when, late in 1941, the Foreman's Association asked the company to negotiate, it found an audience at Ford which was at least willing to listen to argument. The need was for a management team which could most efficiently tackle the big jobs ahead. When the Foreman's Association represented that it would help to solve this problem, and thus to weld the team together by quickly bringing foremen closer to the rest of the management group, the company decided to give it a trial. Thus, the decision was made to consult with the association. At that time Ford, of course, was under no compulsion to do so.

I shall not attempt here to review in detail the first few years of this relationship. It is sufficient to note that it was unsatisfactory and disappointing to both sides.

By November 1943, when our original agreement expired, the company had been completely disillusioned. None of the results predicted by officials of the association had come to pass. The settlement of one difficulty seemed to breed others in rapid succession. Nevertheless, the company once again yielded to the association's argument that the failures that had occurred were because the agreement did not go far enough; that establishment of a contract setting up detailed employment rules and a full-scale grievance procedure would be insurance not only against walk outs and similar unpleasant incidents, but also would produce a more satisfactory relationship with the management of the company.

Hopefully, Ford Motor Co. gave way to these arguments, and took a very long stride in May of 1944. It granted to the Foreman's Association a contract, containing virtually every demand made by the association. (A year later the company went even further; it agreed to the appointment of an umpire for final decision on grievances. This was in deference to the association's plea that the grievance procedure needed this one final step.)

Here was the situation when Ford took this revolutionary action:

(*a*) The company was under no obligation to bargain with the foremen's union. The Maryland Drydock decision was in effect, and foremen's unions had not yet been recognized under the Wagner Act.

(*b*) The association had failed to gain bargaining recognition in any company in the automobile business, and its strikes had been abortive.

(*c*) Nevertheless, since the association's efforts had at intervals disrupted war production in some of our plants and at 14 other major Detroit war plants, Ford would have taken almost any constructive action which promised sustained output. The association assured us that a full contractual relationship would be accompanied by an end to the harassing interruptions to our war work.

(*d*) Another important consideration was the reiterated argument of association representatives that the organization could, with such a contract, serve as a valuable "assistant to management" and effect a better relationship among all groups in management.

Thus, Ford was led to take the final step. It granted to the association—without even the formality of a poll of foremen—recognition as bargaining agent.

Company officials had no mental reservations about their determination to make this agreement succeed. Accordingly, Ford's agreement with the association was complete and all-inclusive. A full-fledged grievance procedure, including the joint retention of an impartial umpire, was expected to cut off threats of strikes or strikes.

But there were still strikes and threats of strikes. There was a continuing series of harassing incidents in the plants. More importantly, the association relentlessly continued its efforts to drive a wedge between our foremen and the other members of our management team.

Quite simply, the company learned the hardest possible way that this relationship in which it had placed so much hope turned out to be incapable of doing the job. It was a failure, and proved the validity of the two historic objections to such relationships often voiced by those who have studied the supervisory union question. The first of these is:

SUPERVISORY UNIONS TEND TO DESTROY EFFECTIVE MANAGEMENT

The advocates of enforced recognition of supervisory unions concede that management is entitled to loyal representation, unsullied by conflicting interest. They concede that the vice presidents and plant managers alone cannot run the plants; that they must have reliable representatives to supervise the rank and file. They contend, however, that membership in a union does not jeopardize such loyalty. We know from rude experience that this is not true; we know that the pressures inherent in collective bargaining with a supervisory union inevitably lead to divided allegiance, irresponsibility, lowered morale, and a decrease in managerial efficiency.

We have learned that there is no such thing, for example, as a management union which is truly independent of organized rank-and-file workers in the same plant. From the early days of Ford's relationship with the Foreman's Association it was clear that the organization was beholden to the UAW-CIO, and that it regarded this as a natural and inevitable linking of arms.

In May, 1943, Mr. Robert Keys, then president of the foremen's group, conferred with R. J. Thomas, then president of UAW-CIO. Thomas assured Keys that in the event a strike was called by the Foreman's Association, the association could expect the following instructions from the UAW-CIO to its membership: UAW-CIO members would continue working, would not recognize foremen's picket lines, but would not take the jobs of any foremen while these foremen were out on strike.

The UAW respected this pledge during every walk-out of foremen from that time on, and in some cases UAW-CIO members went further and refused to cross Foreman's Association picket lines. Indeed, in 1947, we find the president of the association pleading with the UAW-CIO to join the association's strike against Ford.

The association was more than aware that its chance for success and survival rested to a very large extent on cooperation from the rank-and-file union. A natural result was a quick identification of interests, followed by a relaxation of discipline. The danger inherent in such reciprocal understandings was noted by a War Labor Board panel of public representatives in 1944:

"The Foreman's Association of America has asserted its determination to remain independent of rank-and-file organizations. The panel regards this intention of the Foreman's Association as important because the panel does not believe that it is appropriate for supervisors, who are responsible for discipline, assignment of work, rate adjustments and promotions, who represent the employers in handling the grievances of rank-and-file workers, and who generally represent higher management in dealing with the rank-and-file workers, to be subject to discipline by a union which is controlled directly or indirectly by the men whom they supervise. The effectiveness of management requires that it have its own uncontrolled agents to represent it in dealing with the rank and file, just as the rank and file are entitled to have their own uncontrolled representatives for dealing with higher management."

There are all too many examples in Ford files of this inevitable conflict of loyalties. The association proclaimed many times that the organization was "part of the labor movement as a whole," and so it was inescapable that these conflicts should in almost every case find the association pulling the foremen toward the point of view of the rank-and-file union. Here is one such example:

In September 1946 a union foreman, who was shorthanded, called on workers under him to vary their usual assignments for a short time. They refused, and the union foreman dropped the matter. Production began to lag, and a second foreman of higher rank stepped in and took disciplinary action. One of the disciplined workers, in the mistaken belief that the union foreman had taken this action, complained that it was not worthy of a "good union man." This foreman considered the workman's charge so serious that he went to the labor relations office to ask that his "name be cleared" of this charge. Instead, the company demoted him for placing union considerations before his job of leading the men under him. The Foreman's Association not only protested, but carried its protest through the entire grievance procedure to the impartial umpire.

This is a significant example because it epitomizes the habitual attitude of the association. The company, as a matter of policy, was trying then—as it is now—to place more and more responsibility upon its foremen; and the answer from the Foreman's Association was to reject and actively to oppose this policy.

The association even went so far on several occasions as to encourage and support foremen in countermanding company orders. On one occasion, in 1946, the association official working in our tool and die plant was told by a superior to determine whether groups of employes were making a practice of loafing away from their jobs in violation of rules. This association official instructed his fellow foremen not to comply with such an order, and refused to do so himself. The association threatened a strike when the company took disciplinary action.

In April 1947, the UAW-CIO ordered its members to leave their jobs to attend a mass labor rally in downtown Detroit. The company felt this to be a direct violation of the UAW-Ford contract and instructed foremen to notify the men accordingly. The president of the Ford chapter of the association countermanded these instructions. The association not only encouraged this unauthorized walk-out, but, in violation of its own contract, joined it. Over one thousand of our foremen left their posts on this occasion. In doing so they not only exposed company property to damage, but, more importantly, placed a large number of unsupervised workers in unwarranted danger of physical injury.

In a bulletin to members on this occasion, the association declared again that they were "definitely part of the labor movement as a whole," and candidly told association members to "line up behind (UAW-CIO) local 600" at the rally.

In June of 1945, UAW-CIO members at our Highland Park plant were engaged in an unauthorized work stoppage in violation of contract. During the walkout, certain UAW committeemen complained to the Foreman's Association representative that some of the foremen who remained on the job were working. Our agreement with the association recognized their obligation to work, but the association representative nevertheless went into the department and advised the foremen to stop working. As a result the department had to be shut down.

In Ford plants, UAW-CIO committeemen are paid by the company for time spent in handling the shop problems of their constituents. The UAW contract provides that committeemen shall engage in no other activity, and the National Labor Relations Act forbids our paying union representatives for time spent on strictly union business. The company had a similar arrangement with the Foreman's Association. There is a strong tendency among union committeemen to engage in prohibited union activities on company time, and among unions to condone these activities. The company necessarily must rely upon its foremen to prevent such abuses.

In August of 1946, representatives of the Foreman's Association were themselves spending such a large proportion of company time in collecting union dues and soliciting membership that the company complained to the president of the Ford chapter of the association. He not only refused to correct the situation, but said that association committeemen would continue this activity. Obviously when Foreman's Association committeemen themselves engage in such abuses, and in doing so are supported by the association itself, they are not inclined, nor are they in a position, to protect the company against similar abuses by rank-and-file union representatives.

Although it has its ethical aspects, the problem with which we are concerned is a most practical one. Good relationships between management and rank-and-file workers require fair but firm supervision and genuine respect by workers for their obligations to management.

The illustrations I have given show the basic contradiction between the foreman as a supervisor and the foreman as a good member of his union.

In passing, I would like to point out that during the first years of our experience with the association we also lost a record number of man-days through unauthorized walk-outs and strikes on the part of the rank-and-file. This could be coincidental; but we are convinced that there is more to it than that. There is considerable evidence that the lack of leadership and divided loyalties resulting from association activities were reflected in the irresponsible attitudes of the men whom they were expected to dissuade from such actions as illegal strikes.

I would like to turn now to the second major objection to supervisory unions which was so completely borne out in our experience with the Foreman's Association. The objection can be stated this way.

SUPERVISORY UNIONS FORECLOSE MERIT AND INITIATIVE BY THEIR RIGID INSISTENCE ON SENIORITY IN DETERMINING PROMOTIONS AND DEMOTIONS

This question also was emphasized in the War Labor Board panel report mentioned above:

"The panel, however, believes that management should be left free to assess the relative weights to be accorded seniority, merit, and present or potential ability when lay-offs, demotions, and transfers of foremen are made."

In respect to promotions, the panel noted that its reasons for the foregoing conclusion "apply even more forcibly."

"The attachment of excessive weight to seniority in promotions would go far to reduce the drive to excel among the foremen and would limit the opportunity of men to forge ahead. Its effect upon the quality of management and upon the enterprise and efficiency of American industry would be unfortunate, if not disastrous. The effect on the rank-and-file would also be undesirable."

At Ford, seniority is always accorded great weight by management, but to make it conclusive would be disastrous. The association, at our insistence, agreed to a provision in the 1944 contract to the effect that seniority would prevail only in cases of equal ability. The association made frequent public reference to this provision as proof of its position that merit should prevail in the promotion or demotion of supervisors. But quite a different attitude was displayed when questions of promotion or demotion actually arose. The contract language meant very little in actual practice.

The association habitually challenged promotions or demotions made on the basis of merit. Forty percent of all grievances filed by the association were on this issue alone, and many of them were carried through all stages of the grievance procedure to the umpire. The association thus clogged the grievance procedure to assert this one point.

Simply stated, ability and seniority were almost always held to be synonymous by the association.

Here are a few excerpts from typical grievances filed by the association during this period:

"* * * Since the company has accepted Mr. Maitland's services as being satisfactory, making no effort at any time to show him as lacking ability, seniority should be the governing factor in the demotion."

"Consideration of reinstatement of foremen from the availability list who were demoted by reason of a reduction in force must be based on seniority alone."

"It is the association's contention that ability in the instant case is not a factor since the question of Mr. Moore's lack of it had never been discussed."

"* * * Since Mr. Pendracke has the greater length of service as a foreman in the department and since his removal as a foreman was not because of lack of ability or inefficiency the company must reinstate him as per contractual obligation before Mr. Matievich."

In another case the association argued as usual that the aggrieved employee had been on the job for many years, and consequently must be presumed to have the required ability, so that his seniority entitled him to the position. It went on to say: "The association's position in the instant case is amply supported by precedent since an umpire ruling in a parallel case between the Ford Motor Co. and the CIO resulted in complete vindication of the union's argument. So much so, in fact, that the new contract between the company and the CIO incorporates a clause stipulating that in case of a reduction in force, demotions or lay-offs will be made on a strict seniority basis. The association sees no reason why this should not also apply where foremen are concerned."

Indeed, the continuous opposition of the association to promotions and demotions, except upon a strict seniority basis, led most higher supervisors to follow seniority save in the most extreme cases, in order to avoid friction and to "get along" with the association.

This insistence on the mechanical application of seniority was and is repugnant to all concepts of good management. It is a concrete denial of ability and of the natural urge of men to better themselves. Two members of the Ford policy committee, both vice presidents, are primarily responsible for production. Both men came fro mthe ranks of foremen. Almost all of their subordinates followed the same route to their present positions. The future, not only of Ford, but of other companies depends upon the ability of management to recognize and preserve ability and reward merit quickly.

If a rigid rule of seniority is to prevail, this country might easily be deprived of the leadership and ability of men like William Knudsen, Walter P. Chrysler, Walter Gifford and many others who have risen through the ranks.

The test constantly imposed upon American management is one of accountability: Accountability for good products, reasonable prices, and fair and equitable treatment of its employees and of all other groups with whom it deals.

When a foremen's organization must be recognized, management is compelled to share its judgment in selecting the persons who actually run its plants and deal with its employees. This does not, however, relieve management from its complete accountability, which in the nature of things cannot be shared. The panel report referred to above deals cogently with this issue:

"The panel believes that great weight should be attached to the dependence of higher management on the competency of foremen. When the managers of an enterprise select foremen to whom they delegate authority and responsibility, they are not relieved of accountability for results. They are expected to pick competent men on whose good judgment and reliability the superior can depend. The panel calls attention to the fact that foremanships are to a considerable extent the seedbed for higher management. Furthermore the men who hold high positions in management are chosen in part for their skill in selecting and developing subordinates into an effective organization. They should be free within broad and reasonable limits to exercise these functions and to select and develop men for greater responsibilities."

The record is clear that the association strongly opposed any action by the company to improve the status or enhance the dignity of foremen, or to improve their ability to perform their jobs, except in collaboration with, and with the prior approval of, the association. Association officials opposed any system of merit increases, characterizing those who would receive them as "red apple boys" and "company men." The theme of the association was that foremen were not, and would never be, a part of management; that they would always be "just foremen."

Meanwhile, Ford Motor Co. was making a genuine effort to work out successfully its agreement with the association. This assertion is supported by the testimony of Mr. Keys, president of the association, before the House and Senate Labor Committees in February 1947. He referred frequently to the "excellent relations" of his organization with Ford, and to the "efficient and cooperative manner in which the grievances of our members were handled by the Ford Motor Co.

But long prior to the expiration of the agreement, Ford realized the necessity of reviewing the whole situation in view of the highly unsatisfactory history of the past few years. This, and the militant stand taken by the association, led Ford, on April 8, 1947, to send a notice of its intention to terminate the agreement.

The association answered this notice by repeating its demand for the enlargement of its power to include bargaining representation for all foremen, including nonmembers of the organization; inclusion, without vote, of general foremen and even some classes of superintendents; check-off of association dues and assessments; increased emphasis on seniority; and a number of fringe issues.

It will be noted that each of these demands was designed primarily to strengthen the hand of the association, not primarily to assist or help the individual foreman.

Accompanying these demands was a notification by the association of its intention to strike unless they were met.

The situation facing us in the spring of 1947 thus had many aspects:

(*a*) We did not want a strike.

(*b*) Experience had convinced us that a management union such as the association was unworkable unless a wholly new concept of its role could be agreed upon.

(*c*) In the Packard case the National Labor Relations Board had held, contrary to its Maryland Drydock decision, that management was obligated under the Wagner Act to bargain with supervisory unions.

(*d*) Ford Motor Co., through Mr. Henry Ford II, its president, was committed to an active program for the constant betterment of personnel relations throughout the organization.

On balance, and despite our discouraging 3 years, we finally concluded that the objectives of all parties concerned might best be served by extension of the existing agreement for another 12 months, if the association would agree not to interfere with the company's plans to draw foremen closer to other groups of management.

A letter to that end was sent, on May 15, 1947, to the Foreman's Association. It suggested no changes in the terms of the contract, but proposed, in the following language, a definite statement of objectives for any future relationship between the association and the company:

"We want foremen drawn closer to other groups of management, not divorced from them. Once a man sets his foot on the management ladder at Ford Motor Co., we want him to know our policies and programs; we want him to share our responsibilities and privileges; we want no artificial barrier put in his way if his ambition is to climb up that ladder in accordance with the value of his abilities, energy, and experience.

"We expect your wholehearted endorsement of these basic objectives.

"We have already started and will continue to develop vigorously a carefully planned program to achieve those objectives. Since our organization is large, the job is not easy. We may make mistakes, but we propose to keep on trying because we intend to succeed.

"We will expect from you assurance that the association will not interfere with this program. In this we ask good faith. Obviously, tacit agreement accompanied by constant sniping at our efforts would make a difficult job next to impossible."

Our proposal was rejected. On May 21, 1947, our foremen went out on strike.

Although the difficulties ahead were only too apparent, we decided to continue with production. During the strike, production was maintained nearly at schedule. This was due partially to the refusal of many foremen and other supervisors to join the strike and to the fact that others quickly returned to work. This was a strong demonstration of the loyalty of many of our foremen to the management team of which they were a part.

Several significant events occurred during the strike. Officials of the FAA publicly ordered its picketing members to "get tough," and violence, threats, and intimidation ensued. On June 23 the Taft-Hartley Act was enacted. Although it was not to become effective for 60 days, there can be no doubt that the act's removal of the legal obligation to bargain with supervisory unions had a direct and immediate effect on the strike. The FAA continued to appeal to UAW-CIO to support the strike, and the rank-and-file union cooperated by following the UAW-CIO policy referred to above. On July 2 Mr. Richard Leonard, then international UAW-CIO representative for the Ford department, offered his services as mediator.

A back-to-work movement by striking foremen was well under way, however, by July 1; and on July 3 the company announced it was formally withdrawing its recognition of the Foreman's Association.

By July 6 the strike, to all intents and purposes, was over. There was a tendency, particularly in the press, to herald the return to work as a "company victory." Technically I suppose it can be described in that way. True, the association had failed to attain a single objective. But as we went through the laborious job of straightening out our plants and patching together our production team, it seemed anything but a victory.

Rather, it crystallized our views on our long and patient experimentation with the Foreman's Association:

First, the notion is false that supervisors can be dependent upon a union and still retain a primary loyalty to the job of supervising men and operations.

Second, union intervention at the supervisory level tends in practice to transmute individual responsibility—the essence of efficient management—into mass irresponsibility.

Third, the insistence of the Foreman's Association—or any other supervisory union—on promotion and demotion according to seniority alone is repugnant to our concept of good management, and always will be.

Fourth, the independence of a supervisory union in a highly organized mass production industry like the automobile business is a myth. There is an inevitable tendency in supervisory unions to ally their interests with the interests of unions of rank-and-file workers, a situation which is the antithesis of management responsibility.

Finally, the philosophy that guarantees the right of the rank-and-file to organize and choose their own representatives—with which we agree—cannot practically be applied to the supervisory group.

As a result of hard experience we reject the thesis that foremen can be "employees" for the purpose of mass bargaining with a company over wages and working conditions and yet be a part of management when supervising rank-and-file employees. A divided loyalty is as bad or worse than no loyalty at all.

I am aware that the records of this and other congressional committees contain a number of statements from officers of the Foreman's Association asserting the virtues and accomplishments of the organization, together with claims concerning the necessity for the right of foremen to organize. I am acquainted with most of these arguments.

Mr. Keys has declared, among other things, that FAA increased production, brought to a halt work stoppages by foremen, is "truly independent," and does not coordinate with rank-and-file unions. As I have indicated, our experience was decidedly otherwise.

Mr. Keys also asserted that supervisors are not actually part of management; and that foremen have no more voice or authority in today's large industries than the individual hourly rated employee. These statements are not true.

Since the conclusion of our relationship with the Foreman's Association, we have felt free to go forward with our program of placing more responsibility on and authority in our foremen. This program is, we believe, essential to the continued success of the enterprise. Accordingly, we have made each foreman the manager of his own department. He is now engaged exclusively in the performance of management functions. Attached is appendix A containing the sheets from our supervisor's manual on which are set forth in detail the responsibilities of each classification of Ford plant supervisors. The number of ranks of supervision have been reduced substantially. The power to discipline their employees, as contrasted with mere recommendations as to discipline, is being returned to them.

The status and benefits accruing to the formen's position have been increased commensurately. This has been a natural result of his increased authority and responsibility. For example, his salary status has been improved and he is eligible for merit increases; he takes part in periodic management meetings; he participates in a management development program; he assists in the development of and is kept informed concerning company policies and programs; and he is given assurance of proper recognition for increased efficiency, production and good personnel management.

This program could not have been adopted while our foremen were unionized. Its adoption not only would have been impracticable, it would have been fruitless as well.

In summary: At Ford Motor Co. we are proud of the reputation we have for fair, honest and progressive dealings with our employees. We want to continue to deserve that reputation. We know that we cannot work with a supervisory union toward that objective, and toward the much larger objective of sustained high production and low costs.

We at Ford have, since 1941, considered with earnestness and sincerity of purpose the question of supervisory unions; and we have tried to be fair in our appraisal. We have given the experiment a generous trial, and I think the record is one of patience and cooperation on our part. We feel that we are beyond theory or conjecture. The fact is that no amount of patience or effort can make an essentially unworkable arrangement work; and we know from actual experience that unionization of supervisors is unworkable.

We have, therefore, come to the conclusion that it would be most unwise to force supervisory unions upon American industry. The consequences, we firmly believe, would be serious and far-reaching. In the first place, hundreds of thousands of capable Americans might thus be deprived of their hope and right to move upward on the basis of merit to increasing responsibilities. But, more importantly, because it involves the American people as a whole, we think that production efficiency would be decreased. This would of course mean higher costs and prices and lower production. Thus, the result achieved would be directly contrary to that sought by Congress.

STATEMENT BY JOSEPH GRITTER, SECRETARY, CHRISTIAN LABOR ASSOCIATION OF THE UNITED STATES, GRAND RAPIDS, MICH.

The Christian Labor Association of the U. S. A. is interested in the enactment of labor legislation that will give proper protection to the rights and welfare of all who will be affected by it: the workers, the employers, and the public. Whether that is effected through amendments to the Taft-Hartley Act, or through repeal of that act and the enactment of a new law, makes very little difference to us, if only in the new legislation the rights of all are given adequate protection.

It is our contention that the constitutitonal rights of American workers have not up to this time been properly upheld. When we speak of "workers" we have in mind not only those who are organized in the larger labor movements but as well the millions who are organized in smaller independent organizations and those who have chosen not to join any organization. Although we believe that every worker ought to be organized in a union of his free choice, we also contend that neither the State, nor any employer, nor any organization, has the right to compel workers to be members of an organization, not of their free choice, under threat of loss of employment. Although it is true that up to this time neither the Federal Government nor the States have enacted legislation that would force workers to be members of an organization, it is undeniable that Government bears responsibility in such a matter if it enacts legislation under which such coercive practices are given legal sanction. Congress will do well to give serious thought to that fact when it considers a new labor law.

Both the Wagner Act and the Taft-Hartley Act theoretically provided protection to workers to be members of a union of their free choice. The latter act also pretends to protect the right of a worker not to join an organization if he so chooses. The expression of such rights is quite meaningless, however, if as a result of their exercise by a worker he suffers the loss of employment. When in a law certain "rights" are established, the exercise of them without suffering the loss of liberties and privileges accorded to others who exercise parallel rights should be fully protected.

Neither the Wagner Act nor the Taft-Hartley Act gave protection to workers who because of certain convictions chose to be members of an independent, minority organization. It is true that such workers can maintain such an organization if they succeed in gaining a majority in a bargaining unit. But, when they are not able to do so, when they are defeated in an election, the organization of their free choice is subject to annihilation, to a sudden death that means the end of all their efforts. And that is not all. The law allows the winning organization to secure a contract that will compel them to join the organization to which they were opposed in order to retain their employment. That is the crowning injustice. It is particularly grievous to those who cannot, with a clear conscience before God, join organizations which engage in practices that they cannot harmonize with their religious convictions. By becoming members of such organizations they become coresponsible for their activities. Because such organizations do not place themselves under divine law it is impossible for such Christian workers to exert sufficient influence upon them to remove the offending practices. Such workers are then placed in the position where they must choose between the loss of employment and denial of their Christian convictions. It is not a free choice. It must be made under severe pressure. If they choose to remain loyal to their Christian convictions they must suffer loss of employment, a most serious matter, especially when they are confronted with closed-shop and union-shop conditions on all sides. That such suffering because of loyalty to religious convictions should be allowed in our Nation is well-nigh unbelievable. But it is an undeniable fact.

A solution of this flagrant injustice has been sought by Christian workers through the establishment of their own organizations on a Christian basis. But, as stated before, such organizations are powerless unless they attain a majority in a bargaining unit. As a minority they are given no protection whatsoever against annihilation by the majority. Our present laws are most unfair to minorities. They promote a policy of eventual complete domination of all labor by a few large organizations of which workers will have to be members if they are going to live. That policy gives no consideration whatsoever to minority rights, nor to the principle of free choice without penalty, nor to protection of the right of citizens of this country to give expression to their religious convictions without loss of certain divinely given and constitutionally protected rights.

Both the Wagner Act and the Taft-Hartley Act, in their respective seventh sections, sanction either the closed shop or the union shop. In both it is evident also that those who wrote the legislation were aware of the inconsistency of such policies with the basic freedoms which the laws sought to protect. In both such policies are allowed as exceptions to the generally established rule of freedom of choice and nondiscrimination. They were inserted because of the extreme pressure exerted by certain groups that had gained great power through the exercise of such undemocratic and un-American policies. Through the exercise of the policy thus sanctioned as an exception such organizations have forced millions of workers to accept membership in them against their will, have crushed minority groups and completely ignored the objections of those who could not because of their convictions, religious or otherwise, join them. The exception to the rule of freedom of choice and of nondiscrimination, has become the rule. Even as an exception it should never have been allowed, but now it has become a rule of practice that is fast destroying our democratic way of life.

Under compulsory union membership a worker, who must remain in good standing in the union, loses his freedom of speech. It cannot be otherwise. Workers who know that their jobs depend upon being in the good graces of union officers cannot speak freely. So long as there is not freedom from fear there cannot be freedom of speech. There is fear in the minds of millions of workers in America which keeps them from giving expression to their convictions.

There can be no freedom of religious expression under compulsory membership in a union not of one's free choice. Religious liberty means more than the right to attend divine worship on the Sabbath. It means also that citizens of this land shall be allowed to live in harmony with their religious convictions without suffering the loss of other constitutional rights as a result. Granted that such exercise is limited to the extent that it must not interfere with the rights of others, that would not apply in the case of workers who do not interfere with the right of others to join a union of their free choice, and who ask only that they be accorded the same privilege or the right not to join any union if their religious convictions do not allow them to do so. Under our present laws such workers are thrown out of employment and consigned to starvation.

We believe that our views on compulsory union membership are supported by the decision of the United States Supreme Court, given on January 3, 1949, (Case Nos. 47 and 34) in answer to the appellants' contention, "The right of unions and union members to demand that no nonunion members work along with union members is indispensable to the right of self-organization and the association of workers into unions" the Court unanimously stated: "We deem it unnecessary to elaborate the numerous reasons for our rejection of this contention of the appellants. Nor need we appraise or analyze with particularity the rather startling ideas suggested to support some of the premises on which appellants' conclusions rest. *There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or cannot, participate in union assemblies.* [Italics added.] The constitutional right of workers to assemble, to discuss and formulate plans for furthering their own self-interests in jobs cannot be construed as a constitutional guaranty that none shall get and hold jobs except those who will join in the assembly or will agree to abide by the assembly's plans. For where conduct affects the interests of other individuals and the general public, the legality of that conduct must be measured by whether the conduct conforms to valid law, even though the conduct is engaged in pursuant to plans of an assembly."

Congress will do well to take note of those words. Compulsory union membership may be sanctioned again, but the test will be whether such a sanction will be held to be a valid law that does not conflict with the Constitution. The decision of the Court indicates that the right to enter upon closed- or union-shop contracts cannot be wrung from the Constitution.

The question of union security looms very large in any discussion of compulsory union membership. Leaders of the larger organizations have taken the position that in order to have union security labor organizations must have legal sanction to compel workers to join them. The theory of compulsory loyalty to an organization under threat of loss of personal security is the same theory which was brought into application in fascism and nazism, and is presently being enforced in communism. The fallacy of the theory has been exposed repeatedly, nevertheless men continue to cling to it. It is very surprising, however, that leaders of organizations is a democracy, and even members of the Government, accept that theory, in spite of the lessons of history.

The democratic theory of security, of an organization and a nation, is, that security can be attained and maintained only through adherence to basic conceptions of freedom and human rights. Security is only then strong when it is promoted and maintained by voluntary efforts of free men and women. Hence labor organization security that will be lasting can only be soundly established and maintained through voluntary membership of workers in unions of their free choice. That must mean that when workers join an organization in which they believe they will be protected in their right to remain members of such an organization if they so choose. And they will choose to do so if they through their own organization are given an opportunity to have a voice in the determination of their working conditions, even when they constitute a minority of the employees in a unit. We are confident that if minority groups are given representation on bargaining committees, so that not one union but in some cases several unions will jointly negotiate a contract with an employer, there will be organization security, without compulsion, not for one but for all the unions that are each representative of a substantial number of the employees.

Such a policy will eliminate the evils now connected with the closed and union shop. Men will be free again to speak, without fear. There will be a healthy rivalry among the unions. Violent disputes between organizations for exclusive representation power will be eliminated when it is known that the minority organization(s) need not be in fear of "sudden death" in case of failure to gain the majority of the votes in an election.

That kind of policy will mean a revision of the "exclusive representation" power established under both the Wagner and the Taft-Hartley Acts. So long as only one union can have bargaining power in a unit there will be violent battles for it, suppression of minorities, and various schemes for so-called union security, to be enjoyed by one union only, all of which in one way or another compels the individual to surrender divinely given rights in order to be able to gain his daily bread. Among all the evils of compulsory membership that of the subjugation of the individual to the organization, with the inevitable loss of his right to live in accordance with his conscientious convictions, is the most unjust.

We do not know of any other democratc nation in which labor unions are given such exclusive representation power, including the annihilation of all opposition. Nor do we know of any other democratic nation in which in an election organized groups can be placed over against one another with the winner having life-and-death power over the loser. It would be democratic either to have the employees vote for persons to represent them, contesting unions having the right to put up candidates, or to have proportionate representation on the basis of the number of votes cast for each.

In that direction lies the solution of the present unsatisfactory and unjust policies. Until such a solution is worked out, in harmony with the democratic principles to which this Nation is committed, there can be no solution in which the guaranteed personal liberties of the workers of this Nation are fully protected.

Such American policies will require revision of the main parts of the present law. Under such policies as we propose real union security can be attained. Instead of the closed shop or union shop the organized shop can be allowed, under which employees will be free to be members of the union of their free choice, and those who cannot because of conscientious convictions join any union will be allowed to continue in employment upon offering proof of acting in good faith in the matter.

We suggest the following amended reading of section 8 (a) (3) of the Taft-Hartley Act: "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with one labor organization, or two or more labor organizations acting jointly, (not established, maintained or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership in the bargaining organization, or in one of the organizations bargaining jointly, on or after the thirtieth day following the beginning of employment, or the effective date of such agreement; whichever is the later, if such organization is, or such organizations are, the representative of the employees as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made, and *Further provided*, That the right of employees to become or remain members of a union of their free choice, without dual membership, shall be fully protected, and that no employee who has conscientious objections to membership in any union shall be discharged as a result of refusal to join if such employee offers proof of his good faith in the matter by agreeing to contribute an amount equal to the average monthly union dues to a civic welfare or charitable institution of his own free choice, or offers other proof of good faith."

Such a change will require that section 9 (a) of the Taft-Hartley Act be amended to read as follows: "An organization chosen for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes of collective bargaining in respect to the rates of pay, wages, hours of employment, or other conditions of employment, if that organization is the only bona-fide labor organization that is representative of a substantial number of the employees in the unit. *Provided:* that if there are two or more labor organizations that are each representative of a substantial number of the employees in the unit, which together represent a majority of the employees, nothing in this Act shall prohibit such organizations from entering upon joint representation of the employees through proportionate representation on a bargaining committee, to be determined by the Board; nor shall anything in this Act prevent the Board from ordering such joint representation if in the opinion of the Board that will best protect the rights and interests of all the employees."

Our comment on other parts of the present law will be brief. If the basic policies we propose are put into effect, other parts of the law will have to be amended accordingly. We believe that most of the present restrictions on certain union practices ought to remain, especially those prohibiting the use of boycotts to compel employers to enter upon an agreement with a union that is not the freely chosen representative of his employes, and the various forms of the secondary boycott. Such practices should never be allowed in a democratic nation.

In regard to the free speech clause we suggest that these conditions be added: (1) that the employer may not offer definite advice concerning organization or related matter, and (2) that an employer may not require of his employes that they give a hearing to the expression of his views on company time. Such practices definitely have an effect that is unfair to the organization(s) seeking representation power.

In regard to the loss of employment status by an employee who strikes during a contract-negotiation period, we wish to state that we have no objection to such a penalty if the strike has not been provoked by the employer. However, if upon an investigation the Board finds that the strike was thus provoked, the employee should be entitled to reinstatement with reimbursement of lost pay.

In section 9 (3) there is a provision that "employees on strike who are not entitled to reinstatement shall not be eligible to vote." There again the question whether such employees are striking because of an unfair labor practice enters in. But regardless of that, so long as those out on strike are considered to be employees of the company they should be entitled to vote in any election affecting their employment. The provision would be more to the point if it read: "Former employees who have lost their employment status through a strike conducted contrary to the provisions of this act, and therefore not entitled to reinstatement, shall not be eligible to vote." The question of eligibility to vote hinges on the question whether or not the strike in process has been called in violation of the law. Employees should not lose the right to reinstatement merely because they are on strike for economic reasons. We take the position that employees who have given satisfactory service in a job have a moral claim to that job because of what they have contributed through their services as responsible human beings, even if they go out on strike to secure justice in the form of better returns for their labor. That is a sound Christian principle.

We believe that the Board should have the power to secure temporary restraining orders, or injunctions, through the courts, when there is an apparent violation of the law, such an order to be in force during the time that the Board completes its investigation. If the Board does not have such power an employer or a union, whoever may be engaging in such an apparent unfair practice, can during the time of the investigation, which usually takes several months, do inestimable and irreparable damage. There must be a means whereby immediate relief from an unlawful practice can be obtained.

We are opposed to a return of the United States Conciliation Service to the United States Department of Labor. Although we might stand to benefit by it, we cannot see that it would be advisable at the present time. The United States Department of Labor is very definitely committed to the promotion of the interests of labor unions. Placing the Conciliation Service under that Department would rightly or wrongly, create a prejudice against it on the part of the employers. Since the Conciliation Service must serve both employers and unions impartially it ought to be kept entirely free from any appearance that it might be under the influence of biased Labor Department officials.

Concerning the power now vested in the President to take effective action to stop the calling of a strike for a limited period of time, if such a strike should threaten the national welfare, we wish to go on record in favor of the retention of such power by the Chief Executive. In our complex economic system such power must be in hands of someone who is fully conscious of his responsibility for the welfare of all the people. There is proof at hand that the leaders of powerful organizations which control services that are essential to the national welfare, are not willing to accept responsibility commensurate with their power. It then becomes a question of whether an organized minority shall have the right to endanger the national welfare in the pursuit of its particular interests, or whether the chief representative of all the people shall have the power to stop such a minority from using that power during a limited period of time while the dispute is being impartially investigated. To ask the question is to answer it. In a choice between the exercise of such Executive power and the right of a minority to rule by terror, we choose the first.

The only step which we would have eliminated in the present Taft-Hartley law procedure, is the one which calls for the taking of a secret ballot by the NLRB after a board of inquiry has reported failure of a settlement to the President. The board must then go over the heads of the union leaders to take a ballot among the workers. That is interference with the democratic function of a labor organization which we cannot justify. We would suggest, instead, that the President within the 15 days after the end of the 60-day period of investigation, report to the Congress with definite recommendations for appropriate action. From the Christian viewpoint we cannot find anything wrong in the right of either an employer or an employee, or a union, having suffered injury through the unlawful acts of another party, to seek redress through the courts. Nor do we object to having unions held responsible for the acts of their agents. Our organizations accept the responsibility willingly, as a Christian moral obligation. Other organizations should be held equally responsible. It has a wholesome influence also upon organizations since it causes them to exercise greater care in the selection of officers and agents.

We favor restrictions upon the use of union funds for political purposes. As a matter of principle we submit that it is morally wrong for an organization to use funds, contributed by people of diverse political opinions and affiliations, for the purpose of supporting candidates of some definite political organization. It is much worse if organizations are allowed to assess members to raise funds for such purposes, especially under closed-shop conditions. Workers are then compelled to contribute to the election of men who may not be their personal choice, under threat of loss of their jobs. That, too, is an injustice that cannot be tolerated in a democratic nation.

From a practical viewpoint we believe that the exercise of strong political power by the labor movement constitutes a great danger to the movement itself. A strong labor-political pressure movement that will constantly try to control Congress, or dictate to it through intimidating pressure, will in the end destroy itself, either through reactionary legislation at some opportune moment or through the sheer weight of its political power. When such power is attained laws will have to be enacted that will assure to such a movement the retention of its power in the future. That will mean the destruction of civil liberty, and the end as well of a free labor movement.

These are, in brief, our views concerning labor legislation that will be just to all concerned, in harmony with the democratic principles upon which our Nation is based. Our suggestions may appear to be revolutionary in some respects. However, we are convinced that they point to the only direction in which a permanent solution of labor relationship problems is to be found. May God grant that you may see that as we do.

STATEMENT OF THE GENERAL FEDERATION OF WOMEN'S CLUBS RELATIVE TO LABOR-MANAGEMENT RELATIONS ACT OF 1947

The General Federation of Women's Clubs is an organization of approximately 5,000,000 women in the continental United States, with a voting membership of over 1,300,000. It is deeply interested in enactment of legislation which will be equally fair to labor and management and at the same time protect the public interest.

We wish, therefore, to call the attention of the House Committee on Education and Labor to the two following resolutions adopted by the general federation which set forth certain principles in regard to labor legislation. We earnestly hope these principles will not be overlooked in current proposals for repeal or revision of the Labor-Management Relations Act of 1947.

CLOSED SHOP

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1947, declares its conviction that the right to work freely and at will is inherent in a democratic society and should be limited only by the constitutional rights of other equally free citizens; that the enforcement of the closed-shop system interferes with and nullifies this right; and that the closed shop, or any variation of the principle involved in the closed shop, should be banned by legal enactment.

LABOR, MANAGEMENT, AND THE PUBLIC

Whereas the failure to reach full agreement on the part of the President's Labor-Management Conference held in October and November 1945 has deeply alarmed the people of this country and has made both management and labor subject to condemnation for permitting selfishness of purpose to interfere with effective cooperation in the continuing national and world emergency, and

Whereas this Nation has been shocked and dismayed by the increase of strikes and riots occurring in key industries and in public services, and

Whereas serious delays in production have retarded successful conversion to peacetime living and the welfare of the Nation, the comfort, happiness, and security of its people are vitally affected, and

Whereas irresponsible leadership in either management or labor is a menace to a successful democratic society, therefore be it

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1946, declares its firm conviction:

(1) That the public as consumer of the products and services of industry is as greatly affected when management and labor disagree as is either of the parties to the disagreement and that protection of the public interest must be recognized as of paramount importance;

(2) That it is the inescapable duty and responsibility of both labor and management to exert every possible effort to the end that agreements which are binding upon both parties may be reached whereby an equable profit for industry is assured; a fair wage for labor is attained; and the vital interest of the consuming public is protected;

(3) That the Government of the United States through an extension of its Conciliation Service and a sound labor policy enacted into law should safeguard and preserve the rights and interests of management, labor, and the public, and prevent discriminatory practices;

(4) Although the right of labor to engage in collective bargaining in an effort to improve working conditions is uncontested, the right to strike while seeking such benefits does not include the right to injure persons, damage property, interefere with the general welfare or to jeopardize the public safety; therefore, Federal legislation should include provisions whereby civil and criminal responsibility and accountability be placed upon union officers and participiating union members during strikes, slow-downs or other union activity which shall be comparable to the responsibility and accountability of fellow citizens for their acts;

(5) That in a democracy equity demands comparable financial accountability to the public on the part of both business and labor unions and, therefore, legislation should include provisions whereby disclosure of receipts and expenditures of labor union funds be made mandatory to the same degree as those required of business.

STATEMENT BY EDMUND R. PURVES, EXECUTIVE DIRECTOR, ON BEHALF OF THE AMERICAN INSTITUTE OF ARCHITECTS, RELATIVE TO H. R. 2032

The American Institute of Architects is a national professional organization comprising 88 chapters and 7 State organizations in the United States and its possessions, and is the only organization representing the profession of architecture. As the spokesman for its approximately 8,000 members, it is considered competent to express the opinion of the profession as a whole.

Professional service is the only product of the architectural profession, taking the tangible form of drawings, plans, and specifications, and the average architect more often acts in the role of employer than employee. There are architects employed on a salary basis by corporations. There are architects directly in the employ of Federal, State, and municipal governments. It is possible that some of them may act through collective bargaining to establish salaries and working conditions. For that portion of the membership which is practicing the profession under principal architects or employers, the institute considers it fitting and proper that certain definitive terms affecting such professional employese be retained in whatever labor legislation is enacted by this session of Congress.

The phase of labor legislation which deals with and affects professional employees was embodied in section 2 (12) and section 9 (b) (1) of Public Law 101, Eightieth Congress, as follows:

"Section 2 (12), which is a definition of the term 'professional employee,' states that—

" '(12) The term "professional employee" means—

" '(a) any employe engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

" '(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"Section 9 deals with 'representatives and elections.' In subparagraph (b) of that section it is stated that—

" '(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit.' "

These provisions virtually cover three points which the institute is concerned with; namely that—

(1) No employee in a professional office should be obliged, against his will, to join a labor organization as a condition of employment.

"(2) In the event that a collective bargaining group be formed in a professional office, it must not be forced to affiliate with a nonprofessional labor organization.

(3) The right of employees in any such unit to designate their own representatives must be respected and observed.

In recapitulation, let us observe that the architects recognize the right of any group to form units for the purpose of collective bargaining, but believe that as a supplement to this established right, membership in such unit should not be made a condition of employment. The architects believe that if a group of professional employees does organize for collective-bargaining purposes, their actions should not be directed or governed by nonprofessional people. The matter of affiliation should be left entirely with the professional architects involved.

The architects believe, further, that in the event a collective-bargaining unit is formed, it should have the sole right of designating its own representatives to take up matters with employers. This premise is based on the argument that persons outside of the architectural field are hardly qualified to act as representatives, since they would lack the knowledge and experience required to intelligently present the professional viewpoint in any collective-bargaining case.

We feel that because the practice of architecture is a career which requires a progressive and intellectual turn of mind, together with initiative, talent, and a natural inclination, developed by intensive traning, only those engaged in the pursuit of such a career should be vested with powers to determine policies affecting the welfare of the practitioners. It is inconceivable that anyone unfamiliar with the specialized training and experence necessary to the profession could satisfactorily represent any such group.

On perusal of Senate bill 249, we find no provision made for the protection of the collective-bargaining rights of professional employees as such, nor any definition of professional employees.

To our knowledge there has been no exception taken to the provision of sections 2 (12) and 9 (b) (1) of the existing labor-management law and these sections have been successful in application.

We, therefore, respectfully request that your committee include in its recommendations to the Congress the retention and continuation of sections 2 (12) and 9 (b) (1) contained in Public Law 101, Eightieth Congress.

STATEMENT BY E. W. TINKER, EXECUTIVE SECRETARY, AMERICAN PAPER AND PULP ASSOCIATION

This statement is submitted in lieu of personal appearance by the American Paper and Pulp Association, 122 East Forty-second Street, New York City, on behalf of its members.

The American Paper and Pulp Association is the over-all national association of pulp and paper manufacturers. It represents the sixth largest industry in the United States, employing upward of 223,000 workers. The industry has a national production in excess of $5,250,000,000, and an invested capital of more than $4,500,000,000. Annual wages to the workers in the industry exceed $650,000,000, and the total tax bill approximates $400,000,000. In terms of providing tools for the workers, the investement per worker is conservatively calculated to amount to $20,700.

As the national association of the pulp and paper industry, we are naturally greatly concerned with the proposed changes in the National Labor Relations Act which are now being suggested in bills such as H. R. 2032 and S. 249.

The National Labor Relations Act, more commonly known as the Wagner Act, as originally enacted, was not, as claimed by its proponents, the Magna Carta of labor. It was not, because it was an unbalanced act. It was an act that gave to labor some long overdue privileges, but it did not give to employers corresponding procedural rights and protection against the unfairness of labor. The first amendment to the Constitution of the United States guarantees freedom of speech and of the press, but the interpretations of this fundamental right in cases involving the Wagner Act were such that the right of an employer to express his views on labor policy or problems was virtually emasculated. The enactment of the Labor-Management Relations Act, 1947, represented a conscientious effort on the part of the Congress to bring into balance the distorted relationship between employer, represented by management on the one hand, and employees by unions on the other hand. The Labor-Management Relations Act evolved after long and careful hearings before both Labor Committees and has been in effect only a relatively short period of time. The report of the Joint Committee on Labor-Management Relations, dated December 31, 1948, reveals that during the 14-month period following the enactment of the Labor-Management Relations Act, as compared with the 14 months immediately preceding its effective date, there was a 42 percent reduction in the average number of stoppages in effect per month, a 44 percent reduction in average number of workers involved in stoppages in effect per month, a 37 percent reduction in the average number of man-days idle per month, a 37 percent reduction in total number of man-days idle, and a 41 percent reduction in percent of estimated working time idle per month. Moreover, during the period from August 1947 to September 1948, the average hourly earnings of industrial workers increased in monthly progression from $1.236 in August 1947 to $1.363 in September 1948. As pointed out by Prof. Edwin E. Witte, chairman of the department of economics at the University of Wisconsin, total union membership has increased since the passage of the Taft-Hartley Act. The Joint Committee on Labor-Management Relations states that the only unions that have failed to increase in membership since the passage of the act have been those of the left wing group, whose officers have not made the non-Communist affidavit.

During the past several decades, labor relations in the primary pulp and paper industry have not only been relatively stable, they have also been relatively harmonious. The industry has not been one marked by severe upheavals resulting from strikes or other instances of deep-rooted conflict between employer and employee. There has existed a unanimous desire on the part of management to meet honestly and deal honestly with the workers, whether collectively with those workers as represented by unions, or individually. This harmonious relationship which prevailed during the pre-Wagner Act days continued after the enactment of that law, and it continues to exist under the Labor-Management Relations Act. In view of these facts, we feel that our industry has been fortunately situated. It is a fair statement that the pulp and paper industry is not one whose experiences compelled the enactment of the Taft-Hartley Act. Nevertheless, the enactment of that law serves to buttress the fair balance which has long existed between management and unions in the paper industry. It is the feeling of management representatives in the pulp and paper industry that where Government undertakes to regulate the relationship between employer and employee, or, for that matter, wherever the Government intervenes in a supervisory capacity, the approach must always be one of fairness to both parties or to whoever is involved. In order to command the respect of employer and employee, legislation must provide for rules of conduct applicable to both parties, to the end that responsibilities, as well as the rights of each party, will be amply provided for. Moreover, labor legislation enacted in the best interest of the general public, must not be patently one-sided in the sense of imposing obligations on only one party to the bargain, while conferring all of the benefits and rights on the other. This was the most severe criticism applied to the Wagner Act, and that is what the Taft-Hartley Act was enacted to correct. At the time of the enactment of the Taft-Hartley Act in 1947, and at the present time, it could and may be fairly stated that many, if not most, labor unions have so grown in power as to present a far stronger economic force than that held by any employer.

The policy of the Wagner Act was supposedly to correct the inequality of bargaining power between employees who did not possess full freedom of association or actual liberty of contract, and employers organized in the corporate or other forms of ownership. But the unbalance of the premise was rectified in the statement of policy of the Taft-Hartley Act, which recognized that best industrial relations flourish only where "employers, employees, and labor organizations each recognize under the law one another's legitimate rights in their relations with each other, and above all, recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest." The American Paper and Pulp Association, representing, as it does, such a sizable segment of our national economy, and a segment which stands for harmonious and sound industrial relations, believes that it would be a cardinal error for the Congress even to consider the restoration of the unbalance which existed prior to August 23, 1947.

For the first time, under the Taft-Hartley Act, representatives of both employers and employees were and are required to bargain collectively. This mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or in connection with the negotiation of a collective-bargaining agreement, is a bilateral requirement. Employers in the pulp and paper industry have always recognized the moral, as well as the legal, obligation to bargain collectively. This obligation should continue, and should not be changed to a unilateral requirement. Another proviso which should be continued is that the obligation of employer and the representatives of employees to bargain collectively does not compel either party to agree to a proposal or require the making of a concession. As large consumers of bituminous and anthracite coal, and quite apart from the direct employer-employee rationship, this industry has a vital interest in the retention of this requirement of fair play. It is a well-known fact that the head of the United Mine Workers refused to state his demands to the coal operators in 1946 and refused to bargain collectively with representatives of 31 percent of the coal tonnage of the United States. An example of a direct benefit to a pulp and paper employer under this section is quoted from a letter received from one of our large producers:

"The International Typographical Union has always insisted on a standard form contract which was written primarily covering working conditions in working rooms of large newspapers and job shops. Much of the phraseology contained in the standard form contract did not apply to our operations, but if we had had any trouble, that same language could have had serious ramifications. Under Taft-Hartley we have been able to legally refuse to sign their standard form contract, with the result that we have not had to assume all of this potential liability."

Section 8 (b) (1) of the Labor-Management Relations Act, 1947, relating to restraint and coercion, has served to discourage mass picketing. While it is true, as stated previously, that there have been few strikes in our industry during the past several decades, nevertheless there was a strike during the past year, and the following information is a direct quote from the affected company: "Our plant was closed from August 20 to November 20 because of the strike. The strike was a breach of contract on the part of the union, and if it had not been possible for us to go into the court with a bill of equity, and after due hearings in the court obtain an order from the court restraining pickets from prohibiting free and easy ingress and egress at the plant, which permitted the majority of our people to return to work, our plant might still be on strike."

The right to work unmolested at a job of his own choice is a fundamental right of an American, except during times of national emergency or war. The presence of massed pickets in front of an entrance to his place of employment, thereby deterring by words or actions, or by both, his exercise of his inherent fundamental right to pursue the employment of his own choice, was not protected by the Wagner Act. On the contrary, any worker seeking to exercise his right to work was subject to beatings and other forms of physical compulsion. This condition was corrected by the Taft-Hartley Act. There was not, and is not now, any suggestion that workers on strike should not be permitted, in the exercise of the freedom of speech inherent to us all, to advertise reasonably the existence of a labor disagreement in an orderly and proper fashion. But mass picketing, physical violence, and other forms of illegal coercion and intimidation were not, are not, and should never be the proper medium of advertisement of such disagreements between employers and employees.

There seems to be scarcely any difference of opinion with respect to jurisdictional strikes. President Truman himself has proposed that this provision of the law be preserved. The record under the Labor-Management Relations Act clearly demonstrates that the present prohibition and method of handling has practically eliminated this type of work stoppage. Secondary boycotts are prohibited under some circumstances by the Labor-Management Relations Act. This prohibition should be continued, and in addition, strengthened. Secondary boycotts visit hardships on those not directly concerned with an industrial dispute, whether employer, employee, or the general public. They constitute a form of coercion which is contrary to the public interest and should not be tolerated.

Section 9 (h) of the L. M. R. A. requires the disavowal of Communist affiliation by union officials. This provision has been extremely valuable in encouraging patriotic American workers and labor leaders—and most workers and labor leaders are patriotic—to purge their unions of Communist infiltration and domination. This requirement of the law served the ultimate purpose of eliminating an avowed Communist from the employ of one of the leading paper manufacturers, and it has served to discredit other Communists who were seeking to infiltrate and corrupt the employees of this same employer. We respectfully recommend that section 9 (h) be amended to apply to all policy-making, governing, and negotiating officials of labor unions, both at local and international levels. In the interest of making the law bilateral, as previously recommended, we see no reason why non-Communist affidavits should not also be required from all corporate officers and management officials having responsibility for labor relations in companies seeking to use the processes of the National Labor Relations Board, and we accordingly further respectfully recommend the amendment of section 9 (h) to reflect such a requirement.

Section 301 of title III of the L. M. R. A. provides for suits by or against labor organizations, where a collective bargaining agreement has been violated. Recovery is limited to money judgments against the union organization as an entity, and its assets. Judgments may not be recovered and assessed against any individual member or his assets. One paper manufacturer writes:

"During the days of the Wagner Act, the unions were very agreeable to the incorporation of a no-strike clause in the contract, since there was no liability accruing to them if the contract was violated. After the contract was written, and any serious grievance developed, the union would oftentimes use the threat of quitting work, regardless of the fact that the contract contained a no-strike clause. With the passage of the Taft-Hartley law and the liability that goes along with any failure to fulfill contract provisions, the union attitude has changed, and we are no longer exposed to definite threats of not working. In addition, the unions themselves are more willing to submit their members to discipline in order to carry out the contract. This was definitely not true under the Wagner Act."

Another employer writes: "A union's obligation to bargain has fostered better union attitude and has facilitated collective bargaining."

This section of the law answers affirmatively the question, "should labor laws make it clear that a collective bargaining contract must be honored by both parties? Should each party have an equal right to sue the other for breaking the contract?" The affirmative answer by the L. M. R. A. to these fundamental questions is again another evidence of the bilateral equal responsibility approach of that law.

Traditionally, in the pulp and paper industry, foremen and other supervisory employees have regarded themselves, and have been regarded by their employers, as a part of management. Their duties and their privileges have traditionally reflected this relationship. Their services and salaries have been scaled to reflect properly the recognition of the responsibilities carried by each and every one of them. Under the Wagner Act there was a complete sense of demoralization of this essential adjunct of management. With the exclusion of supervisors from the ambit of the L. M. R. A., as the president of one paper company states, "This provision has protected our management family and improved relations with supervisors."

Another employer writes, "The recognition of the right to promote a man into the company's supervisory ranks has been most helpful indeed. Previously, because of contract seniority provisions, unions took the arbitrary stand that the man with the longest seniority, unless under unusual circumstances, would be entitled to the status of a foreman when such a vacancy existed. Further, after a union member had been promoted to the rank of foreman, the union in many instances would still claim jurisdiction after the former member had become a foreman."

In conclusion, we respectfully suggest that the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, be amended only in respect to section 9 (h), and that in the near future adequate hearings be conducted to afford an opportunity for those representatives of management, labor, and the public desiring to testify, to be heard concerning the operations of this fundamental law of our land.

STATEMENT BY RICHARD J. GRAY, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AMERICAN FEDERATION OF LABOR, RELATIVE TO EFFECTS OF TAFT-HARTLEY ACT UPON ORGANIZED LABOR IN THE BUILDING AND CONSTRUCTION INDUSTRY

The building and construction industry was one of the first major industries in the United States to work out mutually satisfactory labor-management relations. Many of our agreements date back half a century. I can say without fear of contradiction that no industry has had more stable, cooperative labor-management relations than ours. We are accustomed to work with our employers in mutual respect and harmony, and to settling our differences around the conference table.

Into this situation was injected the Taft-Hartley Act, which threatens to undo everything we have built up with so much patience and care over the years. Before the full effect of this act upon building and construction trades unions can be understood, the nature of the industry itself must be considered. It is an industry made up of thousands of contractors, large and small, divided roughly into general and specialty contractors. Every contractor, whether general or specialty, hires his own labor. Few ever built up a permanent labor force, with the exception of clerical and supervisory employees, since this would mean carrying labor through the periods between jobs, which every contractor experiences. Labor is, therefore, recruited anew for each particular job. As a result, building and construction tradesmen move from job to job, sometimes working for 10 or 12 contractors in the course of a single year. Most construction projects last only a short time, and few of the trades work throughout the entire construction period on any project. Even the largest projects, such as dams or bridges, run for a few years only. In other words the continuity of employment, the stability of the relationship between an individual employer and his employees which are characteristic of most industries, are conspicuously lacking in the building and construction industry. Time, therefore, becomes relatively more important in any problem which arises.

Although building tradesmen are organized in separate craft unions, which correspond to the divisions within the industry itself, and although they work on a single job for a number of different employers, there is strong unity between them. They are, in essence, members of the same labor organization. They support each other, their interests are the same, they bargain together with their employers on wages and hours and conditions of work. On the national level they are joined together in the building and construction trades department, and on the local level by local building and construction trades councils. The Taft-Hartley Act, by its boycott provisions, attempts to tear apart this strong organization, to pit one union against another, to force one union to work for the destruction of another, and even to work for its own destruction. The two labor organizations which have been most seriously hit by the boycott provisions of the act are the typographical and the building trades unions. It is not by chance that they are among the strongest and the most successful and responsible labor organizations in the country.

With the nature of the industry in mind, I would like your committee to consider the effects of the Taft-Hartley Act upon building and construction trades unions. And in this consideration it should be remembered, too, that employers generally have held back from use of the act since it was adopted because we have been in a period of relatively full employment. This has been especially true of the construction industry. It is easy to foresee what would happen under the Taft-Hartley Act if millions of unemployed were walking the streets. Union organization could, in that case, with the present law be effectively wiped out in a short time.

REPRESENTATION ELECTIONS

Only one such election has been held thus far. It illustrates well, however, what this portion of the act means to our unions.

A contract for the construction of the Bull Shoals Dam, in Arkansas, was let on May 8, 1947, by the Army engineers to the Ozark Dam Constructors (a joint venture formed by nine contractors from various parts of the country, only for the purpose of constructing the dam). Work began in June, 1947. The completion time is approximately 40 months, and December 1950 is tentatively set as the completion date.

The Fort Smith, Little Rock and Springfield joint council, of Little Rock, Ark., early last year asked the Ozark Dam Constructors to bargain with it as the representative of the men at work on the dam. Its request was refused by Brown & Root, who are the operating contractors on the dam. The joint council then, on March 4, 1948, petitioned the National Labor Relations Board to hold a representation election, and after a hearing the NLRB on June 17th ordered that such an election be held. Although the joint council won the election—which was finally held on July 28, 1948—by a large majority, and although the results were known by everyone the day following the election, the NLRB withheld certification of the joint council until August 19, 1948, and then issued such certification only after repeated protests on our part at the delay.

The first meetings between representatives of the joint council and of Brown & Root occurred about the middle of September 1948. Other meetings took place later that month, and at one of the later meetings the attorney representing Brown & Root presented a proposed agreement to the joint council, on a completely arbitrary, take-it-or-leave-it basis. The agreement was one which no labor union could accept. Since Brown & Root refused to entertain any suggestions of the joint council for changes, negotiations broke down. As an illustration of the contract which was proposed, Brown & Root retained the right to classify men without consulting the union, to fix wages and conditions of work, and in general to operate exactly as though no agreement with a labor organization had been made. In addition, the contract demanded that the joint council provide a bond for liquidated damages in the amount of $100,000, payable in the amount of $25,000 per day in the event of strike, slow-down, or other interference with work. Even if the joint council had been willing to furnish such a bond it would have found it impossible to do so.

When negotiations broke down in late September 1948, the joint council preferred unfair labor practice charges against Brown & Root with the National Labor Relations Board on the grounds that (1) they had refused to bargain in good faith and (2) they were discharging men for union activity. Some 300 men were discharged, for example, when it was learned that they had signed the original petition for the election. At the same time complaints were made to the contracting agency and the Department of Labor that Brown & Root were paying men less than the rates established by the United States Department of Labor under the Davis-Bacon Act, by the simple method of classifying them as laborers or helpers and putting them to work as skilled mechanics. After waiting for many weeks for the NLRB to act, the joint council went on strike on December 6, 1948. The strike is still in effect.

A hearing on the charges against Brown & Root was held by the NLRB in January 1949, after renewed attempts on the part of the joint council to settle the issues by direct negotiations. The evidence is now before the trial examiner for his findings. If the average of the NLRB holds in this case, the trial examiner's intermediate report can be expected some time in early summer. A recent study of Board delays shows that on the average about 6 months' time has elapsed from the date of the filing of charges against employers to the intermediate report of the trial examiner.

Brown & Root, as soon as the strike occurred, began to import strikebreakers in large numbers, in direct violation of the Byrnes Act. Men have been coming in by the hundreds from Texas, Florida, Oklahoma, Nebraska, New Mexico, Wyoming, and other States. In addition to violating the Byrnes Act, this has direct and immediate significance under the Taft-Hartley Act. That act provides that employees on strike who are not entitled to reinstatement are not entitled to vote in a representation election. The NLRB has ruled that this denies the right to vote to strikers in an economic strike who are permanently replaced, although the strikebreakers may vote. Unless the NLRB finds the Ozark Dam Constructors guilty of unfair labor practices it will be perfectly possible for Brown & Root in time to request another election and defeat the joint council.

Meantime, Brown & Root continue to pay less than the established wage rates. Both the Army engineers and the United States Department of Labor have made on-the-job investigations as to the validity of the charge that Brown & Root consistently follow the policy of employing men as laborers, at the rate set for that classification, and then assigning them to work for which higher rates have been established—without changing the men's classifications or wages. The investigation of the Department of Labor revealed without doubt that this charge is true. That Department, however, is not the enforcing agency under the Davis-Bacon Act. Enforcement lies in the hands of the contracting agency, in this case the Army engineers. They are reported to have found a large number of these violations, and to have ordered them "corrected" but on this I have been unable to secure any definite information.

Recently Brown & Root refused to recognize that the election which took place on the Bull Shoals Dam is applicable also to the Flippen Materials Co., a separate joint venture established by the same nine contractors, and set up only for the purpose of furnishing crushed stone for the dam. Men work interchangeably for the Ozark Dam constructors and the Flippen Materials Co. In some cases men who work for the Flippen Materials Co. are paid by the Ozark Dam constructors. The Flippen Materials Co. contract is cost plus, with a savings clause, and with the further provision that some 30 percent of certain costs of the Ozark Dam Constructors may be charged against the former company.

Through the entire history of this case runs the willingness of the joint council to conform to all of the provisions of the law. But the contract time for the construction of the dam is passing. More than half of the 40 months is already gone. When the project is completed the Ozark Dam constructors will dissolve, and the various contractors engaged in the joint venture will disperse, leaving no possible recourse to the union. A major part of the construction jobs upon which building tradesmen depend for their living would have been finished long ago, in much less time than that which has already elapsed since the application for an election more than a year ago. Actually, this portion of the Taft-Hartley law is not only unworkable in a major portion of the industry, but thoroughly destructive as far as building and construction trades unions are concerned.

UNION-SECURITY ELECTIONS

This section of the Taft-Hartley Act, as it relates to the building and construction industry, must be considered against the background of the labor-management relations in that industry. Our tradition for half a century has been the closed-shop agreement. The bill now under consideration by your committee places great emphasis upon the use of arbitration in the adjustment of grievances and the settlement of disputes which arise under collective-bargaining agreements. With this we are in complete accord. Many building-and-construction-trades unions have for years included provisions for arbitration in their constitutions. Recently, however, due to the great extent of disagreement even among the people who sponsored the Taft-Hartley Act as to how far and in what ways it applies to the building and construction industry, employers and unions in the industry have found themselves completely at a loss as to what they can safely include in their agreements. Among other things, provision for arbitration is being eliminated in many of our contracts. As a matter of fact, under the Taft-Hartley Act, most of the provisions which have in the past gone far to assure the stability of the relationship between contractor and union are being eliminated, and unions and employers are now negotiating only for wages and hours of work—leaving out most or all of the other provisions which were formerly part of their contracts.

Only one union-security election has been held so far in the building and construction industry under the Taft-Hartley Act. It was in the heavy construction industry in 33 counties of western Pennsylvania, with only five trades participating, and was held solely for the purpose of working out the techniques of such elections. Even this simple election took months of preparation on the part of the NLRB, the employers, and the unions. There is little need of going into the difficulties of holding these elections in the industry, since Mr. Denham has himself admitted that they are insurmountable and gave up, months ago, any attempt to work out procedures for such elections. The serious thing about this portion of the act, however, is that meantime both employers and unions in the industry are unable to follow the pattern which had become so characteristic in the past in the writing of collective-bargaining agreements. Thus the labor-management relationship is greatly disturbed.

BOYCOTT PROVISIONS

It has become customary to say that the Taft-Hartley Act outlaws the secondary boycott. Actually it goes much further than that, and makes illegal any action based on the unity of interest between various building and construction trade-unions which has for years been considered not only legal, but essential to the continued existence of the trade-union movement.

The National Labor Relations Board has made two decisions on the boycott in the building and construction industry. In the first decision, handed down in November 1948, the Board found local 74 of the United Brotherhood of Carpenters and Joiners, in Chattanooga, Tenn., guilty of a secondary boycott because it refused to permit its members to work on a job when nonunion men, whom the union was at the time attempting to organize, began work on the job. The case arose when Watson's Specialty Store was awarded a subcontract for floor and wall coverings in the remodeling of a private residence, upon which only union carpenters were at work. The union for some time had been trying to organize the employees of the store, and was at that time picketing the store—and this the Board found to be a legal activity on the part of the union. When the store's nonunion men came on the job the union carpenters walked off. They did not, however, make any threats either against the contractor or Watson's Specialty Store, and the strike was entirely peaceful. Nonetheless the NLRB found the union guilty of a secondary boycott. Clearly it was trying only to protect its own wage rates and conditions of work.

The second decision of the Board, made in February 1949, prohibits peaceful picketing and the use of the unfair list in a secondary boycott. In this case, the carpenters' district council of Kansas City, Mo., was involved in a wage dispute with the Wadsworth Building Co., which had refused to renew its contract when the union demanded a wage increase. The carpenters thereupon struck, and picketed the Wadsworth Building Co. plant. The Wadsworth Building Co. manufactures prefabricated houses, and had sold two of its houses to Klassen & Hodgsen, who were engaged in erecting the houses. Klassen & Hodgsen employed a union carpenter, who was called off the job by the union, and the project was picketed, and Klassen & Hodgsen placed on the unfair list of the local building trades council. When some of the truck drivers employed by material dealers refused to cross the picket line, the Wadsworth Building Co. and Klassen & Hodgsen joined in preferring unfair labor practice charges against the union and its agent. By a 3–2 decision the NLRB found both the peaceful picketing and the use of the unfair list illegal. This in fact prohibits a union from making known the existence of a dispute, and has the effect of forcing union members to work on struck work, as well as preventing one union from supporting another union in the same industry. The minority decision of the NLRB found that the free speech provisions of the act permitted picketing and the use of the unfair list, even in the case of a secondary boycott. Both opinions, the majority and the minority, stressed the obvious conflict between the free speech and the boycott portions of the act, which are in fact absolutely contradictory.

More recently, and based upon the above decision, a trial examiner of the NLRB found local No. 5 of the International Brotherhood of Electrical Workers, in Pittsburgh, Pa., guilty of secondary boycott, because the union's agent "talked with several employees on the job, not members of his union, and called to their attention the fact that a nonunion electrical condition existed there." No strike occurred on the job in question, no one quit work, there was no picketing, no threats were made or implied—but the union was found guilty. It had already been under injunction for almost 6 months.

As of today, the injunction story under the Taft-Hartley Act is as follows: 41 injunctions requested by the general counsel, of which 39 were against unions, 2 against employers. Of the 39 injunctions asked for against unions, 16 (or 44 percent) were in the building and construction industry. Of these, 10 were granted, 3 denied, 1 withdrawn, 2 pending.

All of the injunctions asked for in the building and construction industry were under the mandatory provisions of the act, and all dealt in one way or another with the boycott provisions of the act.

There are about 16,000,000 members of organized labor in the country. Some 2,000,000 of them are in the building and construction trade-unions. Yet 22 percent of the injunctions affect unions which account for not more than an eighth of the total trade-union membership. Of the injunctions granted against building and construction trade-unions, one was in effect for well over a year before the Board made its decision; another has now been in effect a year, and two others for about 6 months. Actually, under the present boycott provisions of the act, in view of the way in which the industry itself is organized, almost any strike can be construed as illegal.

JURISDICTIONAL DISPUTES

Discussion of jurisdictional disputes is almost certain to be tinged with emotion. This has created a general belief that the problem is far more serious than it in fact is. No one wants, or believes it possible to do away with jurisdictional disputes. They are in essence as the attempt of any other segment of our society to outline the field in which it will operate. A jurisdiction means, in the long run, outlining the area in which a union will operate, and which men and women will be eligible for membership in the union. Jurisdictions change with changes in industry, with changes in machines and equipment, with changes in skills, with break-down of the job processes, and with many other factors. It is only when these disputes result in stoppages or delays in work that they become a bogeyman of a size out of all proportion to the facts.

It has been customary for a long time to think of building and construction trade-unions whenever jurisdictional disputes are mentioned. As a matter of fact, such disputes are common to all industry. Jurisdictional disputes in the building and construction industry have never been significant either in number or in amount of time lost. In 1947, for example, when the Taft-Hartley Act was being considered and adopted, the total number of man-days lost because of strikes in the entire construction industry, according to the Bureau of Labor Statistics, from all causes, was only $^{66}/_{100}$ths of 1 percent of the time worked in the industry. And the time lost because of jurisdictional disputes amounted to only about a tenth of the total time lost, or something less than $^{7}/_{100}$ths of 1 percent of the time worked. Yet the great hue and cry which was made about those strikes led the public to believe that they were frequent, of great duration, and threatened to destroy the industry.

We have always tried to prevent stoppages of work because of jurisdictional disputes. The history of the Building and Construction Trades Department shows a number of efforts to establish machinery for handling jurisdictional questions in a peaceful, orderly manner, and I must say that I believe the figures of the Bureau of Labor Statistics prove that we have been largely successful in our attempts. We now have in operation a national plan for settlement of jurisdictional disputes which went into effect in May 1948, and under which joint boards made up of equal numbers of representatives of employers and unions are established to hear and decide jurisdictional claims. An impartial chairman heads each such joint board.

All of this proves conclusively that labor in the building and construction industry can, and should be permitted to, resolve its own questions of jurisdiction.

SEPARATION OF CRAFT BARGAINING UNITS

When the Taft-Hartley Act was passed, we were confident that it would permit the NLRB to carve out craft bargaining units from the over-all units in industrial plants. The National Labor Relations Board, however, soon made it abundantly clear that the change in the law had meant nothing. In April 1948, for example, the NLRB issued two decisions which are typical. It refused, in those decisions, to permit elections for the establishment of separate bargaining units of maintenance bricklayers, although the two unions in question had been in existence long before the organization of the production employees of the plants. The two cases were those of Middletown, Ohio, plant of the American Rolling Mills Co., where the Armco Employes Independent Federation, Inc., is the bargaining agent, and the Lorain, Ohio, plant of the National Tube Co., where the Steelworkers Union, CIO, is the bargaining agent. These are but two of dozens of instances in which the NLRB has in the past 2 years refused to recognize craft bargaining units. The result is that unions made up of skilled mechanics, which have been in existence in many cases for years, are prevented from enjoying the ultimate fruit of their organization—the right to bargain collectively for their members on wages, hours, and conditions of work. They are in fact swallowed up and lost in the over-all bargaining unit, composed largely of production employees. And in hundreds of casts, like the two I have just cited, these union members are forced to accept as their bargaining agents either a rival labor organization, the CIO, or independent unions having no relationship to the great labor organization of which the craft unions form such a vital part.

We urge, therefore, that the proposed bill be amended to make it possible for well-organized, responsible craft unions to bargain for their members in industrial plants, when those members want to be represented by their own unions.

ASSIGNMENT OF WORK

The provision in the Taft-Hartley Act which permits employers to assign work arbitrarily, without consulting with unions of their employees, has given the unscrupulous employer an unrivaled chance to chisel on wage rates. It has taken from the hands of the unions one of their most effective means of protecting their established wages and working conditions. In the past year and a half, dozens of complaints have come to the Building and Construction Trades Department from all over the country, to the effect that construction work is being done by large corporations with maintenance or operations employees, whose wage rates are below those established by building tradesmen through collective bargaining. This practice harms not only building tradesmen but contractors as well, and will mean a serious curtailment of the industry if it continues. It means also the creation of disputes over jurisdiction where no such disputes existed before.

A union is powerless to protect its jurisdiction under the Taft-Hartley Act, even when it has an agreement with another union as to the jurisdiction over certain work. For example, the Washington Gas Light Co. of the District of Columbia some months ago entered into a contract with a contractor employing union ironworkers, to dismantle certain iron construction. The company also engaged a union crane contractor, who employed a union operating engineer and brought him on the same job. At the same time the company assigned its own maintenance and repair men to work on the dismantling job, doing exactly the same work as the union ironworkers.

Neither the ironworkers nor the crane operator could be removed from the job without violating the act. Their union representatives consulted with the representatives of the union to which the maintenance and repair employees belonged, and the two unions reached an agreement as to the jurisdiction of the work in question. The company employees then informed the company that they were being required to do work which belonged to the ironworkers, and that they did not want to continue at such work. The company refused to accept and be guided by the agreement between the two unions, and ordered its employees to continue at the work assigned to them. This experience is multiplied many times over throughout the country.

CONCILIATION SERVICE

There has been a great deal of talk about the Conciliation Service remaining impartial only so long as it is kept out of the Department of Labor. Mr. Ching gave lengthy testimony before the Senate Labor and Public Welfare Committee on his experience as head of the Service during the last year. I want to point out that the impartiality of Mr. Ching himself can be questioned. Let me recall to the committee that when he served on the War Labor Board it was, not as a public member, but as industry member. We are firmly of the opinion that the Conciliation Service should be returned to the Department of Labor, and headed by a labor man of broad interest.

STATEMENT BY SAL B. HOFFMANN, PRESIDENT, UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, A. F. OF L., RELATIVE TO REPLACEMENT OF NATIONAL LABOR MANAGEMENT RELATIONS ACT OF 1947 BY APPROPRIATE LEGISLATION

Our union, the Upholsterers' International Union of North America, founded in 1892 and in continuous existence since that date, and affiliated with the American Federation of Labor since 1892, was at the earliest practical date in 1947 in compliance with the new Federal Labor Relations Act adopted by Congress in that year and has continued in compliance with and operated entirely within that act up to the date of this submission. As an organization in full compliance with the act as the law of the land, while retaining all rights of citizens to dissent from the legislation in question in whole or in part, to seek revision or repeal and to petition for redress of grievance suffered under the administration of such legislation, we respectfully submit our experience as faithful observers of the law which indicates that only outright repeal of the act of 1947 can effectively serve the interests of the whole people of these United States and, indeed, the purposes set forth in the preamble of the act itself.

The Labor-Management Relations Act of 1947 was primarily in the nature of a sweeping revision of the National Labor Relations Act of 1935, and of other fundamental related legislation by Congress of even longer establishment. We submit that such sweeping revision of an entire framework of law in operation without successful challenge for more than a decade in widely varying conditions of peace and war, must satisfy certain fundamental questions before the validity of such sweeping changes can achieve the general acceptance necessary for the functioning of general law intervening in such an important area of economic and personal relationships, under our democratic process and system of law. These tests are simple and common-sense tests of:

(1) What is the source and inspiration of the proposed revisions? Are these sources and inspirations of the specific proposals to be found in those groups who faithfully complied with the law of the land in spirit and letter, while it stood as the governing statute or otherwise? Are they identified with general public interest or do they represent special and biased, or even class-conscious interests identified by past purposeful activity on this and other questions as but little concerned with the general welfare?

(2) Is the purpose of such proposals for revision of the very framework of law, the remedying of public abuses or merely the creation of an opportunity to restore the abuses, to curb which was the purpose of the perviously enacted legislation?

(3) Finally, what are the facts as to the reality of the abuses complained of? What are the facts as to any necessary relation between the changes in law and the remedying of verifiable abuses, and what are the facts as to the practical effect of the changes in the law in 1947 on the abuses aimed at and the promotion of the general welfare?

In the first test as to the source and inspiration of the basic revisions of the Federal labor law embodied in the Labor-Management Relations Act of 1947, better known as the Taft-Hartley Act, it is submitted that every informed man or woman today possesses the common knowledge that the present act was originally drafted in detail by the professional representatives of the National Association of Manufacturers and that, even after the operation of the full legislative process in both Houses of Congress, the final act represented survival of the major portion of the original draft and its senatorial sponsor, the Honorable Senator Robert Taft of Ohio, so stated. It is, of course, common knowledge that the National Association of Manufacturers has, throughout its life and that of its ancestral predecessors, been identified with the special group of American employers and managers who resisted collective bargaining in principle and in practice, tenaciously and without pause from their beginning to the present day. This association not only challenged and tried every rivet of the constitutional and legal framework of the original Wagner Act of 1935, but, when they lost their challenge to the principle of the act before the Supreme Court of the United States, remained the inner fortress and protection of every employing interest seeking to obstruct and evade the purpose and the administration of the National Labor Relations Act throughout its history. No one familiar with the social and political history of our Nation in the last generation needs to be told that this sponsor and defender of the Taft-Hartley Act has concerned itself with the narrowest and most limited class interests of its constituents on every public measure of the last generation, whether it be in respect to labor, education, health and public welfare, national defense, or any other matter of general concern and proper subject for legislative action in the public interest.

The second test of the purpose of the act of 1947 stands answered in the light of the facts as to the source and inspiration of that legislation which has never been effectively denied. The abolition of the 100-percent union or so-called closed shop and the evident aim to hamper the limited union shop, which had been part of collective bargaining in some industries for over a hundred years before enactment of the Taft-Hartley Act was in line with the Nation-wide campaign of the same associated employing interests after the First World War whose "open shop" drive did seek and, in many cases, succeeded in destroying both established unions and the collective bargaining for which they were the sole instrument. The clothing of this destructive purpose, in the form of Federal law, did not conceal the same underlying purpose which characterized the same industrial interests 29 years ago and which, oddly enough, had their organizational headquarters in a large city of Ohio then.

By the third and final test of the facts, there was never proven to exist in the hurried and prejudged testimony of 1947, any such emergent national crisis as a consequence of abuses in the collective bargaining field as would justify turning the existing Federal labor legislative structure upside down, as was the essential purpose and effect of the Taft-Hartley Act of 1947. In the haste to enact punitive legislation against organized labor, a new and dangerous principle was born in 1947. While the Wagner Act had declared public policy to be the furthering of collective bargaining and devised certain procedures and administrative machinery to effectuate that purpose, it stopped short after protecting the effective right of self-organization of workers which was the condition of existence of collective bargaining and bringing the parties by peaceful, legal, and democratic process to the bargaining table. The Taft-Hartley Act, on the other hand, went entirely beyond even the most drastic of regulation of the process of self-organization and of powerful labor organization and any and all alleged abuse of power by labor in attaining collective bargaining, to swing recklessly into the area of prescribing what could be the result of collective bargaining and prescribing, by affirmative Government administrative intervention, the actual steps in the collective bargaining process by which the restricted results could be attained.

This drastic departure and extension of Federal intervention into the hitherto largely free and voluntary private collective bargaining process, as seen in the proscribing of the 100-percent union shop and prescribing of the methods of achieving the limited union shop, was hasty and ill-considered and may yet cause its inventors and victims alike to rue the day the act was done and the precedent established. The facts as set forth in the report of the National Labor Relations Board attest to the truth of the charge that the act of 1947 did aim to discourage and diminish the success of self-organization as the first step to reach the collective bargaining table and to obstruct the enforcement of the very rights still proclaimed as preserved in that statute. The cold figures prove that unions found it more difficult and costly to reach and, more unlikely, to win representation elections under the new act and its administration. Inasmuch as the Wagner Act prescribed no direct civil or criminal penalties for the violation of self-organization rights of workers by employers, but relied upon back-wage awards as the main deterrent, it is significant to note the fall-off of such substantial back-wage collections under the Wagner Act to an infinitesimal figure under the Taft-Hartley Act. The main deterrent to employers' interference became a pallid paper shadow of its former self. The obvious effect of the discriminatory one-sided weighting of the Taft-Hartley Act against organized labor inevitably incident to its class and special interest-biased source inspiration and purpose is seen in the effect of the requirement for non-Communist affidavits from labor's side of the bargaining table alone which, aiming at isolation of the Communist fifth columnist operative in the ranks of labor, actually permitted this element to hide behind some of the oldest and most respected and Communist-free unions in the Nation and to fight their special cause in the false guise of a champion of all labor. Others have detailed in great length the contradictory and self-defeating nature of industrial relations under this ill-starred and inspired 1947 Labor-Management Relations Act and our recorded experience as a fully complying union is available to the committee if its addition will serve further purpose.

On the basis of the foregoing summary, however, our international union can follow no other conscientious course but to urgently recommend the course of the chairman of the Senate Committee on Labor and Public Welfare and the Secretary of Labor in this vital matter which calls for clearing the ground for new growth by:

(1) Repealing in toto the Taft-Hartley sponsored National Labor-Management Relations Act of 1947.

(2) Immediately reenacting the tested Wagner National Labor Relations Act of 1935 with such amendments as the parties of labor and industry can agree upon and the good judgment of the administration and Congress elected after full discussion of the issue in 1948 can unqualifiedly recommend in the public interest on the basis of facts indisputably established.

The Upholsterers' International Union, through its general executive board, submits the following broadly detailed recommendations for amendments to the reenacted National Labor Relations Act of 1935:

(1) Closed shop specifically permitted—State anti-closed-shop laws declared inoperative in the interstate commerce area.

(2) A requirement for union officers to execute non-Communist affidavits should be made and expanded to include employers, as well as all officers and employees, field representatives, administrators, and other employees or agents of trade unions, whether appointed or elected, who make policy or who have authority to supervise and direct the affairs of a labor union or its subordinate branches, including the collective bargaining representatives of a labor union and the officers of any national or international labor organization with which it is an affiliate or constituent unit; and the employers' professional labor relations representative and the officers, authorized representatives, administrators and other employees or agents of employers' associations and their subordinate branches.

Furthermore, that declarations against nazism, fascism, and domestic equivalents, such as the Ku Klux Klan, should also be included in these affidavits, because of their specific relevance in the case of employers as revealed in the investigation of international cartel and other disloyal agreements during the last World War.

(3) That there should be a provision requiring labor unions to file financial statements and other reports as now required by Federal law, and this should be expanded to include employers, employers' labor relations representatives and employers' associations.

(4) That there should be a provision in the law regulating union and private employer administered welfare funds, with the exception of any provision requiring joint administration, which is rigid and unworkable. Because of vast sums involved and the newness of the field, some regulation and possible supervision by filing of reports with the Department of Labor or the Federal Security Administration seems indicated. Our union's experience proves conclusively that, in small-scale industry, joint management, which is theoretically appealing, is administratively out of the question. A complete brief on this question was submitted to the same committee of the Eightieth Congress and is available for the committee's information.

(5) There should be a requirement for 60-day notice of any proposed termination and modification of a contract by employers and unions.

(6) It is also proposed that there should be created a national labor-management panel composed of an equal number of representatives of management, labor, and the Government under the nonvoting chairmanship of the Secretary of Labor for the following purposes:

(*a*) With the duty, at the request of the Secretary of Labor, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

(*b*) The panel acting as a whole or by subcommittee, shall conduct a thorough study and investigation of the entire field of labor-management relations, includilng, but not limited to (1) The means by which permanent friendly cooperation between employers and employees, and stability of labor relations may be secured throughout the United States; (2) the means by which the individual employee may achieve an improved standard of living, including plans for guaranteed annual wages.

NATIONAL LABOR RELATIONS ACT OF 1949

WEDNESDAY, MARCH 16, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Augustine B. Kelley (chairman) presiding.

Mr. Kelley. The committee will be in order, please.

Mr. Green, the president of the American Federation of Labor.

Mr. Green, will you proceed when you are ready? You and Mr. Randolph are going to testify together?

Mr. Mason. No. One at a time.

Mr. Kelley. Very well.

Mr. Green.

TESTIMONY OF WILLIAM GREEN, PRESIDENT, AMERICAN FEDERATION OF LABOR

Mr. Green. Mr. Chairman and members of the committee. I appreciate the opportunity you have accorded to me to present to you the point of view of the American Federation of Labor upon the pending legislation which you are now considering. Thank you so much for this opportunity. I will be glad to present this statement. and after I have done so, answer any questions that you might wish to submit.

Mr. Kelley. Very well. Go right ahead.

Mr. Green. The working men and women of this Nation value highly the blessings of individual and collective freedom conferred upon them by the organic law of this land. No other group or section of people in the United States places a greater value upon individual and collective freedom than do working people. Freedom to organize into trade-unions and freedom to bargain collectively through trade-unions, is regarded as a sacred right by the workers of our country.

Under the free-enterprise system employers freely bargain for the sale of their products on terms and conditions regarded as reasonable and satisfactory; workers engaged in collective bargaining to negotiate wage rates and conditions of employment. Such agreements provide for the compensation which they shall receive for work and service performed, and the conditions under which they work. Through the exercise of this right, the workers have succeeded in lifting their standards of life and work. The exercise of these rights by labor and by management has been universally regarded as being both elemental and basic justice ever since the Declaration of Independence was signed.

Now the infamous Taft-Hartley law makes it a crime for labor and management to negotiate certain provisions of a wage agreement customary and satisfactory to both; but, no restrictions were placed upon the right of employers to negotiate for the sale of the products of labor on terms which may be acceptable and satisfactory.

Why was such an antilabor law passed by the Congress of the United States? What was the real purpose of this act? Here is the answer. The Taft-Hartley Act was passed for the purpose of making strong unions weak and weak unions still weaker. Its obvious purpose was to deprive labor of the right to negotiate contracts such as employers and employees have exercised during all the years which have intervened since collective bargaining became a fixed practice in the economic life of our Nation.

Through free collective bargaining, wage agreements were negotiate through two World War periods during which the individual and collective productivity of the workers of the United States reached the highest point in all our history. Even now our Government is inviting employers and workers of European countries to visit our industries to observe methods of management and producing workers. Would this happen if American wage earners did not have an outstanding record for resourcefulness and productivity?

If, as the record shows, free collective bargaining made an immeasurable contribution to the growth and development of our Nation up to the present time, why should it now be made a crime for employers and employees to negotiate a free collective bargaining agreement, acceptable and satisfactory to both?

Free collective bargaining and sound management-labor relationships are a large part of the basis on which a sound national economy rests. When the exercise of this right is denied to either management or labor by legislation or otherwise, the national economic structure is seriously affected.

Labor, in fighting for the repeal of the Taft-Hartley law, is seeking to bring about the restoration of the exercise of elemental individual and collective freedom as granted by the Constitution of the United States. It is fighting for the preservation of the American way of life—for an American principle.

The Taft-Hartley law is filled with legal restrictions upon the exercise of the common elemental rights of labor. For instance, if workers exercise their right to strike against injustice and for the redress of grievances, the employer may employ new workers classified as strikebreakers, and after doing so call for an election for the selection of a new collective-bargaining agent. The strikebreakers alone can participate in such an election; the employees who are on strike are denied the right to vote.

It is difficult to understand why the Congress of the United States would vote to pass a law in which there was embodied such an amazing restriction upon the exercise of the right of the workers to strike against injustice and wrong, and which conferred upon employers the power to destroy unions and protect strikebreaker. That is an amazing thing.

The law further protects the employment of Communists who may be expelled from membership in free, democratic trade-unions because they are Communists. While workers may expel a member from their union who may be proved to be a Communist, they are denied the right under the Taft-Hartley law to refuse to work with a Communist.

The Taft-Hartley law is un-American, vicious, and reprehensible. The membership of the American Federation of Labor will never become reconciled to such legislation. The sponsors of the Taft-Hartley law and a large number of the supporters of this vicious legislation have stated in newspaper advertisements, in radio addresses and otherwise, and even on the floor of Congress, that working people generally favor the law and that only the officers of labor unions, classified as labor "bosses," are opposed to it. A specific and definite answer was made to these false and untrue statements at the election which was held last November in the States of Ohio, Indiana, Illinois, Minnesota, Tennessee, Pennsylvania, and in other congressional and State elections. In my opinion, further answers similar to the kind made at the election which was held last November will be made in other congressional districts during the 1950 elections. The opposition among working men and women to the Taft-Hartley law is universal. I want to emphasize that. It is universal among the workers, and Nation-wide in character.

The retention of the Taft-Hartley law upon the statute books of the Nation and its operation would serve to promote unrest and communism and to threaten the maintenance and functional processes of our free-enterprise system. America is the last stronghold of the free-enterprise system. Practically all the nations of the world, outside of the United States, have turned to socialism, communism, or some other form of totalitarianism. Communist representatives proclaimed, when revolution was being promoted in Czechoslovakia and other nations, "See what the workers are subjected to in capitalistic countries." They especially emphasized the fact that in capitalistic America, trade-unions were being wiped out through the enactment of the Taft-Hartley law which had been sponsored by the National Association of Manufacturers and capitalists of the United States. That was used in the revolution that took place in Czechoslovakia.

The record in Europe shows that many nations now under cover of the Iron Curtain were influenced to accept communism because of prejudice, persecution, hunger, and suffering. Communism thrives on hunger, suffering, poverty, and oppression. The American Federation of Labor has stood for the preservation of our form of Government, in defense of the exercise of individual and collective freedom. It has been a staunch defender of our free-enterprise system. It can speak, as it has spoken through its representatives, to the oppressed working men and women of Europe, telling them of the benefits and blessings of democracy, freedom, and liberty. This cannot be done effectively by the representatives of Wall Street, the manufacturers association, and the wealth of our Nation.

Now, have we arived at a period in our national history when a stanch patriotic movement such as the American Federation of Labor is to be weakened—and I might say destroyed—through the enactment and maintenance of vicious antilabor legislation such as the Taft-Hartley law?

On the contrary, we must show the workers of the world that our form of Government and our free-enterprise system is better for working men and women than communism or any other form of totalitarianism. We can make a great contribution to the achievement of this aim and purpose through the prompt repeal of the Taft-Hartley law.

In my opinion, the best interests of employers and of our free-enterprise system will be served through the development of strong unions, united into an organization such as the American Federation of Labor, which will stand immovable and uncompromising in defense of our American form of government and in opposition to communism and totalitarianism. Both employers and employees are beneficiaries of such service.

The American Federation of Labor aided in the formulation and adoption of the Wagner Act of 1935 and unreservedly opposed on principle the adoption of the Taft-Hartley Act. The Wagner Act provided for acceptance as public policy of the right of wage-earners to collective bargaining as their method of determining terms and conditions of work in industry. Collective bargaining enables workers to participate in free enterprise by means of contracts—the normal instrument of business. Collective action which makes for equality of bargaining power with management assures that essential element of a contract—mutuality. The Wagner Act provided the machinery to implement this basic justice. It accepted the principle of voluntarism which assures rights and relies upon the workers to assume responsibility for knowing and seeking their advancement and welfare. The act prohibited employers from interference and restraint of employees in their efforts to organize and bargain collectively. The Wagner Act assured the benefit of a broad principle of human justice. It wrote this right into public policy. That is why we call it labor's Magna Carta.

The Taft-Hartley Act seeks to define rights of employers and minorities and to limit collective bargaining. The act weakens unions and thus prevents equality of bargaining power with management. By outlawing the requirement for union membership as a condition of employment, and by making excessively burdensome the requirement that all hired must join the union within a limited time, the act strikes at the heart of the union's ability to serve the management and to maintain discipline—an essential to responsibility. The union shop is a practice inherited from the guilds which preceded trade-unions. Even the trade-unions of the early nineteenth century operated on a union-shop basis. Any union that assumes responsibility for the technical fitness of members on the job must control training and have experienced workers available for employment. This is a service to industy and assures employment to persons prepared to do quality work.

By proscribing what our opponents term the "closed union shop," the Taft-Hartley law goes contrary to accepted practice in the professions as well as in trade unions. Furthermore it strikes at the right of voluntary organizations to govern themselves for the advancement of their welfare.

The Taft-Hartley Act weakens unions by encouraging litigation as an alternative to economic action. Courts can punish wrongdoing but cannot solve labor and industrial problems.

Since, under the Taft-Hartley Act, the union can require the discharge of workers only because of nonpayment of dues, the union is denied its most effective disciplinary action. Union officials find it necessary to work side by side with a person who is trying to disrupt or mislead the union and are denied any effective weapon to remedy such a situation. Without discipline no organization can be effective.

Experienced trade-union executives regard the Taft-Hartley Act as punitive, restrictive, and demoralizing in its effects on trade-unions. They foresaw the weakening of trade-unions in the passage of this legislation which would prohibit free workers from participating in free American enterprise. Their fears were increased by the recrudescence of the injunction as a method of dealing with labor disputes. The injunction in the past has denied wage earners constitutional and legal rights and has subjected them to a judicial depotism in which the judge made law, determined whether law had been violated, and the penalities. After years of effort trade-unions freed themselves from judicial government by securing the enactment of the Norris-LaGuardia Act which forbade Federal courts to issue injunction in labor disputes. Labor held that labor disputes could best be settled when workers and management can go over a situation, discuss their own problems, and reach agreement on how to remedy the injustice. An outside agent cannot understand the implications involved in union-management differences as well as those involved in a dispute, and is therefore not in the best position to effect remedies. So, when our Chief Executive was authorized to determine when a strike or lock-out was a menace to national health, with authority to request that an injunction be issued if he finds such action expedient, it put upon the President a responsibility which unfairly hampers him and injects the dispute into partisan politics. Injunctions of themselves do not settle economic disputes but they do arouse resentment and distrust.

Let me review for you gentlemen of the committee the experiences of the Atomic Trades and Labor Council whose members are employed at Oak Ridge:

A dispute over a new contract between Carbide and Carbon Chemicals Corp. and the Atomic Trades and Labor Council of the American Federation of Labor arose. The plant involved was the Oak Ridge National Laboratory, a Government-owned atomic-energy plant operated by the company under a contract with the Atomic Energy Commission. The issue concerned was wages and working conditions. Employees voted to strike on March 16, 1948. The President appointed a board of inquiry on March 5, the parties agreeing to maintain status quo until March 19. The board of inquiry submitted its first report on March 15, and 4 days later the Attorney General obtained an injunction. Now, what happened? In a last-offer ballot, conducted by the National Labor Relations Board, the employees voted by a large majority not to accept the employer's last offer. The injunction was dismissed at the end of 80 days. That means the injunction settled nothing. Upon intervention by the president of the American Federation of Labor and the officers of the Metal Trades Department of the A. F. of L., the parties sat down and with the assistance of the Mediation and Conciliation Service, and after 52 hours of constant negotiation, they agreed to a settlement; a collective-bargaining settlement.

It should be noted that in this case the union had all along offered to submit the dispute to impartial arbitration, but the company refused. Responsibility for continuation of the dispute can therefore be laid at the door of the company—but the injunction was issued against the union, with no comparable penalty whatsoever against the company.

The charge made by the workers of the Nation that the Taft-Hartley law is a slave-labor law, is based upon that section of the Taft-Hartley law which provides for resort to the use of the writ of injunction. Even honest, sincere, unbiased Members of Congress can be deceived by this provision. It violates the thirteenth amendment to the Constitution of the United States which provides that involuntary servitude shall nct be imposed except as a punishment for crime. When workers are compelled to work against their will by order of the Government, or be subject to punishment, for refusal to do so, they are being subjected to involuntary servitude. It matters not how long you compel a man to work; for 1 minute, 2 minutes, 5 minutes, or an hour. If he is compelled to do so against his will, that is involuntary servitude. The workers regard that as slave labor. Many employers have long fought for the use of the writ of injunction in labor disputes. Beuause they abused this privilege, Congress passed the Norris-LaGuardia Act which abolished government by injunction. Now they seek to restore this undemocratic and vicious practice in order that they may be helped by the Government when they stubbornly resist fair and reasonable proposals of labor unions. The injunction helps them to accomplish this purpose. Here is the Government lining up with an employer against labor. There is nothing in the Taft-Hartley law which provides that employers shall be required or compelled by the Government to do certain things in labor disputes during a so-called emergency which threatens the public health and safety. It is all one-sided. There is nothing against the employer. He can do as he pleases. He can provoke the strike and then get the Government on his side with an injunction.

The Taft-Hartley law provides for resort to the use of the writ of injunction against labor; employers who reject the reasonable proposals of labor unions are not required or compelled to do anything. There have been nine cases in which national emergency procedure has been invoked. In six of these an injunction was issued, and in effect 80 days, against the workers, not the employer. The injunction accomplished nothing except the prolongation of the dispute. In no case did the procedure effect an adjustment or even contribute to the final settlement. The board of inquiry procedure has served only as a formality to justify a request for injunctive relief.

There is no justification for arbitrary legal prohibitions or compulsions in labor-management disputes. The parties concerned will get together and settle them if there is no intervention to provide a scapegoat to take responsibility for an unpleasant decision. It is very easy to confuse public health and safety with convenience and danger with discomfort. The public is not separate and distinct from those who work for wages nor is a Government official impartial or above partisanship simply because his functions run counter to those of wage-earners. Under normal conditions it is safe to say that no strike has endangered public health and safety. When there has been public danger, wage earners have been as ready as other citizens to practice restraint in the interests of the Nation.

Neither police power nor a police state can prevent strikes so long as workers are freemen. Neither has compulsory arbitration reduced the number of strikes in countries where such laws prevail. Where we have had absence of strikes and industrial disputes collective bargaining is fully developed.

The American Federation of Labor is in favor of that section embodied in the Thomas bill which provides for cooling-off periods, and for a mediation and conciliation in the application of the same principles in dealing with emergency situations where the public health and safety may be menaced. Similar to what has been embodied in the Railway Mediation Act, and that has worked admirably because there have been no strikes except maybe one in all the years on all the railroads in the country, where the public health and safety was menaced even to a remote degree. I want to make that observation clear that we favor the enactment of that section of the Thomas bill into law so as to deal with it effectively.

Strikes resulting from unremedied grievances. They are evidences of underlying injustices that stir workers to protest their wrongs. Unless channels of justice are freely available, the fires of rebellion smolder and finally break down restraint. Those who advocate limitation of the basic right to strike place community comfort and convenience above human justice for workers. There can be no real national health and security based on denial of basic rights. Unless the individual can withhold his labor effectively to promote his own welfare, he has little freedom. No nation is more sound and invincible than one in which all realize their responsibility for maintaining rights, benefiting by justice, and for helping forlorn workers to do likewise. The community has a responsibility to demand and support justice with redress of grievances. This is a far higher purpose than seeking relief from discomforts and upsets.

We protest efforts to outlaw boycotts organized to help fellow workers establish better standards of work. The boycott has an honorable history. We all honor its historic use by our forefathers to prevent taxation without representation. In the labor movement it has traditionally been used against products made under conditions unfair to workers. One of the most valuable attributes of the labor movement is the deep spirit of fraternity that permeates and strengthens it. As a practical matter workers know that the welfare of each is interdependent on the welfare of all. There is every reason why one union should help other unions to establish and maintain labor standards.

On behalf of the American Federation of Labor I urge upon this committee the repeal of the Taft-Hartley Act and reenactment of the Wagner Act as provided in H. R. 2032, which is your bill. In addition I wish to submit a memorandum containing amendments to this bill endorsed by the executive council of the American Federation of Labor.

These amendments, Mr. Chairman, are inconsequential. For instance, where the bill provides that it shall be the duty of certain people to do certain things, we suggest that that be changed to read that "It shall be the policy of the Government" to do those things. We think that will be better, and these amendments, I will not read, but I will leave them with you for your consideration.

That concludes my statement.

Mr. **Kelley**. Without objection, they will be inserted as part of the record.

(The amendments referred to are as follows:)

Amendments to H. R. 2032 Proposed by American Federation of Labor

Section 105 of the present bill, pages 4 and 5, purports to eliminate the further exercise of Board and Federal court jurisdiction in all matters in which the jurisdiction of the Board or of the Federal courts has been or could have been invoked under the Taft-Hartley Act, unless jurisdiction in such matters is retained in the Board or Federal courts by the provisions of the present bill.

The language of this section, however, could be made more expressive of this intent to remove liabilities imposed by the Taft-Hartley Act. As written this section bars actions or proceedings under the "National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947" (the Taft-Hartley Act). The Taft-Hartley Act, however, contains five titles. Only title I amended the earlier National Labor Relations Act. Thus, as presently written, the bill would bar only those actions or proceedings authorized under title I of the Taft-Hartley Act. It would not, for example, bar actions or proceedings instituted under titles II and III of the Taft-Hartley Act, such as civil-damage suits against labor organizations, injunctions in national emergency cases, or criminal prosecutions against labor organizations and their officers for violation of the ban on union contributions and expenditures made in connection with Federal elections. Such damage suits and criminal prosecutions are presently authorized by Title III of the Taft-Hartley Act. Injunctions in national emergency cases are presently authorized by title II of that act. The provisions of section 105 of the present bill should be clarified so as to leave no doubt that not only title I, but titles II and III of the Taft-Hartley Act are embraced within the language of section 105.

Another clarifying change should be made in section 105 of the present bill. The exact language of this section cancels the jurisdiction only of the Board and Federal courts to entertain certain proceedings authorized by the provisions of the Taft-Hartley Act. Section 303 (a) of the Taft-Hartley Act, however, makes it unlawful for any labor organization to engage in certain types of secondary boycotts and jurisdictional disputes and section 303 (b) authorizes any person injured in his business or property by reason of any violation of section 303 (a) to sue, not only in the Federal courts, but "in any other court having jurisdiction of the parties" (which would seem to include State courts) and to recover damages and the cost of the suit.

Since it appears most likely that section 105 of the present bill intended to foreclose all liability imposed by the Taft-Hartley Act and enforceable in any court, Federal or State, the provisions of this section should be made more definite by express language embracing within its coverage damage suits instituted in State courts or "in any court having jurisdiction of the parties."

Section 405 of title IV of the present bill, pages 21 and 22, states that the provisions of titles II and III of the bill shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended.

It is quite evident that the sponsors of the present bill, in proposing section 405, were or the opinion that the National Labor Relations Act, as it existed prior to its amendment by title I of the Taft-Hartley Act, eliminated from its coverage individuals employed by an employer subject to the Railway Labor Act. Because of this, and since title I of the present bill is a reenactment of the original National Labor Relations Act, with certain amendments, it was, no doubt, felt unnecessary to extend the proviso of section 405 to title I of the present bill.

The National Labor Relations Act, prior to its amendment by the Taft-Hartley Act, however, did not by any express language exempt from its provisions individuals employed by an employer subject to the Railway Labor Act. Such exemption was, of course, not necessary since the National Labor Relations Act did not contain any unfair labor practices on the part of labor organizations or employees.

It is suggested, therefore, that it be made definite in the present bill that individuals employed by an employer subject to the Railway Labor Act are completely exempted from the coverage of the present bill.

Section 108 of the present bill, pages 10 and 11, makes it an unfair labor practice for "an employer or a labor organization" to terminate or modify a collective bargaining agreement unless a 30-day notice of termination or modification is given to the United States Conciliation Service. The notice required of a labor organization is not notice to an employer, but to a governmental body. Clearly this section is designed to aid and assist the United States Conciliation Service in carrying out the purposes of its being, as set forth in title II of the present bill. That being the case, the severe penalties that may attach to an unfair labor practice should not be made applicable to a failure to give the 30-day notice (which failure, by the way, may be unintentional, but nevertheless punishable). Under the present wording of the section, it might be possible for the board to order cessation of the strike engaged in without such notice, or to penalize the strikers as by condoning their discharge.

The purposes of title II, Mediation and Arbitration, the United States Conciliation Service, of the present bill can best be carried out if section 108 of title I is eliminated entirely as an unfair labor practice and it is made a matter of "public policy" under section 204 of title II of the present bill that a 30-day notice be given of an intention to terminate or modify a collective-bargaining contract. Labor organizations affiliated with the American Federation of Labor will be happy to cooperate with the United States Conciliation Service by giving this notice and that it is entirely unnecessary to force the giving of this notice by making a failure to do so, an unfair labor practice.

While there is no objection to the requirements that notice be given, it would appear that the possible penalties are entirely too drastic for what might be mere inadvertance. Accordingly, if section 108 is not removed as an unfair labor practice, as suggested, this section should be amended to provide that failure to give such notice shall subject the offender to a cease-and-desist order requiring only the giving of notices then and in the future.

The language of section 108, as now written, needs clarification. It makes it an unfair labor practice "for an employer or a labor organization" to fail to give the required notice. It thus appears that the penalties of an unfair labor practice will attach to both parties even in a situation where both parties got together and by mutual agreement and without industrial disturbance modified a collective-bargaining contract or terminated one by entering into a new agreement, but failed to notify the United States Conciliation Service 30 days beforehand.

Section 204 of the present bill, pages 14 and 15, places a "duty" on employers and employees to exert every "reasonable effort" to make and maintain collective-bargaining agreements for definite periods of time concerning (1) rates of pay, hours and terms and conditions of work; (2) adequate notice of desire to terminate or change such agreements; (3) abstention from strikes, lock-outs, or other acts of economic coercion in violation of such agreements; and (4) procedures for the peaceful settlement of disputes involving the interpretation or application of such agreements. It also imposes the "duty" of participating "fully and promptly" in meetings undertaken by the United States Conciliation Service to aid in settling disputes.

There is danger that the term "it shall be the duty," appearing in section 204, lines 15 and 16 of page 14 of the bill, might be deemed to make the specified duties mandatory in nature and to authorize injunctions or damage suits in State or even Federal courts in case of failure to perform such duties. This construction would involve the possibility of injunction suits in early stages of negotiations and even a possibility of compulsory arbitration. The phrase, "it shall be the duty of employers and employees and their representatives" should be eliminated from section 204 of the present bill and that the first four lines of section 204 (lines 13 to 17, inclusive, on page 14) be redrafted to read that it is the "public policy" of the United States, in order to prevent or minimize labor disputes affecting the free flow of commerce or threatening consequences injurious to the general welfare that employers and employees, and their representatives "should do the things enumerated in section 204 (a) and (b).

Section 205 of the present bill, pages 15 and 16, states that it is the public policy of the United States that a collective-bargaining agreement "shall" provide procedures for the referral of disputes, growing out of the interpretation or application of the agreement, to final and binding arbitration. This section is expressive of public policy only and apparently is not designed to place a mandatory duty upon parties to an agreement to provide therein the procedures mentioned. To make this more certain the word "shall" contained in the third line of this section (line 10, page 15) should be changed to "should."

Insert in the bill the following provision or designation of craft unions as collective-bargaining units:

"The Board shall decide in each case whether in order to insure to employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this article, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or any other unit; provided, however, that in any case where the majority of employees of a particular craft shall so decide the Board shall designate such craft as a unit appropriate for the purpose of collective bargaining."

This provision has worked well in New York and should work equally well for the United States.

Mr. Kelley. Mr. Green, the statement was made last night by the National Association of Manufacturers, Mr. Mosher, that this year's propaganda was used to arouse the individual workers, union workers, against the Taft-Hartley law by the union leaders. I believe that you appeared before the joint committee—maybe it was the Labor Committee last year, I do not recall the year—but I asked you the question had you ever polled the individual members of any of your organizations of the American Federation of Labor to determine how they felt about the Taft-Hartley Act, and I believe you told me you had not.

Have you done it since then? Have you any new figures on that, as to how they feel about it?

Mr. Green. Yes, we polled our membership—a large percentage of them, in different localities, so as to find out from them, and the returns showed 99 percent of them, in every instance, favored the repeal of the Taft-Hartley law.

Mr. Kelley. Ninety-nine percent?

Mr. Green. We took that poll some time ago and, of course, we have not done anything since then. We have not sounded them out since we took the poll, but I know the sentiment is the same.

Mr. Kelley. Was that poll taken as a cross section of the membership?

Mr. Green. Yes, a cross section of the membership of the A. F. of L.

Mr. Kelley. Do you recall the number that were polled?

Mr. Green. I forget the number that were polled.

Mr. Kelley. I recall you said about 15——

Mr. Green. About 50,000, I think.

Mr. Kelley. And 99 percent of them were opposed to the Taft-Hartley Act?

Mr. Green. Ninety-nine percent of them.

Mr. Kelley. Mr. Bailey?

Mr. Bailey. Mr. Chairman, President Green's presentation of the case of labor in opposition to the Taft-Hartley law and in favor of H. R. 2032 has been so completely and so ably presented that I am sure no question I would ask would add to the clarity of the presentation.

I would, however, like to ask President Green, in connection with his proposed amendments to H. R. 2032, a question in reference to section 302 of the act. Section 302, if I remember correctly, has to do with the setting up of Presidential emergency boards, after the expiration of the waiting period.

Mr. Green. Yes.

Mr. Bailey. The point I want to make is this: The committee has heard testimony in one instance, at least, in which they contended that this section 302 was not strong enough in itself to bring around this conference table at this conference of last resort all of the interested parties.

For instance, the illustration was made that in case of a strike in, we will say, a Bell telephone company, it finally was referred to the Presidential board or commission——

Mr. GREEN. Yes.

Mr. BAILEY. That the Bell telephone is just a part of the over-all set-up. In other words, most of the Bell telephone companies are owned outright by the A. T. & T. and, in turn, the A. T. & T. is controlled by a large number of banking concerns, a large number of businesses, and he suggested there should be an additional section so all parties of interest could be forced to sit around the table, on the assumption the one party involved in the strike did not make the policies of that particular company.

What do you think of the proposition? Do you think it should be strengthened there?

Mr. GREEN. I think that during a cooling-off period, when the matter is gone into, and all parties are cool and calm, the best interests of the public would be served if there could be brought into the picture the representatives of employers, or the company, or the corporation—whatever that may be.

I am not prepared at the moment to say whether, in order to deal with a situation such as you have presented, the section should be amended. That is what you have in mind, is it?

Mr. BAILEY. That is correct.

Mr. GREEN. To cover that? I think perhaps the purpose is to have that very thing take place, but I am not sure whether it ought to be amended to make it specific and clear and definite and plain.

Mr. BAILEY. One more question, Mr. Chairman.

I listened to a radio forum one day during the past week in which you participated.

Mr. GREEN. Yes.

Mr. BAILEY. And in that forum you stated that strong labor unions are America's best defense in the fight against communism.

Would you care, for the benefit of the committee, to restate some of the things you stated in that broadcast?

Mr. GREEN. I will be very glad to.

Mr. BAILEY. Thank you.

Mr. GREEN. I referred to that in this statement, but experience is a great teacher, and we learn our most valuable lessons in the school of experience, and in that field we have been experimenting abroad. We have representatives abroad who are working for the American Federation of Labor and the Government in an effort to make the Economic Administration plan a success.

As you know, in practically all the nations of Europe the turn has been to the left and, as I said here, free enterprise is wiped out in practically all of those countries abroad.

The revolutions that have taken place in those countries which are now covered by the iron curtain orginated with labor, the masses of the people. It was a labor movement in Czechoslovakia that captured the Government and established communism.

All right. Who is it who can talk to labor as effectively as the representatives of labor? Our people in Europe are talking to the working people in Europe, and telling them about the operation of our free-enterprise system in the United States, about free collective bargaining, about the right of workers to organize in free trade-unions, and to bargain collectively for the sale of their labor, if I may put it that way, to the employers, just as I can bargain collectively for the sale of the products of labor. One sells labor and the other sells the product of labor.

As a result of it all they are bringing commissions here now, labor representatives to the United States from these countries, to visit our plants and our families, and to visit among the laboring people of our Nation, and discuss with them our economic and political problems. In that way labor can serve to protect our free-enterprise system, and to oppose communism.

Now, would it not be better for our Government to encourage the growth and strength and influence of a great agency like the American Federation of Labor in order to oppose communism effectively, than to weaken it and destroy it like the authors of the Taft-Hartley law are seeking to do? They cannot prevent communism: it will grow in spite of them. And if you drive the workers here in America into communism, then the free-enterprise system is threatened here.

Strengthen the agency, build it up, establish it upon a sound basis so it can effectively cope with an ideology and a philosophy that has established itself in practically every Nation throughout the world except America.

There is the answer, I think, that should be convincing to any thinking person.

Mr. BAILEY. Thank you very much for your comments.

That is all, Mr. Chairman.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I feel confident that Mr. Green is capable of presenting the subject for the labor unions very ably.

I notice on page 3 you state:

> By proscribing what our opponents term the "closed union shop," the Taft-Hartley law goes contrary to accepted practice in the professions as well as in trade-unions.

What profession do you refer to, or how do you connect that with trade-unions, Mr. Green?

Mr. GREEN. I will be very glad to tell you about that.

A man, in order to practice medicine, must qualify, must he not?

Mr. IRVING. I understand he must.

Mr. GREEN. A lawyer, in order to practice law, must qualify, must he not? And nobody else who does not qualify can practice medicine or practice law. The lawyers have even gone further than that, Congressman, and out in California they passed a law, as a result of the agitation of the lawyers, which provides that no man can practice law in California unless he first joins the Bar Association of California, which is their union. There is a closed shop of the bar association in California, and that is spreading to other States.

Mr. IRVING. Would that apply to any other professions?

Mr. GREEN. I beg your pardon?

Mr. IRVING. I mean, would the same idea apply to other professions that you know of?

Mr. GREEN. Only in the legal requirements which are that a man must, in order to practice law, qualify. He must get his degree and show that he is certified. A doctor, in order to practice medicine, must get his certificate, or, if you and I feel we would like to practice medicine or practice law, we are not admitted to the bar nor to the medical profession and we cannot do it.

Mr. IRVING. The same thing is true of dentists or accountants, is it not, and many other professions?

Mr. GREEN. I think it operates in a very large degree among other groups, yes.

Mr. IRVING. Of course, the answer I got to an inquiry such as this was that the State controls these examinations and these requirements, but I am of the opinion that the people who are on those boards and make the rules are pretty much from the profession that is involved.

Mr. GREEN. Oh, yes, they come from that profession, because they are qualified to do that.

Mr. IRVING. There are, even among employers, more or less, closed shops, are there not?

Mr. GREEN. The thing with the closed shop is for the purpose of conferring upon workers equal bargaining power with corporations. If some of the workers in this country are in the union, and some of them are not, then those who are not in the union are not subject to the set-up that might be paraded by the union and, as a result of it, the employers are the beneficiaries of the division that is created within the ranks of labor.

Mr. IRVING. I think what I actually meant was that the employers have a closed shop sometimes between themselves.

Mr. GREEN. Oh, yes; they practice it. Yes.

Mr. IRVING. I was told in my office not over 10 days ago that a certain young fellow wanted to start in the contracting business, and the other contractors warned him that there was no room for him in this territory in that business, and that by many methods that are condemned, they tried to show or prove to him that there was no room. He was followed home at night, and there were shots from weapons that disturbed his feeling of well-being. Then I recall a case about a year ago where a contractor came in from a city about 250 miles from where he is, and bid on a job after he had been told not to bid on the job; after he got there, and his equipment and machinery were on the job, some of it was bombed with dynamite, and so forth, and there was no trouble between labor and this out-of-town contractor at all. He could not lay this dynamiting to labor unions because he was an employer of union labor, and his relations were very fine with all the unions.

Mr. GREEN. I see.

Mr. IRVING. So I think these things bear some consideration and investigation.

Just below that, in the next paragraph, the second paragraph below that, on page 3, you say.

> Under the Taft-Hartley Act the union can require the discharge of workers only because of nonpayment of dues.

If you had labor spies in a union, or union records in a union, you could expel them from the union, I presume, but you could not take them off the job where they are associated every day with the loyal members of the union?

Mr. GREEN. That is right. That is the objection to it. The union, under the Taft-Hartley law, is robbed of any disciplinary power over its members. For instance, it is our policy to eliminate Communists from our unions, and to deny them the right to serve as delegates to a convention or to a conference, and under the Taft-Hartley law, if you have a union shop, and some worker or 2 workers, or 5 workers, or 10, or whatever number there may be, who are admitted or proven Communists, all the disciplinary action the union can take against them is to put them out of the union, but the distasteful thing is that they have to stand by and work with them.

Our unions want to remove the Communist's influence from the unions and from the workers, and deny him the right to preach his Communist philosophy in the unions, and yet this Tart-Hartley law says we cannot do that. Just think of that, in America, where we are fighting communism.

Mr. Irving. I think I brought——

Mr. Kelley. You have 1 minute remaining.

Mr. Irving. I think I brought out the question the other day that you could not take a Communist off the job even though you expelled him from the union, and it is a bit dangerous to expel people from the unions now, because they can sue you, I understand, and, in case of a court that might be prejudiced or biased, they might have a very good opportunity to sue, so it is not too well to expel people from unions.

Mr. Green. That is all right; surely. They have to have a good reason; otherwise they are subject to damage suits, but when our constitution provides against working with Communists and the union is informed for that purpose, we will take our chances in court, if you will remove the Taft-Hartley law.

Mr. Kelley. The gentleman's time has expired.

Mr. Irving. Thank you.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. Mr. Green, I think I understand everything you said in regard to the Taft-Hartley law. I have studied it very closely myself, and apparently I have gained the reputation with the fulminating radio reporter of being a sort of "hatchet man."

I want to ask you about some other things that have not been mentioned in your testimony.

Having represented some unions, I am aware of the fact that a union, like any other organization, must have disciplinary powers, and if it does not have them it cannot exist; but, as you just stated—and I was glad to hear you state the officers or trial boards of a union should have good reasons for expelling a man before he is expelled. We will certainly agree upon that. Otherwise, it is a power that amounts almost to economic execution, is it not?

Mr. Green. That is right. It must be used judiciously and carefully, just as the courts exercise care and caution.

Mr. Jacobs. I wonder if we could not also agree upon this, that unions, of course, are composed of men who are mortal, and are subject to the weaknesses flesh is heir to, the same as any other organization?

Mr. Green. Yes.

Mr. Jacobs. And once in a while we have men at the head of organizations—unions included—who do abuse those powers. I think we can agree on that. You have seen it in your experience in the labor movement, have you not?

Mr. GREEN. Yes, but appeals can be taken to the officers of the organization, or to the organization itself, in cases where the individual feels that an injustice has been done.

Mr. JACOBS. Eventually, it can be taken to the convention, but sometimes that is a long way off.

Mr. GREEN. Then we would have redress in the courts like any other citizen.

Mr. JACOBS. Which is a very slow and cumbersome procedure, and rather costly?

Mr. GREEN. Sometimes, yes.

Mr. JACOBS. My experience has been that it generally always is. Every time you get mixed up in court I feel like the English gentleman who said if a bandit should meet him with a pistol and demand his purse he would fight him to his death, but if he met a lawyer and he said he was going to sue him, he would surrender about all he had without putting up a fight.

Mr. GREEN. Yes.

Mr. JACOBS. What about the case where the member of a union has a controversy with a man who is in the highest authority in the union? In particular, we will take the international president. He has a controversy with someone down the line, and eventually becomes the man's judge under some constitution. Do you not feel there should be some other remedy for that man, without going through a prolonged and expensive common-law action?

Mr. GREEN. Of course, there is the matter of justice, aside from the union controversies, that ought to apply in all controversies, and the man ought to be given a fair trial, but this is not a perfect world; it is made up of imperfect people, and our unions are imperfect, and it is fair to assume that employers are imperfect; but you do not have a word in the Taft-Hartley law that says that an employer shall be persecuted or prosecuted if he does not do that.

Mr. JACOBS. I agree with you on that.

Mr. GREEN. It is all against labor.

Mr. JACOBS. I agree with you on that, but I am thinking in particular about the type of case, to give you an example, where a man who was a member of the carpenters' union in Wichita, Kans., and he made a motion before the A. F. of L. convention, as I understand it, at the 1947 convention, under mandate from the Central Labor Union of Kansas, calling upon the carpenters to abide by the historical decision of the American Federation of Labor in their dispute with the machinists' union, which sounded like good sense to me. He was a business agent for the carpenters' local out there in Wichita, Kans., and the general president of the carpenters' union wrote a letter to the local and told them to dismiss him as business agent.

In other words, he was thrown out of an office that he had been elected to by the members of his own local, for simply following out a mandate that both parties abide by the decision that you folks had made in the convention.

Do you not think that was a pretty harsh thing to do, asssuming the facts to be as I stated them?

Mr. GREEN. I stand for simple justice for every one individual, no matter where they are.

Mr. JACOBS. I believe you do, too.

Mr. Green. I do not know about the case of yours, but the individual, I care not who he is——

Mr. Jacobs. I was not the man's attorney. I happened to know about the case and looked over the record, and I assisted the attorney in writing some briefs.

Mr. Green. It is my judgment, even in that case, the individual would have the right to appeal to the executive board, or the board of directors, as we call them.

Mr. Jacobs. He also has an appeal to the courts?

Mr. Green. Yes, he has an appeal to the courts.

Mr. Jacobs. But ordinarily, unless it is a prejudged case, the courts, of course, would not touch it until after he exhausted all remedies within the union. In this particular case an appeal to the executive board meant nothing because they always go along with the general president. We both know that is true. You do not need to say it, but we both know it is true. He would have to wait for the next convention, which is a rather delayed remedy. That would be a very delayed remedy for a man in those circumstances.

Mr. Green. Certainly I would agree to that.

Mr. Jacobs. And, in another type of a case, Mr. Green, where an international takes a local union and puts it under trusteeship, and keeps it under for a long number of years—I have in mind one that was under trusteeship for 16 years—and the men who belonged to that union never had an opportunity to vote for an officer, and they never had an opportunity to vote on a contract, and when they finally got an election of officers and investigated, they found their wage scale 34 cents an hour less than the free locals in the adjoining district.

You would not approve of that?

Mr. Green. I do not know, of course, what was involved in these cases, but I am reluctant—

Mr. Jacobs. I understand; but assuming the facts to be as I stated.

Mr. Green. You know we cannot deal with individual cases. You are picking out these individual cases, but what does our great movement do, as a whole?

Mr. Kelley. You have 1 minute remaining.

Mr. Jacobs. When you say the labor movement is the bulwark of free enterprise, I agree with you, and I will say to you that in my opinion those cases are not the rule; they are exceptions.

Mr. Green. Exceptions, yes.

Mr. Jacobs. But at the same time— and I cannot help it—my heart goes out to those men who are thus abused, and over and above that I believe the labor movement would be much stronger if we had some simple legislation that would require the few isolated instances where those abuses are permitted to more or less toe the line.

What do you think about that?

Mr. Green. What is involved in that is a question of conferring upon every individual the right to have his day in court.

Mr. Jacobs. His day in court, his voice in the government of his union.

Mr. Green. That is right.

Mr. Jacobs. In other words, democracy within the unions, and if we have leaders who abuse democratic processes, do you not think the Government should have fair, simple legislation that requires them to observe them?

Mr. Green. I agree with that. I think everyone should have his day in court.

Mr. Kelley. The gentleman's time has expired.

Mr. Perkins?

Mr. Perkins. Mr. Chairman, I agree with what Mr. Green has said concerning the injunction in labor disputes. However, I do want to ask him a few questions.

How long have you been connected with the American Federation of Labor?

Mr. Green. I have been president since 1924. I succeeded Mr. Gompers, and that was about 25 years ago.

Mr. Perkins. You were connected with the labor movement several years before that date, I believe?

Mr. Green. Oh, yes; I have been with it all my life, ever since I have been of age.

Mr. Perkins. From all of your experience, have you ever seen the occasion when the Government has benefited by the injunction in an effort to settle labor disputes?

Mr. Green. The Government?

Mr. Perkins. Yes.

Mr. Green. It has under the Taft-Hartley law.

Mr. Perkins. I do not think you understood my question.

Mr. Green. You mean benefited by it?

Mr. Perkins. Yes.

Mr. Green. Oh, no, no, no, no, never. In this case that I tell you about, they issued the injunction, and it was in effect for 80 days, and of course the workers complied with it against their will; but they complied with it, and carried it out. And then the injunction ended and they were free to act, and what did they do? They got around the table and settled it through collective bargaining, and not because there was any injunction.

Mr. Perkins. Since the adoption of the Taft-Hartley law, how many times did you say the Government had gone into court and asked for an injunction?

Mr. Green. Nine times, I believe it was.

Mr. Perkins. Yes. And I believe that your evidence disclosed that in none of those instances did the injunction help settle the controversy?

Mr. Green. No. Instead, it hurt, in my judgment, and created ill feeling.

Mr. Perkins. I believe it is pretty well agreed that our National Government has an inherent right to go into court and apply for an injunction in a strike that involves national health and welfare. That is your conception of the law, I believe. Am I correct in that statement?

Mr. Green. You mean the Government possesses that as an inherent right?

Mr. Perkins. Yes.

Mr. Green. I do not know. There are some differences of opinion even among legal-minded people as to whether, in an emergency which the officers of the Government might decide was a real emergency, they had the right to issue an injunction without authority being conferred upon them to do so.

Mr. PERKINS. You know there is nothing in the Constitution of the United States that would prohibit such procedure, do you not?

Mr. GREEN. I do not think there is anything that definitely prohibits it.

Mr. PERKINS. Do you not think that it would appear to be the most unreasonable construction of the Constitution which denies to the Government created by the Constitution the right to employ and invoke the injunction if such emergency confronted the welfare of this Nation? In other words, I refer to that inherent right again.

Mr. GREEN. Of course, you are dealing with a profoundly controversial subject there, and I am not sure that the Government has that right.

Another thing that has been stated by some very able people is that the Government would have the right, under certain circumstances, such as you refer to, to take over the plant and operate it. I know that during the war such powers were conferred upon the Government, but I am not sure whether the Government possesses that power if it does so without specific provisions authorizing it to do so.

Mr. PERKINS. I personally think that the Government does possess such powers, but, now, my point is when the injunction was written into the Taft-Hartley law, do you not think that it was abused to a great extent against the employees over this Nation, and against unions?

Mr. GREEN. Of course, that is part of our objection to it, and then the other part is that the exercise of governmental power through the judiciary and labor disputes should not be conferred upon the courts.

Mr. JACOBS. Will the gentleman yield at that point?

Mr. PERKINS. Yes; but I want to say I am wholly in accord with that last statement of Mr. Green.

Mr. JACOBS. I want to say for the record that it is my judgment that the Government has no inherent power to procure an injunction except that which would be the same inherent power of a government to set up a provisional government if chaos became so great that action was just demanded in order to prevent the abolition of law and order. I do not believe that that inherent power exists. The fact that it is in the Constitution, does not spell it out, because our Government is one of delegated powers and, therefore, if it is not delegated, I cannot believe the Government has it. Of course, any person has the right to maintain order if chaos becomes great enough. At least, those are my views. I wanted them on the record.

Mr. PERKINS. In response to that, I disagree with the gentleman from Indiana, because under article II, section 1, clause 1, of the Constitution that sets out that the executive power shall be vested in the President of the United States, and by virue of article II, section 3, "he shall take care that the laws are faithfully executed."

Mr. JACOBS. That is right.

Mr. PERKINS. And article II, section 1, clause 7, requires that he preserve, protect, and defend the Constitution. If such an emergency that confronts the country was to arise which affected the health and welfare of this Nation, and it was necessary to invoke the injunction—I have never seen a time when that was necessary—we know what a successful part labor played in winning the war—but if that time were to arrive, there is nothing in the Constitution that would prohibit the

President from resorting to courts for the injunction to effectively execute the laws of this country. That constitutionally inherent power is not prohibited by the Constitution, and it would certainly be a weakness on the part of our Government that was created by the Constitution——

Mr. Kelley. The gentleman has 1 minute.

Mr. Perkins. If we could not effectively protect our people in time of great peril without any express law to that effect. That is my belief about the matter.

Mr. Green. As I say, there is a difference of opinion on it, of course.

Mr. Kelley. The gentleman's time has expired.

Mr. Green. And let me point this out: After all, the workers of the American Typographical Union are American citizens.

Mr. Perkins. Yes.

Mr. Green. And interested in the preservation of our form of Government.

Mr. Perkins. That is right.

Mr. Green. And are interested in serving the people and the public. We must keep in mind, now, their patriotism, as well as the patriotism of others.

Mr. Perkins. Sure.

Mr. Green. Let me tell you that during the war period the workers of America surrendered their rights to strike. They made a solemn pledge to the President of the United States that they would not resort to strike for the duration of the war—until victory was won. They kept that pledge 99 percent during the war. Is that not an exhibition of patriotism?

Mr. Perkins. It certainly is.

Mr. Green. Another thing I want to tell you is that during the war the officers of the United States Government called upon the unions—not the individuals—to render special service here, there, and in different places throughout the Nation.

Mr. Kelley. The gentleman's time has expired.

Mr. Wier?

Mr. Perkins. Will the gentleman yield 1 minute to me?

Mr. Wier. Yes.

Mr. Perkins. I wanted to make myself clear that I agree with your remarks.

Mr. Green. Yes.

Mr. Perkins. The only reason that this question of injunctions is controversial, as you say, is that the Government has that authority and others do not?

Mr. Green. Others do not; yes. There is a difference of opinion.

Mr. Perkins. But I wholeheartedly agree with your remarks with reference to the use of the injunction.

I do not believe in it.

Mr. Kelley. Mr. Wier, you have 9 minutes.

Mr. Wier. Mr. Green, sitting here on this committee for 10 days now, and listening to many employers and trade associations elaborate upon their attitude toward the present labor relations law, I have gathered some very interesting points of information. One is the fact that a lot of stress is being placed upon a number of particular instances of labor disputes as to the effect upon the economy.

Have you any knowledge as to the total number of labor contracts in the United States that are in existence and functioning?

Mr. Green. I could not give you the number because I have not assembled that information, but there is a very large number. We have practically 8,000,000 members in the American Federation of Labor who are working under contracts, and that are negotiating through collective bargaining with the employers.

Mr. Wier. I will give you the figure I have—between the A. F. of L. and CIO there are 100,000 labor contracts functioning as of this time.

Mr. Green. I think you are pretty well correct on it, although I have not the correct figures here.

Mr. Wier. Do you happen to know how many contracts the A. F. of L. has?

Mr. Green. No, I do not.

Mr. Wier. What would be your guess in all of this collective bargaining that goes on in every hamlet and in every county and in every city in the United States, as to the percentage of these contracts which become involved in a dispute that needs law?

Mr. Green. A very small percentage.

Mr. Wier. You would say a very small percentage?

Mr. Green. Practically all of them were negotiated without resort to a single moment's stoppage of work.

Mr. Wier. Let me give you this review that I have gotten in these hearings, dependent upon the type of employer or management that was presenting their point of view.

Mr. Green. Yes.

Mr. Wier. This is the way they feel about sections of the Taft-Hartley law.

In the big mass-production industries, particularly, they say: No. 1, the section is essentially needed for the prohibition of the foremen's right to organize.

No. 2, opposition to the closed shop.

Mr. Green. Yes.

Mr. Wier. No. 3, it is very necessary to have the injunction. And then they follow the injunction with the necessity for suit, suability.

Mr. Green. Yes.

Mr. Wier. For violation of the contract. And then we have heard very specifically the objections of management to the so-called jurisdictional dispute, and that is followed with the secondary boycott and then the national emergency.

Now, we come down to some points that quite a number of employing management are in accord with, that there were some provisions in the Taft-Hartley Act which have since proved to be mistakes.

Do you want to comment on that?

Mr. Green. I will tell you, first of all, so far as foremen are concerned, I think that that is a right that they should determine for themselves. I do not think any restriction should be placed upon them because they are workers and they are servants. There may be officers in the corporation close to the company who occupy a little different status. In a closed shop, their objection to the closed shop, as you have said, is fundamental with the employers and that is because they want the unions, as I have said, to be weaker. A union operating under a closed shop is stronger than a union operating under an open shop agreement, and there is no equality in bargaining power. That is the purpose of the Taft-Hartley law, to weaken the organizations and make them weaker so they can deal with them better.

Mr. WIER. I want to get this in, and I have only 9 minutes, now.

Mr. GREEN. Yes.

Mr. WIER. This is the forecast that I make, and I want you to elaborate upon it. After all of these years of experience I have had in the trade-union movement it is my conviction that if unemployment increases to the degree that it has in the past, it may be very difficult. We have been under the Taft-Hartley Act at a time when everybody has had a job.

Mr. GREEN. Yes.

Mr. WIER. Conditions have been fairly decent, and have been made so by contract.

We are pondering here in the Congress as to what the immediate future is going to bring about. I hear it every day on the floor, the threat of unemployment.

Under unemployment, Mr. Green, with your 8,000,000 members, and with the continuance of the Taft-Hartley in operation, and every union hall and every union with a substantial of unemployed members, what is going to happen? What is going to be the threat?

Mr. GREEN. We will have a very chaotic condition, in my judgment; the worst economic situation that we have ever seen in the history of America, particularly if this Taft-Hartley law stays in effect.

Mr. WIER. What part do you think, let us say, left wingers in our trade-union movement will play with unemployment prevailing?

Mr. GREEN. It is difficult to anticipate what part they will play, but it is my judgment they will take advantage of the situation to create chaos and confusion and economic disturbances as between industry and labor.

Mr. WIER. Do you think the Taft-Hartley Act will be good ammunition for them?

Mr. GREEN. Absolutely, the best kind.

Mr. WIER. I just wanted you to elaborate on that, because I have some fear of that question.

Mr. GREEN. That is the way I feel. I am apprehensive about it, because, as you well pointed out, this law has operated for about 1 year during a period when our country was passing through a time when practically everybody was employed, and that makes a difference. But with unemployment a decided change will come, and then we will be faced more and more with the difficulties in the Taft-Hartley law.

Mr. WIER. That is all.

Mr. KELLEY. Mr. Burke?

Mr. BURKE. First of all, Mr. Green, I want to say that I am sorry I was unavoidably detained and could not be here for your oral presentation, but I have sketched through your written presentation, and I believe you have very ably given labor's objection to the Taft-Hartley Act.

There are a few questions I would like to develop along the lines of the other questions that have been developed.

I was particularly interested in one answer you made to a question by either Mr. Jacobs or Mr. Perkins about the injunction. You said your feeling was that the injunction was primarily bad because of the bad feeling that it created among the people who were involved in the injunction.

Is that not because they feel that the original premise of the injunction is that they must of necessity be wrong on their side of the labor dispute, or that is the court's feeling, that they must necessarily be wrong, or an injunction would not issue; is that not just about the way they feel about it?

Mr. GREEN. You are right. They are moved by a deep sense of injustice because they feel that the cause of the dispute is a matter of justice and equity to be settled in a just way, and then when the injunction is issued they immediately feel that the Government has stepped in and taken sides with the employer against them.

Mr. BURKE. That is right, and they feel they have as much right——

Mr. GREEN. And they resent it.

Mr. BURKE. Sure.

Mr. GREEN. Because they feel they are entitled to the same consideration as the employer.

Mr. BURKE. And they feel they have as much right to free enterprise as does their employer?

Mr. GREEN. Certainly.

Mr. BURKE. Yes.

Mr. GREEN. They sell their labor to the employer and the employer sells the product of labor. "There is no injunction restraining him, but there is an injunction restraining me." It is a sense of injustice.

Mr. BURKE. There was another question Mr. Wier talked about that I would like to refer to.

A great deal of testimony has been given by various employers and corporations, presidents, and so on, on this subject of organization of foremen.

Mr. GREEN. Yes.

Mr. BURKE. Would it not be very difficult to write a law which would determine at what level collective bargaining should start and end, and also might it not be very difficult to write into the law the conditions that apply, maybe, by tradition, in various industries?

Mr. GREEN. It would be very difficult, because in writing such a law it is reasonable to conclude that an injustice would be done. You could not draw the line where equal justice would be done, even though you are moved by an honest and unselfish purpose. Besides, the foreman works for wages, salaries—whatever it is—as an American citizen, and he should not be denied the right to try and bargain a little better for higher wages and salaries. And many of the foremen have no power to hire or discharge workers. They are just foremen directing workers here and there in their line of work. It is difficult to draw a line of distinction between the group or that type of individual, and the worker on the assembly line, if I may put it that way. It is very difficult.

Mr. BURKE. And it is also very difficult to say that a foreman over in this industry—we will use for an example the building trades—who is the same sort of individual with the same sort of powers as the man called a foreman in an automobile plant.

Mr. GREEN. Sure. It is not on a Nation-wide standardized basis, the difference in trades, and yet in a law you prohibit everybody, no matter what the circumstances are. Foremen in a plant where, maybe, two to five thousand or ten thousand people are employed, and a foreman in a plant where only two or three are employed—it applies to all.

And, now, how can you do justice?

Mr. Burke. You cannot.

You have stated that you have spent some 25 years as president of the American Federation of Labor, and I know a good many years before that in the labor movement, and I know that you were also a predecessor of mine in the Ohio State Legislature.

Mr. Green. Yes; I am in your fraternity.

Mr. Burke. We can, I guess, truthfully and frankly say that our existence has been pretty much what is termed in the vernacular, living in a goldfish bowl.

Mr. Green. Yes.

Mr. Burke. That is, the general public knows pretty much about us. Our backgrounds are pretty well known all the way through.

Mr. Green. That is right.

Mr. Burke. In order to carry on our daily business, and the affairs of the line of pursuit that we have followed throughout our lives, we have been required by the Taft-Hartley Act to prove our Americanism.

Mr. Green. Yes.

Mr. Burke. Where no other profession, trade, or line of work has been required to do that, is that not correct?

Mr. Green. That is correct, under the Taft-Hartley law.

Mr. Burke. That is right. And is that not pretty much our reason for objecting to the Communist affidavit?

Mr. Green. Yes.

Mr. Burke. Not because we felt that we could not sign it—we would be willing to sign such an affidavit every day of the week—but the idea was that we had to sign it in order to carry on our line of work.

Mr. Green. That is right. The chief objection on the part of labor is that they feel they are reduced to a secondard status. They must, in order to exercise collective-bargaining power, file non-Communist affidavits. The employer and the manager, the representative of the company with whom they deal, do not have to do that. It is assumed that you may be in the Communist class, and the other fellows never are.

Mr. Burke. That is it.

Mr. Green. They resent that secondary status position.

Mr. Burke. By virtue of the line we follow we are presumed to be guilty until we prove ourselves innocent?

Mr. Green. That is it.

Mr. Burke. That is all.

Mr. Kelley. Mr. Lesinski?

Mr. Lesinski. I will reserve my time, Mr. Chairman.

Mr. Kelley. Mr. McConnell?

Mr. McConnell. Mr. Green, would you say that the influence of the Communist in union affairs has increased or decreased during the past year?

Mr. Green. I think their activities have increased, although we have the American Federation of Labor pretty free from Communist influence, but in some organizations that I know of they have been pretty active, and are increasingly active.

Mr. McConnell. Would you say that the influence of the Communists has increased or decreased in labor unions during the past year?

Mr. Green. I think perhaps it has increased a little since the Taft-Hartley law was passed.

Mr. McConnell. You mean they have more influence now than before the Taft-Hartley was passed?

Mr. Green. Our influence is great——

Mr. McConnell. You say that the Communists have more influence now in labor unions than they had prior, we will say, to the passage of the Taft-Hartley?

Mr. Green. I do not know that I would put it that way, but I think they are more inclined to be Communists than before the law was passed.

Mr. McConnell. What proof have you, Mr. Green?

Mr. Green. Because of speeches.

Mr. McConnell. It is not obvious by elections; Communists have been taking a beating, as a whole.

Mr. Green. I do not know how you would interpret the last election.

Mr. McConnell. I am speaking of the elections of Communists in unions.

Mr. Green. We do not have much trouble with them, because we would not allow Communists to be in our union if we knew it, or to serve as delegates to conventions, or as officers, and so forth.

Mr. McConnell. Do you still say that the influence of Communists has increased in unions since the passage of the Taft-Hartley law?

Mr. Green. I think in some lines, yes.

Mr. McConnell. What lines?

Mr. Green. Some unions.

Mr. McConnell. What unions?

Mr. Green. I do not know that I could enumerate them at the present time.

Mr. McConnell. If the Taft-Hartley Act is repealed, and if unemployment should increase due to declining economic activity, do you believe that the reenactment of the Wagner Act would reduce the influence of Communists in unions, in the light of the experience prior to the enactment of the Taft-Hartley law?

Mr. Green. It is my opinion that the reenactment of the Wagner Act, with the amendments provided in your bill dealing with jurisdictional disputes, boycotts, and emergency strikes, will tend to eliminate the influence of communism in a very wonderful way among the workers of the Nation. I tried to make that plain in the statement that I submitted this morning. Communism thrives on discontent and dissatisfaction and poverty and hunger, and surely one who has been a student of world affairs must arrive at that conclusion, because as I stated, the workers of every other nation in the world except America have turned to the left, towards communism or socialism; and we are the last stronghold of the thoroughly free enterprise system.

Mr. McConnell. How do you explain the rise of communism and communistic influence in unions prior to the passage of the Taft-Hartley Act, when unemployment was higher and when wages were at the greatest rate in the history of our country?

Mr. Green. Partly because of discontent and dissatisfaction.

Mr McConnell. Not over the Taft-Hartley law, because the Taft-Hartley law was not in existence. It was the Wagner Act, then.

Mr. Green. What I tried to emphasize was that the Taft-Hartley law was increasing what we already had.

Mr. McConnell. I do not see that where communistic influence is concerned. There may be some parts that bring unrest, but I do not think you are quite accurate in your statement that the communistic influence has increased in the recent past in unions.

Mr. Green. My dear sir, who knows best? The man who lives close to them every day, or the man who follows a professional life, and does not come in contact with them?

Mr. McConnell. I would say the man who reads the papers and observes the results would be qualified to judge that just as well as anyone else.

Mr. Green. But isn't the man who lives close to and talks to people, talks to the workers, hears their expressions of opinion, their feelings, in a position to learn more than a man who never comes in contact with them?

Mr. McConnell. I do not know what you mean by "never comes in contact with them." I think he has ordinary intelligence and can read papers as to the results of elections in unions and union activities.

Mr. Green. I will tell you, my dear boy——

Mr. McConnell. That is a compliment.

Mr. Green. Well, I want to address you nicely.

Mr. McConnell. Surely.

Mr. Green. We have learned that the newspapers and the commentators on the radio and the columnists, and so forth, have lost the confidence of the people in America. When we read an article now by them or hear them over the radio, we wonder whether they were right or not, because surely during the last campaign they convinced the people of America that they did not know what they were talking about.

Mr. McConnell. Your case is with the newspapers, then, and not with me, sir.

Mr. Green. But you were basing your opinion on that, on what they read.

Mr. McConnell. You will have to take it up with the newspapers as to whether they tell the facts or not.

Mr. Green. I want to advise you, when you read, before you arrive at an opinion, reserve it.

Mr. McConnell. And listen to only one segment of our society? Would that be your theory?

Now, in connection with national emergency strikes, it says here in H. R. 2032:

> Whenever the President finds that a national emergency is threatened or exists because a stoppage of work has resulted or threatens to result from a labor dispute (including the expiration of a collective-bargaining agreement) in a vital industry which affects the public interest, he shall issue a proclamation to that effect and call upon the parties to the dispute to refrain from a stoppage of work, or if such stoppage has occurred, to resume work and operations in the public interest.

Speaking as president of the American Federation of Labor, if such a proclamation were issued, would your organization observe it, sir?

Mr. Green. Yes, sir.

Mr. McConnell. You would?

Mr. Green. Yes, sir.

Mr. McConnell. In other words, there would be no question about inherent powers or anything like that?

Mr. Green. There is no question. We shall respond to the request of the President of the United States in an emergency. As I told the committee here a while ago, during the war we pledged the President that we would not stop work a single minute for any cause, and we carried it out, and we will do it in this case.

Mr. McConnell. Do you favor H. R. 2032? That is the Lesinski bill?

Mr. Green. The emergency section?

Mr. McConnell. No. The bill. Do you favor the bill?

Mr. Green. Yes, sir.

Mr. McConnell. Do you oppose any parts of it at all?

Mr. Green. No. The sections dealing with boycotts, jurisdictional disputes, and emergencies are acceptable to the American Federation of Labor. We endorse it, and we will support it.

Mr. McConnell. Will H. R. 2032 bring industrial peace in your judgment?

Mr. Green. I think it will serve to promote industrial peace and cooperation between management and labor.

Mr. McConnell. Will it assure the settlement of national emergency strikes?

Mr. Green. You say, the settlement of emergency strikes?

Mr. McConnell. Yes. Will it assure their settlement so that the public is not threatened as to their health, safety, and welfare?

Mr. Green. Experience is a good teacher in life. We learn more valuable lessons that way than we do in the academic way. And experience in the railroad situation has shown that the plan which is included in this bill has served to promote settlement of wage disputes without resorting to strike. Now, if it works well among the owners of railroads and their employees, is it not reasonable to conclude that it will work well among others?

Mr. McConnell. Except that we did have a railway strike, and at that time, if you remember, President Truman wanted to draft the workers into the Army to handle it.

Mr. Green. There are exceptions in everything, Mr. Congressman. You cannot have a perfect situation.

Mr. McConnell. But that did assure a settlement.

Mr. Green. Yes. In legislation, we should not deal with exceptions. We ought to deal with the general situation.

Mr. McConnell. My time has expired. Thank you, Mr. Green.

Mr. Kelley. Mr. Smith?

Mr. Smith. Mr. Green, I heard your testimony 2 years ago, and at that time you stated, I believe, that the house of labor demands that the Wagner Act be kept intact with no changes. I believe that is what you said here before the committee.

Mr. Green. I do not recall, but that is what I hoped we would do.

Mr. Smith. Now, you stated to Mr. McConnell that you favored this bill.

Mr. Green. Yes. You expect us to be reasonable; do you not?

Mr. Smith. Yes, sir.

Mr. Green. And we do not want to be arbitrary, because there are a lot of Members in Congress who have denounced me and denounced our representatives because they said that we occupied a negative position, unyielding. When asked if we favored measures to deal with certain things, they said that we said, "No; nothing." Now, we have come to meet that objection, and we say we will go that far. We are willing to do that.

Mr. SMITH. And, of course, last year I think you testified that you did not favor any legislation as far as jurisdictional strikes or secondary boycotts were concerned.

Mr. GREEN. No, because we hoped and believed, and we still believe—but we want to yield to public opinion and public sentiment—that we can set up agencies in our own movement which will provide for the settlement of jurisdictional disputes. I do not know whether you followed us or not, but in the building and construction trades department, we have made progress in doing that. Agencies have been set up for the settlement of jurisdictional disputes, and as a result, jurisdictional disputes have been greatly reduced.

Mr. SMITH. And when you speak of public opinion and say that you recognize public opinion, you mean the public at large, and not the members of the union?

Mr. GREEN. I mean public opinion. We are susceptible to public opinion because we are a part of it.

Mr. SMITH. Now, you stated, and made great point, that the house of labor took the pledge that there would be no strikes during the war.

Mr. GREEN. Yes.

Mr. SMITH. But you do not want to infer that there were no strikes; do you?

Mr. GREEN. I said, we kept it 99 percent.

Mr. HINES. Ninety-nine and nine-tenths.

Mr. GREEN. Well, Mr. Hines tells me that it was 99.9. But I put it at 99 percent. I thought that was a pretty good record.

Mr. SMITH. Well, that might vary. But I do not want to get the idea that when you said you took the no-strike pledge, there were no strikes there in the war. A lot of men did strike.

Mr. GREEN. Oh, men become mad and act in anger, and you have to get at them right away and have them cool down. Don't you find that in families? You know we are not living in a perfect world.

Mr. SMITH. I have found it not only in families, but in a lot of other places. We find it here in Congress.

No further questions, Mr. Chairman.

Mr. KELLEY. Mr. Nixon?

Mr. SMITH. I yield the balance of my time to Mr. Nixon.

Mr. KELLEY. Go ahead, Mr. Nixon.

Mr. NIXON. Mr. Green, how many members has the A. F. of L. lost since the Taft-Hartley Act was passed?

Mr. GREEN. I do not think we have lost any.

Mr. NIXON. Have you gained?

Mr. GREEN. Probably so. But we did it in spite of the Taft-Hartley law.

Mr. NIXON. You said the Taft-Hartley law was passed to weaken the A. F. of L. and the CIO?

Mr. GREEN. It did.

Mr. NIXON. But you gained members?

Mr. GREEN. Yes. It weakened our bargaining power; it weakened our moral and economic influence, tending to prevent us from getting decent wages for the workers. Then as a result of it, if the tide turns, which we expect it to do, we will lose members.

Mr. Nixon. Referring now to the experience to date, and then referring to the experience of the future, because I realize that there can be a difference, the experience to date is that, as a matter of fact, the A. F. of L. has gained a considerable number of members in the past two years.

Mr. Green. Our membership has been maintained in spite of the Taft-Hartley law and because they are fighting to have it repealed.

Mr. Nixon. As far as bargaining and contracts are concerned, you have not been able to negotiate any advantageous contracts during the past year and a half?

Mr. Green. Our difficulties have increased in negotiating agreements under the Taft-Hartley Act.

Mr. Nixon. As a matter of fact, you have the best contracts now that you have ever had, have you not?

Mr. Green. In some respects. Wages are better because of the economic situation.

Mr. Nixon. Again, as far as being specific as to how the law has either caused a loss in membership or less advantageous contracts, it is rather difficult to point out, is it not?

Mr. Green. I am telling you that our membership has been maintained in spite of the Taft-Hartley law.

Mr. Nixon. I see. In other words, as I get your view, you have gained in membership, and you have the best contracts in history, but that is due to the fact that the Taft-Hartley law was a law which was passed for the purpose of weakening your unions and making it impossible for you to have good contracts?

Mr. Green. It is for the purpose of weakening our unions in collective bargaining.

Mr. Nixon. I see.

Mr. Green. We cannot deal as effectively where an open shop prevails as we can where a closed shop prevails. We know that from experience.

Mr. Nixon. Mr. Reporter, I hope that you are getting all this down in the record, because it may sound a bit contradictory in spots, but I want to be sure that the record is straight.

Now, Mr. Green, in addition to the provisions that are in the present Lesinski bill, would you have any objection to adding the provision which is in the Taft-Hartley Act requiring both management and unions to bargain in good faith?

Mr. Green. I do not think it is necessary. But speaking for myself personally, I would have no serious objections, provided you require management and the owners of industry to do the same thing.

Mr. Nixon. Yes. I agree with you that it should be a two-way street, in other words, at the bargaining table.

Mr. Green. You agree with me?

Mr. Nixon. When you said, "to bargain in good faith."

Mr. Green. Yes.

Mr. Nixon. I believe the law should require, as the present Taft-Hartley Act does, that both management and unions bargain in good faith. I do, yes.

Referring to the clause on liability for contracts, do you have any specific objection to that; that is, union liability for contracts?

Mr. GREEN. I see no need for including in the act any clause which provides for damage suits because of some failure to comply fully with the contract, because you are opening an opportunity for a designing—not all employers are that way—but for designing employers to utilize stooges in their employment to provoke violations of contracts in order to establish a basis for damage suits. And that is not good judgment. That is not good business.

Mr. NIXON. In other words, because of the possibility that some contract violations might be instigated by employers, you do not think that a provision should be in the act which makes unions specifically liable for contracts?

Mr. GREEN. I should not be in favor of having such a provision in the act.

Mr. NIXON. If the act were to provide a specific exception so far as the matter you mentioned is concerned, would you have any objection to it?

Mr. GREEN. How are you going to establish exceptions?

Mr. NIXON. You just established one yourself.

Mr. GREEN. I see. How are you going to establish there were stooges? The owner brings them in; they are his men. They work there, and plan and plot, and do it under cover and it is difficult to establish. We have difficulty with fellows in our movement now who want to promote strikes for any cause and for no cause, and we have to fight them.

Mr. NIXON. Then as far as you are concerned, you oppose that provision?

Mr. GREEN. Yes; I should oppose that.

Mr. NIXON. Now, you mentioned this situation. I think you used the example of the State bar of California on the closed shop.

Mr. GREEN. Yes.

Mr. NIXON. And you pointed out that at the present time, a lawyer, in order to practice in California, must become a member of the State bar.

Mr. GREEN. The State bar association.

Mr. NIXON. Which is, of course, governed by a statute which lays down the rule.

Mr. GREEN. That is a lawyers' union. We classify that as a lawyers' union.

Mr. NIXON. Yes; I understand that.

Would you favor similar treatment for unions?

Mr. GREEN. By law?

Mr. NIXON. Yes

Mr. GREEN. Statute?

Mr. NIXON. Yes.

Mr. GREEN. No. Do not ask us.

Mr. NIXON. You mean, you do not want the same rule to apply to unions as applies to the State bar?

Mr. GREEN. All that we ask is to give up the right to bargain collectively with the employer on that point.

Mr. NIXON. You are aware of the fact that the rule in California regarding the State bar and in other States where they have the same system, requires that the State bar association take into membership any person who passes the bar examination?

Mr. Green. I am not sure about that.

Mr. Nixon. That is the case. I know it. You see, you were speaking from your experience a moment ago. I am speaking from mine. I am a member of that bar.

Mr. Green. I see.

Mr. Nixon. And that is the case. Now, would you have any objection to a provision in the law which, if it allowed the so-called closed shop—and I recognize the variations in that—if it allowed the so-called closed shop, which would require that the union do just what the State bar of California does, allow anybody to become a member who is qualified under the rules of the union?

Mr. Green. That is generally the rule. That is the rule with the American Federation of Labor now, without any statute.

Mr. Nixon. Then you would have no objection to a law providing that?

Mr. Green. Why write it in a law when it is practiced, anyhow? But if a man comes and makes application for a job to get work and he is not a member of the union, all right; all he needs to do is join the union, as you join the bar association in California. That is all.

Mr. Nixon. Then your testimony is that there are no unions in the A. F. of L. which a man cannot go out and join today if he qualifies?

Mr. Green. No; I do not think so, generally speaking. Our A. F. of L. is against discrimination because of race, color, creed, or nationality. We set that forth, and we are opposed to any discrimination. But in some highly skilled trades, there come times during periods of unemployment when they have a tremendous big waiting list already in the union of men who are out of jobs and cannot find work anywhere, and they establish a rule that we will not take any more members into our union until our waiting list has been given employment.

That is a matter of procedure to protect them in their work.

Mr. Nixon. Then as far as you are concerned, you would object to a provision in the law which might allow unions to negotiate closed shop contracts but which would in effect require the unions to be open?

Mr. Green. I think that is a subject for contract negotiation, just the same as the employer can contract with the buyer of his goods for the sale of his goods.

Mr. Nixon. You think that a negotiating employer could insist that the union be open before he entered into a closed shop contract?

Mr. Green. If he can do that around the bargaining table, and we have many of them do that. But finally we worked out an agreement. Some are open shop agreements; some are closed shops.

Mr. Nixon. I am not speaking of the open and closed shop. I am speaking in this case of a closed shop contract with an open union, where anybody can join the union.

Mr. Green. Yes.

Mr. Nixon. You say that in some cases the unions have agreed to do that in order to get a closed-shop contract with the employer?

Mr. Green. No, I did not say that. The point I am trying to make plain, and I think you are, too, is that there are many employers who prefer the closed-shop arrangement to the open shop, because security and peace are established, and they are dealing with skilled workers. Take many of the building and construction contractors. They want the closed shop. They want it even more than the workers themselves, because it means stability to them, and security, and then the highest and the best type of service. They want it. But this Taft-Hartley law says that it is a crime if you sit around the table and negotiate such an agreement, notwithtsanding the fact that both of you want it.

Mr. NIXON. Then as I understand the sense of what you are saying, you say that if you do have a closed shop contract, the union should be open. You would agree with that statement; would you not?

Mr. GREEN. Yes, I agree that the union should accord them an opportunity to come in. But I do not think you need to define that by legislation. I should be opposed to having it in any statute.

Mr. NIXON. You mentioned a moment ago that under the law a union member in a union shop under the Taft-Hartley Act could be required to work with a Communist. And the example you gave was that the union might deny membership to a person who was a Communist, in the rank and file.

Mr. GREEN. That is right.

Mr. NIXON. And the employer would then keep him on the pay roll?

Mr. GREEN. That is right.

Mr. NIXON. And therefore you would then have a situation where the employer was forcing the union men to work——

Mr. GREEN. With a Communist.

Mr. NIXON. With a Communist.

Can you give one specific example in which that has happened in the last year and a half?

Mr. GREEN. I have not assembled the information on that. I do not know. But I am talking about what this Taft-Hartley Act provides.

Mr. NIXON. What it could do?

Mr. GREEN. Yes; what it could do.

Mr. NIXON. Will you furnish the committee one specific example before we get into executive session?

Mr. GREEN. I will look and see if it has ever happened. I do not know whether it has or not. But the law says it can.

Mr. NIXON. I understand.

Mr. GREEN. I am talking against the law and what the law provides. You are asking me what has been our experience.

Mr. NIXON. Obviously, we can interpret a law and bend its interpretation and set up all types of possibilities. I think we all recognize that. But laws are, of course, passed to deal with what we expect human experience to be. And in this case, the assumption was that if a union discharged a man from membership because he was a Communist, it was very difficult for us, who wrote this provision in the act, to think that the employer would insist that a Communist remain on the pay roll when he could fire him.

Mr. GREEN. That is what the law provides.

Mr. NIXON. I will say this: If you do give me one specific example of that, I will see that it gets to the press, because I think it would make quite an interesting case study.

The last point that I want to cover is the one that I think the country is more concerned about than anything else, and it is a real problem, as you have indicated, and that is the case of the so-called emergency strikes. As I understand it, you favor the provision of the Lesinski bill, as opposed to the injunctive procedure.

Mr. Green. Yes.

Mr. Nixon. You, of course, are aware of the fact that Mr. Tobin and Mr. Clark, the Attorney General, have indicated that in the event the provision of the Lesinski bill proves inadequate to stop a strike which proves to be dangerous to the national interest, in such a case the President would have inherent power to step in and take some action.

Mr. Green. Yes.

Mr. Nixon. That was their opinion, and I recognize that you indicated that you might disagree with that opinion.

Mr. Green. Yes.

Mr. Nixon. After all, Mr. Clark, as the Attorney General, is the last word on the interpretation of this bill. If that is the way the Administration is going to interpret the Lesinski bill—and they have indicated they will interpret it that way—will you prefer to have that emergency power lodged in the President to be used whenever he considers a strike as constituting a national emergency, rather than to have it outlined in an act specifically as to just how far he can go, and no further?

Mr. Green. I should be opposed to having it set forth in any statute whatsoever. If, on the other hand, that power is vested in the President and it is an inherent power that he can exercise, that is for him to decide, or for whoever is President to decide.

Mr. Nixon. Would you prefer, Mr. Green, that the President, under his emergency power, could, in a certain dispute, issue an order drafting workers into the armed services? Would you prefer that to the injunctive procedure of the Taft-Hartley Act?

Mr. Green. Both of them are reprehensible; both methods.

Mr. Nixon. Both are reprehensible?

Mr. Green. Neither one is American. They are not in accord with American principles and traditions.

Mr. Nixon. The only point I want to make is this: Under the interpretation which Mr. Tobin and Mr. Clark have made of the Lesinski provision, there is not only that possibility, but there is a possibility of other action by the President which I think that you and other leaders of organized labor should take into consideration as the alternative to the present provision of the act. I assume that you have, and that you have come to the conclusion. But I think that you must recognize that the President, under the act, according to the interpretation of the Attorney General, would have the power to step in and probably take action against a union which, in my opinion, could be much more harmful to organized labor than the present provisions of the Taft-Hartley Act.

Mr. Kelley. Mr. Nixon, you have 1 minute left.

Mr. Green. I do not think we will ever reach that if you adopt this bill as provided for, the section dealing with the emergency power.

Mr. Nixon. You do not think the President would ever use the power?

Mr. Green. I do not think he would ever be required to. I think a settlement would be worked out through the exercise of good judgment and during the cooling-off period as provided for in this act that you are now considering.

Mr. Nixon. I have just one more question.

Mr. KELLEY. You have a half minute.

Mr. NIXON. I would like to say that there are a number of points on which we have agreed and disagreed, and we will continue to, probably. But I would like to say in closing that I was particularly interested in your comments concerning the work of the A. F. of L.'s representatives abroad.

Mr. GREEN. Yes.

Mr. NIXON. I had the privilege of meeting Mr. Irving Brown, your representative in Italy, 2 years ago, and I subscribe to your remarks 100 percent as to the work the A. F. of L. is doing abroad in developing free trade-union leadership in opposition to the Communist trade-union leadership.

Mr. GREEN. That is right. I am glad you found that out. And we have additional members there doing the same work.

Mr. KELLEY. Your time has expired.

Mr. Lesinski, the chairman of the committee.

Mr. LESINSKI. Mr. Green, I want to refer you back to communism, a thing that you and I not only hate, but we think is un-American.

Mr. GREEN. Yes.

Mr. LESINSKI. The question was asked of you, Is communism on the increase on account of the Taft-Hartley Act? The proof of the pudding is in my own election, when a candidate delegated by the Communists to run against me got over 13,000 votes. That is something that never happened in my district. And they used the argument that I did not fight hard enough to eliminate the Taft-Hartley Act, although it was in my power.

Mr. GREEN. Yes.

Mr. LESINSKI. And when the regular election came, my opponent on the regular ticket used this same newspaperman to write the same type of articles.

Mr. GREEN. I see.

Mr. LESINSKI. So apparently communism is on the increase.

Mr. GREEN. That is the evidence there, surely.

Mr. LESINSKI. Now, is it not a fact, as far as trade-unions are concerned, that the biggest job to eliminate Communists was done by Walter Reuther?

Mr. GREEN. Yes.

Mr. LESINSKI. He fought the Communistic outfit all through their union, and has eliminated most of them.

Mr. GREEN. Yes; that is right.

Mr. MCCONNELL. May I ask a question?

Mr. KELLEY. Do you yield?

Mr. LESINSKI. I yield to Mr. McConnell.

Mr. MCCONNELL. Has he been able to eliminate them during the past year?

Mr. LESINSKI. He has eliminated a good many of them.

Mr. MCCONNELL. During the past year?

Mr. LESINSKI. Well, the past 2 years.

Mr. BURKE. Will the gentleman yield?

Mr. KELLEY. Will you yield to Mr. Burke?

Mr. BURKE. Will you yield at that point, Mr. Lesinski?

Mr. LESINSKI. I yield to Mr. Burke.

Mr. Burke. Is it not a fact that that battle has been going on over a period of 12 years, rather than the last year?

Mr. Lesinski. It has gone on, and, of course, all of us remember when that particular union was organized, by John Lewis. He took all his fair birds into the union for organization purposes. Now the present officials have a hard time getting rid of them. But they are doing the best job possible.

The same thing was brought up as far as the present coal strike is concerned.

Mr. Kelley. I beg your pardon. That is no strike.

Mr. Lesinski. That is what I want to bring out.

The gentleman testifying for the Southern Coal Association stated they set this present strike.

Mr. Green. Yes.

Mr. Lesinski. Well, is it not a fact that Mr. Lewis has a bargaining agreement that he can choose any 2 weeks within a year for a vacation period?

Mr. Green. That is my understanding; yes.

Mr. Lesinski. That is my understanding.

Mr. Green. There is no strike or violation of the contract.

Mr. Lesinski. That is the way I understand it.

Mr. Green. That is the way I understand it.

Mr. Lesinski. Now, Mr. Green, the last question I want to ask you is a question that Mr. Nixon asked about his bar association's taking all members that passed the bar.

Do they not discharge a good many of those members and throw them out of the bar association because of certain doings that are not ethical?

Mr. Green. I could not answer that question. But it is my understanding——

Mr. Lesinski. Every State has that same law.

Mr. Green. It is my understanding that they have disciplined their members.

Mr. Lesinski. And naturally, they never can do the same thing again and practice law.

Mr. Green. Yes.

Mr. Lesinski. Well, you have the same thing in your closed-shop unions.

Mr. Green. Yes.

Mr. Lesinski. If a man becomes a rat, you try to get rid of him.

Mr. Green. Of course, and you have to do it in order to have the contract that you entered into with an employer carried out to the letter.

Mr. Lesinski. That is right. I agree with the gentleman.

That is all, Mr. Kelley.

Mr. Smith. I would like to ask Mr. Lesinski a question.

Mr. Kelley. Will you yield to Mr. Smith?

Mr. Lesinski. I yield to Mr. Smith.

Mr. Smith. Do I understand you to say that John Lewis made a deal with the Communists when he started organizing the CIO?

Mr. Lesinski. No. He did not make a deal with them, but he had them in as organizers.

Mr. SMITH. That was under the Wagner Act?

Mr. LESINSKI. Well, that had nothing to do with John Lewis.

Mr. KELLEY. All time has expired.

Thank you very much, Mr. Green. You have made a good contribution to the work of the committee.

Mr. GREEN. Thank you. Thank you, all of you. I appreciate the questions that all of you have asked me, because it brought out points that I think have helped us.

Mr. KELLEY. Mr. Woodruff Randolph, president of the International Typographical Union.

Mr. JACOBS. Mr. Chairman, in the course of human events, the stomach gets empty. And in the course of missing so many meals and living irregularly, we develop stomach ulcers.

Mr. KELLEY. We will recess for lunch as soon as Mr. Randolph is finished. The purpose is that the House is in general debate, and it is likely to go into the reading of a bill, and then we cannot meet. So we will continue with Mr. Randolph and finish with him, and then we will recess for lunch.

Mr. JACOBS. That still does not help us in our irregular habits. I am putting in about 16 or 17 hours a day here—we were here until after midnight last night—and I frankly do not think it fair to the members to have to sit here. I do not know how the witness feels about it, whether he wants to proceed. I imagine he also eats once in a while.

Mr. KELLEY. The Chair is going to rule that we will hear this witness, and then we will recess.

Mr. MCCONNELL. Mr. Chairman, continuing on with this, would it not be sound procedure to decide how many we are going to hear in the course of the day, so that they will not sit around here until all hours and then be told we cannot hear them anyhow, which is unfair to the witnesses here and also unfair to the members.

I left here at 10 minutes past 12 last night, and we are in here today. Let us have some reason about this thing.

Mr. JACOBS. Well, I am going to get a lunchbox and bring my lunch from now on.

Mr. KELLEY. Mr. McConnell, we will hear these witnesses, and when we come to the end of the day, we will adjourn, and they are satisfied to wait here or be called later.

Mr. MCCONNELL. What is the end of the day?

Mr. KELLEY. I would say half past 5.

Mr. JACOBS. Midnight.

Mr. MCCONNELL. Not midnight.

Mr. KELLEY. Do not tie the Chair down. It is tied down enough.

Mr. Randolph, do you have a long statement there?

Mr. RANDOLPH. It will take about 12 minutes to read.

Mr. KELLEY. Do you want to read it or summarize it? We would prefer if you would summarize it for us.

Mr. JACOBS. If we are going to hear the gentleman, let us let him read his statement.

Mr. KELLEY. Mr. Randolph.

Mr. RANDOLPH. I will defer to the Chair's desires. I will read about one page here, and then I will direct you to where the rest of it can be found in the matter that we have presented.

TESTIMONY OF WOODRUFF RANDOLPH, PRESIDENT, INTERNATIONAL TYPOGRAPHICAL UNION, ACCOMPANIED BY HENRY KAISER, COUNSEL

Mr. RANDOLPH. Chairman Kelley and Congressmen, my name is Woodruff Randolph. I reside in Indianapolis, Ind. I appear here as president and in behalf of the International Typographical Union. We have submitted to your committee four printed documents. The first is my statement and testimony before the Senate Committee on Labor and Public Welfare on S. 249, which I understand is identical with H. R. 2032.

The second is a booklet entitled "Taft-Hartley and the ITU," which sets forth briefly the agonizing experience of the ITU under the Taft-Hartley Act.

The third is a summary of a contempt case in which we were involved under the Taft-Hartley Act.

The fourth is entitled. "The Taft-Hartley Law Is a Slave Labor Law," and listing its most destructive provisions.

I express the hope that the members of the committee may find time to peruse these documents, particularly the second, which demonstrates exactly how the Taft-Hartley Act is a continuing threat to the existence of any craft union. It is my purpose orally to summarize those statements. If the members of the committee will read from the testimony and statement to the Senate committee, beginning on page 1, the last paragraph on that page beginning with the words, "To summarize these documents is not easy," and continuing through pages 2, 3, and 4, and finishing at the top of page 5, they will have substantially the statement that I have here typed, with necessary changes to indicate H. R. 2032 instead of S. 249. To that extent, the time of the committee will be saved, if the chairman will permit the statement as I have it here to appear in the record as though it were read.

Mr. KELLEY. Without objection, it will be so ordered.

Mr. RANDOLPH. In view of the fact, Mr. Chairman, that we have incorporated these four printed documents mentioned in the statement as a part of our statement, may I respectfully request that they be included in the record?

Mr. KELLEY. Without objection, it will be so ordered.

Mr. RANDOLPH. Thank you, sir.

(The documents referred to will be found in the appendix at the end of today's hearing, beginning on p. 1019.)

Mr. RANDOLPH. I think, Mr. Chairman, that a few words from me concerning the effect of the Taft-Hartley law and our organization, and a few words about the organization, would be helpful to you. This is entirely extemporaneous and without thought because of the change of your plans.

I want to point out that while the Taft-Hartley law was under consideration, we heard a great deal about the fact that labor unions had to be regulated.

Mr. KELLEY. I fear we are going to have to recess for that lunch, because all of the members will have to go to the floor to vote. We will recess until a quarter of 2.

Mr. JACOBS. Mr. Chairman, before we recess, I wish to say that I would like to hear Mr. Randolph's statement. He came here as a witness. I think that we can find time to hear him. I do not want Mr. Randolph to think for one moment that the statement I made was in any way to cut him off. I shall be very much pleased if we hear his entire statement so that we can put questions when we come back.

Mr. KELLEY. We will decide on that when we come back.

Mr. BURKE. I would like to hear it read.

Mr. SMITH. May I make a comment on that? I know that the gentleman over there thinks that I am not very liberal, but I want to say this, that I think this gentleman is the most important witness, so far as I am concerned, that is to come before this committee this year, because I think he knows more about what the Taft-Hartley Act has done to a union than anybody else that has come in here.

Mr. KELLEY. The committee will stand in recess until 1:45.

(Whereupon, at 12:35 a recess was taken until 1:45 the same day.)

AFTERNOON SESSION

(Pursuant to recess, the subcommittee reconvened at 1:45 p. m.)

Mr. BAILEY (presiding). The subcommittee will be in order.

Mr. Randolph, president of the International Typographical Union, will resume where he left off at the noon recess.

Mr. Randolph, I believe there is a request from one or two members of the committee that you read your statement in full. I believe we will accord you the time. They seem to be interested in matters you are going to present, so we will be glad to have them.

TESTIMONY OF WOODRUFF RANDOLPH—Continued

Mr. RANDOLPH. I think, Mr. Chairman, if the members of the committee desire to follow me, they could turn to the first page of this pamphlet, to the last paragraph on the first page, from which I will begin to read.

To summarize these documents is not easy, for each of them is itself a summary of a mass of experience and a body of litigation without parallel in the labor history of the United States, which will, we trust, never be repeated. But, in brief, they demonstrate that since it was founded in 1852, the ITU has consistently adhered to four principles upon which voluntary trade-unionism is necessarily based. These are (1) an insistence upon respect for the rules laid down by our members concerning the conditions upon which they will sell their services, in order that each union member may democratically and directly participate in determining these conditions; (2) the refusal to work with competing nonunion men whose willingness to work at lower wages and under substandard conditions threatens each member of our union; (3) an insistence upon respect for our jurisdiction in order that craft standards may not be undermined by the assignment of work to lower-paid and inferior craftsmen; and (4) the refusal to work on struck or substandard goods produced under sweatshop conditions.

We demonstrate that without being guided by these principles, a union cannot live. We show that the Taft-Hartley Act makes impossible the attainment of these objectives and thereby makes free trade-unionism impossible.

Section 8 (b) (3) requiring unions to bargain collectively has been used to attack the very concept of union rules; our duty to enforce those rules has been attacked as "restraint and coercion" under section 8 (b) (1). The legality of over 30 of our internal laws has been challenged. The right of our members not to work with nonunion men has been limited by denying our right to a closed-shop agreement, and the right itself has been questioned and is doubtful.

A form of voluntary servitude, we are told, is set up by which our members can be required to work with nonunion men against their will. Our right to strike to defend ourselves against the assignment of work to nonunion men is denied by section 8 (b) (4) (D). Our members are made slaves by the provisions of section 8 (b) (4) (A) which compel them, under the whip of an injunction, to act as strikebreakers and to process goods made by men working in opposition to us.

In each of these instances—and each is vital to the preservation of our union—our right to strike in self-defense against efforts to destroy us is denied.

The Taft-Hartley Act may be summed up by saying that it denied the right to strike whenever an object of a strike is to preserve the union—and that right is, of course, more fundamental even than the right to strike for better wages or hours.

We demonstrate in our statement that we decided, shortly after the Taft-Hartley Act was passed, to go down fighting, if we had to, rather than submit to slow decay.

We formulated certain policies which, in our judgment, would protect us within the law against the worst ravages of that act.

In pursuit of those goals, and in an effort to preserve an organization which has a century of tradition behind it, which has enjoyed amicable relations with the employers in the industry and which has contributed more than any other single factor to stabilize this industry and the conduct of the men and women employed by it, we have suffered the following:

(1) We have been compelled to spend over $11,000,000 of members' hard-earned dues in support of strikes and other defense activities to preserve the union against the Taft-Hartley Act.

(2) We have been subjected to the issuance of eight complaints, containing substantially identical allegations and relying on the same evidence, by General Counsel Denham of the NLRB.

We have been forced to engage in five long-drawn-out NLRB proceedings, covering substantially the entire country, at great expense to ourselves and our members, without having obtained a single decision from the NLRB in the course of 16 months of litigation.

(3) We have been forced to submit to a sweeping injunction and to a contempt action under that injunction, brought by NLRB attorneys for the chief purpose of breaking a strike of our members at Chicago, Ill., which has continued since November 24, 1947. The only redeeming feature of our experience under the Taft-Hartley Act has been that, despite the best efforts of a coalition of newspaper publishers, General Counsel Denham, the NLRB and the Federal courts, that strike has not been broken. Nor will it be ended until we have the employers' assurances that they will concede us the same right to live that we so freely concede to them.

(4) Collective bargaining in our industry has been carried on, not with our employers, but with General Counsel Denham and the Federal courts.

We demonstrated that this interference with the processes of collective bargaining has gone so far that we were held in contempt of court for, among other things, failing to include a provision for a neutral "tie breaker" in a proposed contract clause setting up a joint employer-union committee for the training of apprentices.

We believe that this is the first time in American history where either a union or an employer was held guilty of violating the law for failing to place some language in a proposal made in the course of collective bargaining, which the employers were free to reject, and frequently did.

I should emphasize that during this entire course of litigation, when NLRB attorneys cooperating with employers watched the behavior of every member of the ITU, it has never even been alleged that the officers or members of the ITU:

(1) Have engaged in violence, fraud, misrepresentation, threats, or any other conduct which could properly be called improper.

(2) Have discriminated in employment, or caused employers to discriminate in employment, against any individual. No person has even filed a charge that he has been discriminated against by any action of our organization.

(3) Have unjustly or improperly suspended or expelled any member from our organization, or improperly or unjustly refused to admit any person to membership.

(4) Have been guilty of any financial impropriety, or have denied any member the democratic rights which he has as a member of our union, or have done other than enforce the union rules, democratically adopted by the members themselves.

As Trial Examiner Leff found in the case brought by the American Newspaper Publishers' Association:

> Respondents (the ITU) urge in justification of their conduct that their motive and intent was to preserve the union and promote its economic interests. I have no doubt that this is true.

But, under Taft-Hartley, "preserving the union and promoting its economic interests" is illegal. It is for that reason that it should be repealed.

Our statement further shows that the injunctive power under Taft-Hartley is far worse than anything that preceded the Norris-LaGuardia Act—that General Counsel Denham, certainly not with the disapproval of the National Labor Relations Board, has administered the Taft-Hartley Act in a biased and hostile manner; that the so-called "Watchdog Committee" has been used to interfere with the affairs of the executive branch of the Government; that injunctive actions under Taft-Hartley are speedy, but clarification of the law by the NLRB is delayed for weary months running into years; and that the law is so unjust, confused, and contradictory that amending it is impossible.

This experience, plus our analysis of H. R. 2032 as amended, convince us that the Taft-Hartley law should be immediately replaced by H. R. 2032 with certain reservations noted in our analysis of the measure.

We do not welcome all of the amendments to the Wagner Act which are proposed. We foresee the gravest dangers if, through a process of further amendment, more restrictions are placed on free management-union relations. But, recognizing that there are problems with which H. R. 2032 has attempted to deal, we are prepared to accept it on an experimental basis in the interest of speedy repeal of the Taft-Hartley Act. If in practice H. R. 2032 as amended operates to interfere unduly with the carrying on of the normal and legitimate business of our organization, we shall of course bring such matters to the attention of the Congress.

I started to say briefly and extemporaneously before we adjourned, Mr. Chairman, that there appeared to be a sentiment developed over several years of time that labor unions were almost, if not completely, in the wrong, since they had gotten too big for their britches. That was the sum and substance of the general publicity throughout the country, and the newspapers and magazines were constantly full of criticism of labor unions, and there was also criticism of the matter of strikes.

I want to say for our organization that we believe that trade-unionism is a good thing. We believe that it is absolutely necessary if those who work for a living are to have anything at all to say about the wages, hours, and working conditions under which they are employed. We understand quite well the so-called free enterprise system, and we wish it to be more free, and that there were more businesses created instead of less, as consolidations go on.

We understand that it is production-for-profit method, and we approve that, and we believe in its continuance.

We also call your attention to the fact that trade-unionism has improved that system of production and distribution. It is just as much a part of free enterprise as any other part, and the right to strike is as fundamental to us as the right to vote, or as any other right guaranteed under the laws of the land.

We decry this constant attitude toward unions that they are either too big or too powerful or too something else. We say unions are good for the country, and we say that unless workers are organized they are helpless under a dictatorship, and I mean absolute dictatorship, of the employer, whoever he may be.

The emphasis that has been put upon criticizing labor unions by mediums of publicity has been mistaken for the idea that the people of the Nation are against unions. They are not.

We decry the attitude of those who even in public office will say, "Yes, I believe in trade-unions, but—" The minute they put the "but" on there were know they are against trade-unions.

There can be no if's, and's or but's about the question. Either you are for trade-unions, or you are against them. They are as much a part of our free enterprise, as I said, as any other part, and we are proud of their accomplishments, and we realize they are the only force in this Nation—I say it advisedly, and I emphasize—trade-unions are the only force in this Nation that look out for the wages and working conditions of the big mass of working people and, as such, the trade-union movement should be respected. I believe it is respected by all those who respect the Nation as a whole. I believe trade-unions are hated by those who want to minimize their influence.

It makes no difference how many members there are in trade-unions, if their bargaining power is minimized and constantly kept at a low ebb. It is their bargaining power that makes them either successful unions or destroys them, and their bargaining power has but one force attached to it. That is the right to strike. Take away the right to strike and there is no bargaining power on the part of a union.

Taking the background of publicity that was given for several years, and especially during the war, against strikes; and then the emphasizing of strikes that interfered with the national interest or public conveniences, and labor unions were put behind the eight-ball. So much so, that in a national election when Congress took a Republican color a mandate was claimed on the part of those elected to curb labor unions, and the activities of those operating under that alleged mandate took the form of quoting various types of expert advice on what and how to curb labor unions.

There was assembled in this city those who prepared the Taft-Hartley law, and among them were men who had had some experience in the National Labor Relations Board, and attorneys for large corporations, and a law was framed.

We on the labor side believe it was framed in both meanings of the word. It was framed against labor by very clever people. My impression is that very few Members of Congress knew what was in the bill. There was a very nice strategy used by the introduction of the Hartley bill in the House which, if it had become law, would just about have ruined every labor union in the country, and certainly would have stopped us almost in our tracks in our efforts, fraternal as well as economic; but then the bill in the Senate was regarded as a very moderate bill, and they said, "This is an easy bill, a nice one, and this is all you need, and nothing more."

And in the conference between the House and the Senate one of the most vicious clauses in the whole bill was inserted, and it was never debated on the Senate floor. It was a clause that absolutely slices a craft union up at the will of the employer, where a union may not strike if an employer seeks to dismember it piece by piece, by giving its work to some other trade or class, union or nonunion, of course.

During the summer, before last election, in November, employer services were telling and advising employers not to go too far with the Taft-Hartley law; at least, not until after election, and a lot of them did not. That was not true as regards the International Typographical Union.

Bear in mind, gentlemen, that here is an organization, our union which has been in existence since 1852 without criticism from anybody. We were not any of those alleged bad unions that were disrupting the economy of the country, and no one ever accused us of not being democratic, and no one accused our officers of being labor bosses and dictators. We were held out as a model union. We kept our activities economic, and we did not mess around with politics, and we had no class-conscious attitude. We were taking care of our business, namely, wages, hours, and conditions for our members besides some fraternal benefits by way of old-age pensions and the Union Printers' Home for aged and incapacitated people, and mortuary benefits.

Now, mind you, on the average of 95 cents out of every dollar of dues that came to the International Typographical Union was returned to the members in some form of benefit, either the pension, or a mortuary benefit, or the Union Printers' Home, or the Typographical Journal; 95 cents out of every dollar that came to the international union went back to the members, and the union operated on an average of 5 percent of its income.

No pure charity ever did that. So we were held out as a model union, and certainly not the type of a union—if such exists—that caused the adoption of the Taft-Hartley law that called for the curbing of unions. And yet the very first union to be attacked was the International Typographical Union, the very first union to feel the impact of the law was the International Typographical Union, and the very union that has been punished more than any other by the General Counsel's Office is the International Typographical Union.

I wanted to give you those introductory remarks to set you right on some fundamentals, and that is that trade-unionism is good for the country, and strikes are necessary for the country if we are not to take an economic dictatorship from the employers alone. Strikes are necessary if there is to be equality of bargaining, and disagreement over the results, and those who decry strikes and refer to them as something bad, just do not know what they are talking about. The bad conditions existed before there were trade-unions, and before there was a possibility of strikes.

There is where your bad conditions were, but when unions became of sufficient size—and especially in some of the mass-production industries—of sufficient number to have a bargaining power, they increased the opportunity to live of those who worked in it, but the Taft-Hartley law was a law that was framed to reach all unions, and to not only weaken all unions but so far as craft unions go, the law was made to absolutely destroy them.

And there was the propaganda while the law was going through Congress that there was a section in it that favored craft unions as against industrial unions when it came to the National Labor Relations Board making certifications. The fact is that a craft union would do well to live long enough to ever get before the Board. And why were we not sliced up and destroyed? Well, simply because there was enough printing and publishing to be done in the Nation so that our people could keep on being employed, and because the large majority of employers, both in the newspapers and the commercial printing field, thought enough of the Typographical Union that they were not in sympathy with destroying tactics that were being pursued by General Counsel Denham leading and encouraging the employer representatives in the plans of those particular representatives to destroy the organization.

I might make this other observation, that those who have testified before this committee and before the Senate committee on behalf of the printing industry of America, and those representatives of the newspaper branch, the American Newspaper Publishers Association that pursued us through the National Labor Relations Board procedure on charges and trials are simply paid representatives of an association that has absolutely no bargaining power in the industry. The printing industry of America is composed of nonunion commercial printing shops, and those who, before the Taft-Hartley law had been union shops. The organization has two sections: There is the PIA itself of all of the members, and then there is the union-shop section of the PIA. And by their own organization they show there are lots of nonunion shops, and that we do not have any dictatorial power or control over them so as to compel them to do uneconomic or impossible things. They do no bargaining, the representatives who appear here, whether it is by an attorney or by the employer, or officers of that association, they do no bargaining for the association. It is simply an organization of employers, but as such, they hire attorneys and employees to get what they can out of legislation to embarrass and hamper the union.

The American Newspaper Publishers' Association has no labor agreement of any kind whatsoever, and does not engage in collective bargaining, and yet the American Newspaper Publishers' Association, as such, with no power over any of its members, and doing no bargaining for any of its members, under the Taft-Hartley Act preferred charges against the International Typographical Union, and a complaint was issued and a trial had, and there is a case before the Board. Also, notwithstanding the fact that the International Typographical Union, as such, does not do any bargaining either—that is done by the local unions of the organization—here we have the American Newspaper Publishers' Association taking part as though it were an interested party in collective bargaining, and getting all the benefits possible out of the NLRB in charging the international union with violating the law, and attempting by the use of the NLRB procedures and the Government, including the courts, to get an advantage over local unions that do bargain by stopping the international union from supplying strike benefits to them when they need support in a strike.

So, by the use of the Government and the courts, the American Newspaper Publishers' Association succeeded not only in having us enjoined in a Federal court, and being compelled to follow the dictates of Robert N. Denham as to what the law might mean, but we were also compelled to suffer the humiliation of a citation for contempt, and a finding of contempt, because we might, gentlemen, under the terms of a contract entered into between a local union and an employer—we might discriminate against some one man, and because, if you please, a committee appointed to control the education of apprentices in the craft might disagree as to whether or not an apprentice had had full training in the trade, and because there was no tie-breaker on an even-numbered committee we might at some time in the future discriminate against a nonunion apprentice.

We have the disgraceful example of the Government telling the unions through the international union and, mind you, the local unions which were not parties to this suit—we find the Government telling the local unions what they must do through the international union itself.

Am I making too long a speech, Mr. Chairman?

Mr. Bailey. I expect the committee members will want to question you. We are probably encroaching upon someone's time.

Is it not a fact, Mr. Randolph, that the International Typographical Union had long enjoyed a reputation as a democratic union, and prior to the Taft-Hartley Act its relations with the employer were both peaceful and mutually beneficial?

Mr. Randolph. They were, Mr. Chairman, and the democracy of our union far exceeds the democracy of the country in both quality and quantity. I will prove it to you by showing you our books of laws which is made by referendum vote of the members, or by a convention of the delegates, by secret ballot, and I want to point out to you if they do not like a law on the books they can, by initiative petition get a referendum vote to change it, and this Congress has not allowed that in this country.

Mr. Bailey. Mr. Randolph, do you know Gerard D. Reilly?

Mr. Randolph. I have met the gentleman, and I have been examined and cross-examined by him at length in four or five cases in the past year.

Mr. Bailey. In addition to being an attorney for General Electric, I believe he is also an attorney for some of the printing associations, is he not?

Mr. Randolph. He is the attorney for PIA—that is the Printing Industry of America—and he is connected with the Inland Press.

Mr. Bailey. What would you say to Mr. Reilly's assertion when he appeared before this committee a few days ago—and we will find this on page 1124 of the transcript and I quote:

> Actually, if the printing industry seemed to get along ideally with the unions, in many instances it was because it did not have the bargaining strength to resist the exorbitant demands and the impositions of uneconomic practices.

Mr. Randolph. I would say he does not know what he is talking about at all. I know that is not the case. I know every time the International Typographical Union has had a strike on a national basis it has cost the union millions of dollars and the loss of many thousands of members. And I know if you will look into the situation you will find we have no uneconomic practices that we force on employers. All of our matters are governed by agreement with employers in collective bargaining. And, further, his idea that the employers do not have the strength to resist our pressure is untrue, because we have not yet succeeded in stopping a man from continuing in business, either as a commercial printer or as a newspaper publisher. Every time we have a strike he seems to keep on operating just the same.

Mr. Bailey. Mr. Randolph, Mr. Reilly again testified—and this time it will be found on page 1125 of the transcript—

> The ITU does not engage in full collective bargaining because of the insistence that employers must accept the laws adopted by the union. Those laws are not subject to bargaining or arbitration.

Is it true that the adoption and the insistence upon compliance with such laws in any way conflicts with full collective bargaining?

Mr. Randolph. Not at all, Mr. Chairman, and I think you are entitled to a brief statement on that, because it is so confusing.

As it was stated by Mr. Reilly, it might be regarded by reasonable people as a valid objection, but it is not so. The fact of the matter is that since 1852 when the international union sought to establish, for instance, the 11-hour day, it made a law that no local union could make an agreement thereafter for longer than 11 hours a day, and when it established the 10-hour day, the 9-hour day, the 8-hour day, and the 44-hour week, it has repeatedly changed the laws so no local union could make an agreement for a longer period. And, by the way, every reduction of hours cost a strike to do it.

Mr. Bailey. In questioning Mr. Wilson, of the General Electric last night, I read into the record an existing paragraph in the contract between the General Electric and employees. It was the paragraph that provided for arbitration in case every other method failed. I accused President Wilson of bad faith or lack of good faith in that in two instances where they had arbitration decisions, instead of accepting them as final, they went to court to try to have those arbitration findings set aside.

I want to ask you in this regard, at this point, if they are discriminating against your unions in a similar manner by saying there are certain things that they do not have to arbitrate; is that right?

Mr. RANDOLPH. I do not quite understand you, but I will say this, that both the employers and unions have certain things that they will not arbitrate. Naturally an employer is not going to arbitrate as to how he is going to run his business or how much profit he is going to make, and the unions are not going to arbitrate what they consider as their basic code of organization. There is a floor upon which collective bargaining is based. We do not arbitrate these matters that we have nailed down in our book of laws over a long period of negotiation and collective bargaining in this industry. We accept our gains and we nail them down in the lawbook, and we say that no local union shall make a contract for any different condition than is provided in the book, and those conditions have to do with union security and with minimum wages under certain circumstances, and the number of hours per week of work, rates of time and a half for overtime, protection against discharges, and various other things that have been the practice of the industry; and those we do not arbitrate.

Mr. BAILEY. Will you briefly explain the development of the closed shop in your union, and its importance to both the union and the industry?

Mr. RANDOLPH. Mr. Chairman, without the closed shop our organization cannot live very long. The reason for that is that it is a skilled craft, and it covers a number of processes in the trade which the employer is able to take away from us one at a time under the Taft-Hartley Act, and then there would be no union left; and, furthermore, the closed shop has been necessary to maintain that stability which our organization has supplied to the printing industry over these many years.

Mr. BAILEY. One more question: How accurate was Mr. Reilly in his statement on page 1134 of the transcript wherein he accused your organization of being a closed union, and that by combining the closed union with the closed shop it has created "artificial shortages in the supply of compositors and accompanying artificially high costs, wasteful featherbedding practices, and the like"?

Mr. RANDOLPH. He did not testify what such featherbedding practices were?

Mr. BAILEY. I am just quoting his testimony as appears in his presentation.

Mr. RANDOLPH. It is wholly untrue. The alleged bargaining strength of employers is washed out and ours is magnified. As I said a few minutes ago, the truth of the fact is that every time we have a strike the employer has been able to keep on operating regardless of the withdrawal of our people, and that shows he is wrong on that point; and, furthermore, I say we have no uneconomic practices, and we have no featherbedding. We have a responsible craft union with 100 years of background and that cannot be denied. We have not had a closed union, and we have, by the way, a law in our book of laws that permits a nonunion applicant whose application has been rejected by a local union, which permits that person to appeal to the executive council of the International Typographical Union against such a decision. I doubt if there is any union or any lodge or any group of people in this country which has as liberal an attitude toward those who apply for membership.

Mr. BAILEY. One more question.

You make a rather grave charge when you say the so-called watchdog committee has been used to interfere with the affairs of the executive branch of the Government.

Would you like to expand on that? I saw that in your statement. Do you mind explaining just what you referred to?

Mr. RANDOLPH. I referred there to the activity of Counsel Shroyer of the watchdog committee and Senator Taft, a member of the watchdog committee, and of course Counsel Denham was also in on that pressure against our union.

Shortly after our convention adopted our collective-bargaining policy Mr. Denham stated at a bar association meeting that we were wrong and that we could not get away with it. Mr. Shroyer attended a convention in French Lick, Ind., and likewise advised them the ITU was all wrong, and the result was that immediately Mr. Denham started out after the International Typographical Union, and the encouragement of the Government to these bodies made it impossible for us to get along with them through their national association because they were advising their local people not to do business with the International Typographical Union on our collective-bargaining policy.

The result was the employers, such as the group in Chicago, undertook to hold wages down—admitting we were entitled to an increase—in an attempt to force our local union in that city to give them a contract under which they could dismember the union. The union would not do that, and a strike ensued for wages in that city, which is still going on and has been going on for a year and 4 or 5 months.

While that strike was going on Mr. Taft entertained in his office the publishers of newspapers in the city of Chicago. John S. Knight, one of the publishers from Chicago, also publishes a newspaper in Akron, Ohio, and he might have been a constituent of Senator Taft, but the rest of the people were not. Present also were representatives of the Herald-American, the Hearst paper, the Chicago Tribune, and the Chicago Sun-Times. They called in the attorneys from the National Labor Relations Board and the general counsel's office. We protested to the President of the United States, who caused an investigation to be made, and the President's investigation elicited a letter from Mr. Findling of the general counsel's office, which indicated quite frankly that Mr. Taft had put the heat on the National Labor Relations Board—and for what? To cite us for contempt on some kind of an allegation that we were not obeying the law; and after the conference in Senator Taft's office the citation for contempt was pursued by Mr. Denham and secured, and I gave you the fanciful results of that. And the judge was asked—and, mind you, on the theory that we had not asked for the right things in collective bargaining—the judge was asked to shut off strike benefits in the city of Chicago. It is fantastic; is it not?

Mr. BAILEY. Rather so.

That is all the questions I have. Mr. Irving, do you have some questions you would like to ask Mr. Randolph?

Mr. IRVING. Just a couple of questions, Mr. Chairman. Is it not true that your employers, as distinguished from the position taken by Mr. Reilly on behalf of the commercial printers' association, were in favor of the closed shop? I understand—I think the name of the gentleman was Keefe who testified to that effect.

Mr. RANDOLPH. Mr. O'Keefe. Yes, I mentioned his testimony in this pamphlet, and I want to say that the watchdog committee took out after us in Chicago; at least, Congressman Hartley appointed a subcommittee to carry on an investigation in the city of Chicago concerning the newspaper strike in that city, and a subcommittee did visit Chicago and carried on a 3-day session, at which I testified, as did other members of the union and employer representatives, and Congressman Kersten asked Mr. O'Keefe, who is the secretary of the Chicago Newspaper Publishers' Association, some pertinent questions. It will only take a few minutes, and I would like to read it. That is on page 40 of this pamphlet.

> Congressman KERSTEN. Up until now and for a great many years past you had a closed-shop agreement; didn't you?
>
> Mr. O'KEEFE. Yes; we did.
>
> Mr. KERSTEN. How did that feature work out in your previous contracts, so far as your closed-shop provision of the contract was concerned?
>
> Mr. O'KEEFE. We never even discussed it. It had been there for years and it has remained there.
>
> Mr. KERSTEN. Did you have any real difficulty with it so far as your union, the ITU, is concerned?
>
> Mr. O'KEEFE. We did not. As a matter of fact, most of the Chicago publishers, or all of the Chicago publishers, I would say, would prefer to continue a closed shop if it were legal.
>
> Mr. KERSTEN. The reason for that is that this particular union has been a long-term institution that has a certain amount of tradition behind it, a considerable amount, and it is a responsible union, and under those conditions a closed shop has worked out so far as the Chicago publishers are concerned. Is that right?
>
> Mr. O'KEEFE. Yes; it has.

In addition to that, I want to say that even now, a year and 4 or 5 months after a strike ensued for a matter of wages, the publishers of the city of Chicago are now willing that a contract be entered into containing a provision that if the Taft-Hartley Act is amended to permit the closed shop it will automatically be included in the next contract.

Mr. IRVING. In your statement you have emphasized the unnecessary difficulties imposed by the boycott provisions of the Taft-Hartley Act. Will you elaborate on that?

In Mr. Reilly's testimony before this committee—and I think it is page 1138 in the transcript—he says:

> In the printing industry the secondary boycott is a powerful weapon which could thus be employed, as it was before the passage of the Taft-Hartley Act, to coerce small employers into signing up with unions which do not represent labor employees.

Mr. RANDOLPH. It says "employees" in the transcript. I want to say just another word in addition to what I said on the closed shop as to the newspaper industry. The same sentiment exists among the commercial employers themselves. In the commercial field they are also in favor of the closed shop, and not as testified to by the lawyers and secretaries of the association.

As regards the matter of secondary boycott, I want to point out it is a very important question and one that goes to the stability of the industry itself. It not only goes to the survival of the union, but to the very stability of this industry. I want to point that out in this way: Here is the city of Chicago, for instance, with several hundred print shops, and there is an association of employers in that city, mainly the larger employers, and there is the union. For all of the history of this organization—our No. 16—as long as there was an employers' organization in Chicago, the union bargained with that group. I can recall a time when there was less than one-third of the members of the union employed in shops owned by that group of employers; and yet the union bargained with them. That was the only bargaining unit the union had to bargain with, and they bargained with them, but the employers insisted and the union gladly undertook to comply with that insistence, that whatever was agreed upon with that group of employers would be enforced by the union in all of the other shops. In other words, the employers in Chicago were not as good union men as the men they employed; and, therefore, their stability depended upon the union itself enforcing in other shops the same thing that was agreed upon by that bargaining group of employers. That is not only true as regards the commercial field, but it is also true as regards the newspaper field. And this union has not undertaken to use the boycott weapon at all except insofar as to protect itself from the product of a cheap undercutting employer whom some employer might want to use to do a part of the printing job, thereby undercutting the price of the employers in the city by taking a cheaper grade of type, or various other processes of the trade.

Now, if our union members cannot refuse to handle a nonunion product, it takes away the stabilization of that unionism and the closed shop as afforded to that industry, and makes it possible for the employers to engage in cutthroat competition, to their own destruction.

Mr. Irving. I do not know if you have answered my question satisfactorily. But I have consumed all my time.

Mr. Randolph. I am sorry I am so long-winded.

Mr. Jacobs (presiding). Mr. Perkins?

Mr. Perkins. I have no questions.

Mr. Jacobs. Mr. Burke?

Mr. Burke. Mr. Randolph, your union is known as one of the oldest unions in the United States; is it not?

Mr. Randolph. We claim to be the oldest.

Mr. Burke. It is just about the oldest continuously organized union?

Mr. Randolph. We claim that. We think that is true.

Mr. Burke. And during the 100 years or more that your union has been organized, it has become recognized pretty much as a typical American institution; that is, as typical as the Chicago Tribune or the Toledo Blade or any other newspaper, or Sears Roebuck, or any other type of establishment that you would care to mention?

Mr. Randolph. We claim to be the best in our field, very modestly.

Mr. Burke. I do not blame you for that.

It seems to me that I read somewhere not too long ago an article about the history of printers, and there were some very interesting statistics about that particular organization and the industry itself. It seemed that in the early eighteen hundreds, probably around 1820, or somewhere along in there, the average life expectancy of a printer working at his trade was 26 years of age.

Mr. RANDOLPH. Twenty-eight.

Mr. BURKE. Twenty-eight, was it? And by the time the printers' union had become pretty well organized, sometime after the Civil War, the life expectancy through the activities of the union had jumped to somewhere around 45 or 46 years of age.

Mr. RANDOLPH. I think it was about 1890 when it got up as high as 40 or 42. It was pretty slow crawling. But since 1890, it has gone up to 65.

Mr. BURKE. And printers now can expect about the same type of life expectancy as any other group of people; so that would seem to tend to prove that the union certainly did a great deal for its members throughout its history.

Mr. RANDOLPH. Yes. Not only did it do that for its members, by extending their life, but look what it did for the industry in supplying the services of a trained man for that many more years.

Mr. BURKE. That is right.

I notice this particular line of questioning has no direct bearing upon the particular act, but I did want to bring it out, to set in the record the type of information that you have and the fact possibly a union can be just as good as a business establishment.

Mr. RANDOLPH. We think we have a much higher moral standard than most businesses.

Mr. BURKE. I do not blame you for that.

That is all.

Mr. BAILEY (presiding). Are you through, Mr. Burke?

Mr. BURKE. Yes.

Mr. BAILEY. Mr. Jacobs, you have not used your time.

Mr. JACOBS. May I reserve my time until the end, Mr. Chairman?

Mr. BAILEY. It is agreeable to the Chair.

Mr. McConnell, do you have any questions?

Mr. MCCONNELL. Off the record, I just wanted to ask if it is all right for a person to reserve his time.

Mr. BAILEY. I think in this particular case it is, since Mr. Randolph is from Mr. Jacobs' district. It is not a general rule, but just a matter of courtesy.

Mr. JACOBS. Frankly, Mr. McConnell, I wanted to reserve my time and then ask Mr. Randolph in the end whether he has anything further that he wants to say as summary. After all, his organization is located in my district, and it is a courtesy to him, if you do not object.

Mr. MCCONNELL. That is all right. I am quite in accord with courtesy.

I have no questions.

Mr. BAILEY. Mr. Smith?

Mr. SMITH. I believe it is the policy of your union that all contracts signed with locals and with their employer must go to your headquarters at Indianapolis to be approved.

Mr. RANDOLPH. They must go there to be approved as being in compliance with our laws. We do not examine them as to sufficiency of the subject matter, except whether or not the subject matter is in compliance with our law.

Mr. SMITH. Now, I will ask you a direct question. Did a contract ever come into your office from a local in which the only question was the amount of wages, and the contract was turned down by you simply because it was not high enough wages?

Mr. RANDOLPH. I do not recall any such.

Mr. SMITH. Are you ready to say that it never occurred?

Mr. RANDOLPH. Since 1944, I have been in the position of president, and I do not recall any contract having been so turned down.

Mr. SMITH. And you would not turn a contract down if it did not meet with the amount of wage that you thought they ought to have?

Mr. RANDOLPH. You know, when you deal in absolutes, you always run into trouble. I can imagine a circumstance where I would not approve a contract if it was so low that I could see a scheme for the evasion of dues paying. I might take some action on it. For instance, we have some very small local unions, you know. We charter as few as eight printers into a union, sometimes they would drop down to seven, six, five, and so on, and at other times they will grow. But if some of these unions are composed mostly of proprietor members—as some of them are—that is, members who have little print shops and employ maybe no employees or maybe one or two, for the whole town, and if out of eight we had five employer members—and they sent in a scale that was half the amount that it ought to be, I would smell a mouse—that the employer members set the scale low so they would pay low dues, and I would not approve it until I looked into it. Now, that is one of the absolutes, and one of the impossibilities, perhaps, of the situation.

Mr. SMITH. You put in some other factors that I am not concerned with and did not have in mind. I am talking about a man that runs a paper with maybe eight employees, and the employer and the union want to make a wage rate that you do not think is sufficient, and you would disapprove it.

Mr. RANDOLPH. No; we would not do that.

Mr. SMITH. You would not do that?

Mr. RANDOLPH. No.

Mr. SMITH. You never have?

Mr. RANDOLPH. Not to my knowledge.

Mr. SMITH. Now, I believe you testified that you were not in favor of featherbedding.

Mr. RANDOLPH. I do not say that, because I do not know what "featherbedding" is. I reject the word completely.

Mr. SMITH. All right. Let us be more specific. I have heard it constantly said there are a lot of places in this country where union printers set up advertisements for a paper and then junk them, so to speak, because there has been a plate coming in from some national advertiser, and that plate was used, and you have in your contract that you have the right to set up all ads that come into the shop; is that true?

Mr. RANDOLPH. That is not true.

Mr. SMITH. Now, just explain to a layman what you are talking about.

Mr. RANDOLPH. I think I know what you are talking about. But we do not have the practice of resetting national advertising. We do have, and have had since 1872, a practice that is covered by contract whereby the members of a local union will do all of the work of an employer; and it is seasonal, and spotty, causing us considerable unemployment in the matter of supplying good help to do that. But whatever local advertising there is in that city is set in each of the offices. If one office will set an advertisement of a local firm and send a mat of that over to their competitor for printing in his paper, the competitor gets the ad for nothing, and he charges no less for his ad. He is getting the benefit of the composing room of the first plant. Now, for all of these years, and not just recently, you know, but since way back to 1872, we have had what amounts to a fair-trade-practices act by insisting that the union get the benefit of setting that ad for both publishers instead of one publisher getting the ad for nothing, and further protecting the first publisher against having advertisers use his plant to do the composition work for the other publishers in town.

That publisher may have the best plant, give the best service, and have the best type, and the advertisers may have him do the composition, and then make mats to be sent to the other papers who may not give him that kind of service or that kind of type, and the other papers would get the composition for nothing and the members of the union would be deprived of the work involved.

It is not featherbedding, and no publisher has ever proposed, when he gets an ad for nothing, that he give the advertiser a rebate. Far from it. Who is featherbedding? The publisher or we? We are asking for the work. The publisher is getting the mat for nothing. Who is "featherbedding," if you know what the word means? I do not. There is nothing wrong about the practice, and even under the Taft-Hartley law, the trial examiners have held that there is nothing wrong with the practice and that it is not violating the law.

Mr. Smith. Were you consulted about the present bill that we are considering before it was printed?

Mr. Randolph. No; I was not.

Mr. Smith. Do you know who prepared the bill?

Mr. Randolph. I have been hearing rumors about that ever since it has been on the books. Do you know who prepared it?

Mr. Smith. I am not talking about the Taft-Hartley law. I am talking about the one we are considering.

Mr. Randolph. No. I beg your pardon. I thought you were talking about the Taft-Hartley law. I was not consulted about this bill.

Mr. Smith. Do you have any contracts in existence now for a 35-hour week?

Mr. Randolph. Yes; we do.

Mr. Smith. Whereabouts?

Mr. Randolph. One in Seattle, one in Miami, Fla. We have a strike on in Miami now. It was a 35-hour week while we were working. There are quite a few of them.

Mr. Smith. Is it the objective of your union to try to get more 35-hour-a-week contracts?

Mr. Randolph. That is a matter for local unions themselves. They set their own sights on that kind of thing.

Mr. Smith. There has been no national policy fixed on that?

Mr. Randolph. There has not been a national policy fixed on it. Our laws provide that a local may not make a contract for more than 40 hours a week.

Mr. Smith. Does your national union send out what you term so-called laws to regulate the number of apprentices that may be taken in?

Mr. RANDOLPH. We have among our general laws a provision that the contract shall not provide for more than a certain ratio of apprentices to journeymen. As a matter of fact, before the war, that ratio of apprentices and the new members we took in, and so on, kept the industry well enough supplied with printers so that we had approximately 8 percent working less than full time. When the war came on, it took away a lot of our people, and business, which is now commencing to level off, resulted in a temporary shortage of printers. Some of our employer critics assumed that the union should supply them with enough printers so that they would never have to work any overtime. We do not undertake to do that. Since the temporary shortage of printers has set in, our members have worked 5 to 6 percent overtime, as shown by our records.

Mr. SMITH. There is a terrific shortage in linotype operators, is there not?

Mr. RANDOLPH. No; there is not a terrific shortage. There is a temporary shortage. And that, I say, is leveling off now. Many places are reporting printers laid off and printers available. There are some squawks from smaller places where they will not bring the wages up high enough and the men will leave that town and go to a bigger town where they can get more money. But that is only the natural ebb and flow of the trade.

Mr. SMITH. I yield the balance of my time to Mr. Nixon.

Mr. BAILEY. Mr. Nixon?

Mr. NIXON. I noted your comments concerning the democratic procedures in your union, and I might say that before you testified I had had an opportunity to study some of the history of the union and had a pretty good idea as to some of these practices you referred to.

You may not have been following these hearings. But the gentleman from Indiana, Mr. Jacobs, has suggested on several occasions that when the committee resolves itself into executive session to write this bill, he is going to submit amendments to the administration measure which will provide that all unions must follow certain democratic practices. He will have to speak for himself as to what those amendments are going to be. But in effect, the general idea would be to require that all unions follow the better practices of unions such as yours.

Would you favor such legislation? And in answering the question, I should like to say that in reading over your testimony before the Senate in answer to questions from Senator Taft, I gathered the direct impression that you would be unequivocally opposed to such legislation due to the fact that you oppose interference with the internal organization of a union. Is that still your sentiment now, or have you changed your ideas on that point?

Mr. RANDOLPH. No, no. I still believe that such legislation is not sound and should not be put on the books.

Mr. NIXON. I will not develop the point further now, because Mr. Jacobs follows me and he can develop it as he likes. But I think that it would be well when he does question you, if you have any further comments on that point, to make them to him, because it is an issue that is going to be before the committee. In other words, the issue will be whether or not the new administration bill will go further than the Taft-Hartley bill in interfering with the internal organization of a union.

So I will leave the point here because I know he can discuss it much more completely than I, since he has his specific amendments, I am sure, in mind.

Now, you indicated, also, that as far as your union organization was concerned, the union was not a closed union; it is an open union.

Mr. RANDOLPH. It does not refuse new members who qualify and are of good character.

Mr. NIXON. And who meet the professional standards and the character standards that the union has set up?

Mr. RANDOLPH. That is right.

Mr. NIXON. You, of course, also indicated in your statement that you favor a provision in the law which would allow the closed shop. Would you object to a corollary provision in the event that the law did allow a closed shop which would provide that unions would in effect have to be open, in order for a closed-shop contract to be negotiated by the union and the employer?

Mr. RANDOLPH. Of course, I do not know just exactly what you mean by "open." But if I do understand what you mean, my answer would be that I would be opposed to that kind of provision.

Mr. NIXON. I am sure you do not intend to leave the impression with the committee that there is no such thing as a closed union. I have, for example, just received in the mail today a newspaper account of unions in the retail trades in the Los Angeles area that have closed their memberships starting last week, due to the fact that they say there are too many people working in those trades, and for a certain period of time now, it is necessary to close the membership because otherwise there would be too many members of the union for the available jobs.

I think that obviously one question that will come before the committee is that in the event the closed-shop contract is legalized, either in those industries where it is traditional or in other cases, there is going to be considerable insistence that there should be a corollary provision that the union could not be closed. And it is my understanding that you would oppose such a provision.

Mr. RANDOLPH. I certainly would. And there is very good reason for it. It is not a place for legislation at all. A union such as ours, which is a craft organization and which has tried and has successfully maintained enough people to take care of the industry, is doing both itself and the industry a service. Now, to make a law that all of the people who developed into printers had a right, per se, to come into our union is certainly not sound because the union has to have a fair control over the number of people serving the trade if it is going to live. In times of stress when there is a lot of unemployment, as there was in 1932 and 1933, one-third of our members were unemployed. Our unions did not take anybody in during that time. If there is any period of unemployment that develops our unions will not accept new members. And they are perfectly right in not accepting new members. Why should free riders on the outside come running in to get the benefit of unionism and that degree of help that we give to our members in times of stress when they have not bothered with coming into the union in other times and paying their part of the expense and the trouble that goes with unionism?

Unionism is an uphill job. It is not easy. It is work that is opposed by employers. They have had a constantly struggling job to hold themselves together. Why should anybody be allowed to be legislated into a group of union people?

Mr. Nixon. Your answer, Mr. Randolph, is predicated on the fact that the people who would be trying to get into the union would be people that have been on the outside as free riders?

Mr. Randolph. Yes.

Mr. Nixon. And who just wanted to come in during times of stress so that they could get good contracts which the union was able to negotiate.

Let us take the case in a city where the union had organized virtually all of the printing establishments in that city. And there are some, I think. And the type of situation involved is that new individuals are going into the printing trades, new blood. The same rule should apply as far as you are concerned? You think that the union should be closed, and the union should determine who gets the available jobs?

Mr. Randolph. No; that is not so. Our apprentices are selected by the employer himself. For the first year they are on probation. They can be discharged at the will of the employer. After that, they get a status of apprenticeship, and they are started out to learn the trade.

There is no difference between a young fellow getting a job that way and what it would be if he got a job in a nonunion place to learn the trade. Certainly, no one has the legal right, per se, to go and learn a particular trade because he wants to, any more than he has a right to go to become a doctor without going through the training and paying the fees for it. We do not concede that just anybody who wants to be a printer has per se the right to be a printer, because in 100 years we have established some standards and some wages and conditions that are worth while.

Mr. Nixon. Again, Mr. Randolph, you are getting off the point that I tried to make. You used the analogy of the doctor. Well, let us use that analogy. Of course, the doctor does not have a right to practice medicine until he becomes qualified, and a printer does not have the right to go into a plant and work unless he is qualified as a printer. But the point is that if a doctor does become qualified and passes the State medical board examination, he can become a doctor. As far as the printer is concerned, where you would have a situation in which the union had in effect closed its membership, here you would have a case where a man who had qualified from a technical standpoint in becoming a printer would not be able to become a member of the union.

Mr. Randolph. Well, why does not he keep on working where he became qualified?

Mr. Nixon. Where he became qualified?

Mr. Randolph. In a nonunion shop, where he learned the trade. Why doesn't he continue to work there?

Mr. Nixon. Let us suppose that in this case, he had attempted in the first instance to take his apprentice training in a union shop, but there was not room because the rules of the union as to the number of apprentices you would take. In other words, he was forced to go out and take his training in a nonunion shop. In effect, the union would be indicating to this man that due to the fact that there were not enough jobs to go around, the union would have to distribute them only to their members.

Mr. RANDOLPH. Well, what is wrong with that?

Mr. NIXON. You used the analogy of the doctors. You will have to admit that it does not apply, does it?

Mr. RANDOLPH. No. The doctor also can go and practice medicine without joining the AMA if he wants to. And the nonunion printer can keep on being a nonunion printer if he wants to.

Mr. NIXON. And also not be able to get a job. I realize——

Mr. RANDOLPH. Well, that is not true.

Mr. NIXON. Yes, yes, I know. I know your argument on that, that in most of the cities there are lots of nonunion shops. Well, you know as well as I do that there are a number of cities where that is not the case.

Mr. RANDOLPH. You see, what you are doing is talking from a hypothetical case without any practical effect.

Mr. NIXON. Now, just a minute. You say it is a hypothetical case. You mean, there are no situations where printers are unable to ply their trade due to the fact that they cannot get in the union?

Mr. RANDOLPH. We do not get that information. That, as I say, is hypothetical, and comes from Taft-Hartley propaganda. Now, as a matter of fact, this limitation on apprentices is for the purpose of trying to have a fair balance of trained employees to take care of a fair volume of work, and it is just as much to the employer's advantage as to ours, and it is absolutely essential as far as we are concerned, because if we have twice as many printers as jobs, we can only get half as much work, and the scales are going to be lower.

Mr. NIXON. Then as far as you are concerned, you do believe that any individual who is not now a printer and who wants to become a printer, or a doctor, for that matter, as far as you are concerned, you do not believe that the union rules should prohibit him from doing so, either practically or otherwise?

Mr. RANDOLPH. Well——

Mr. NIXON. You agree with that statement?

Mr. RANDOLPH. Not the way you put it.

Mr. NIXON. I did not think you did. What do you think?

Mr. RANDOLPH. Because you are trying to make it appear that way to the whole industry. Let us be fair about that. I explained to you how our apprentice ratios are based on the number of journeymen and the needs of the trade. Now, I will say to you further, if you want to be hypothetical, suppose you wipe out the union entirely, assume a condition where there is no union in the industry; how is a man going to be a printer if he wants to be a printer? He has to get a job, does he not? If the employer does not want to hire him, he does not get a job, and the poor guy cannot be a printer. Well, you turn right around and try to take that kind of situation and say the union men are keeping them from being printers. It is not so at all. It is the volume of printing in the country that keeps people from being printers. And a boy has just as much trouble, if not more, in getting a job with a nonunion shop as an apprentice as he does in a union shop.

Mr. NIXON. There is no question about that.

Mr. RANDOLPH. So why cry about the boy in one case and not cry about him in the other?

Mr. NIXON. I think from your answer to the questions, it is quite apparent that the rules of a union, where you do have a closed shop, necessarily have the effect, in times of unemployment, as you have indicated, of keeping new people out of the trade. Now, that may be a desirable effect.

Mr. RANDOLPH. It does not. I did not say that.

Mr. NIXON. We will let the record speak for itself, because my time is up.

Mr. McCONNELL. Mr. Randolph, I just wanted to ask one question that occurred to me while Mr. Smith was questioning you. He asked about the approval of a contract by your central union, or by your international body; is that right?

Mr. RANDOLPH. That is right.

Mr. McCONNELL. And you have stated that you knew of no such case?

Mr. RANDOLPH. No. His question was, if a local and an employer agreed on a contract and forwarded it to the international union for approval as to whether it is in compliance with our laws, would the international union object if the only question involved was a matter of wages, and would we refuse to approve it on the theory that the wage was too low.

Mr. McCONNELL. Yes.

Mr. RANDOLPH. And I told him, "No," and I gave him a possible exception to that.

Mr. McCONNELL. Now, I wanted to ask about the contract that was drawn up with the union headed by Claude Baker. Is that his name? Claude Baker was formerly the head of the ITU?

Mr. RANDOLPH. He was.

Mr. McCONNELL. Is there a case of that nature pending at the present time? I think that is what Mr. Smith was getting at.

Mr. RANDOLPH. Mr. Baker has not been the president since 1944.

Mr. McCONNELL. Does he head a local union in California?

Mr. RANDOLPH. He is at the present time president of the San Francisco Typographical Union.

Mr. McCONNELL. And did they draw up a contract and submit it to your people, and was it rejected? Or what was the story? I do not know; I am just after information.

Mr. RANDOLPH. There was a current internal matter without benefit of results. I would rather not discuss it. It had no connection with wages whatever.

Mr. McCONNELL. No connection with wages?

Mr. RANDOLPH. It was an internal matter with the union, and I do not want to talk about it, especially since Taft-Hartley is not supposed to be connected with the internal affairs of unions. It is not supposed to be.

Mr. BAILEY. I would like to ask the gentleman from Indiana if he cares to ask Mr. Randolph to return here at 4:15 when we will resume the hearing?

Mr. JACOBS. That depends on what Mr. Randolph says and how he feels. If Mr. Randolph has anything further that he has to say, he could determine that.

We have to go now. They are probably down to the R's on the first roll call.

Mr. RANDOLPH. Gentlemen, I think I have about exhausted the subject, unless you have some more questions you want to ask.

Mr. Jacobs. I did desire to go into some matters, especially in view of Mr. Nixon's remarks.

Mr. Randolph. I will be glad to stay here until you come back.

Mr. Jacobs. But I do not want to require you to come back.

Mr. Randolph. No, no. I shall be glad to stay here. That is what I came to Washington for.

Mr. Bailey. The committee will stand in recess until 4: 15. We have to answer a roll call at this time.

(Whereupon, at 3: 25 p. m., a recess was taken until 4: 15 p. m.)

(Pursuant to the recess, the subcommittee reconvened at 4: 15 p. m.)

Mr. Bailey. The subcommittee will be in order.

At this time we will resume where we were when we took the recess for the roll call.

I believe the gentleman from Indiana, Mr. Jacobs, has some time; if he cares to use it at this time it is at his disposal.

Mr. Jacobs. Is that an invitation to save time, Mr. Chairman?

Mr. Randolph, did you have any further statement you would like to make for the record? Originally, I had intended to reserve my time for that question, but in view of some questions put by another member of the committee, I want to develop a little further.

Do you have anything further?

Mr. Randolph. No, I do not have anything further.

Mr. Jacobs. In regard to the question of elections in unions that Mr. Nixon brought up, I am familiar with the operations of the International Typographical Union. As a matter of fact, as a part of my examination of Mr. Reilly I put in an article by Mr. Hart. Is the name Hart?

Mr. Randolph. Hard.

Mr. Jacobs. That article appeared some years ago in the Reader's Digest.

I listened with considerable interest to your statement here in regard to officers. I believe you have two political parties in your organization?

Mr. Randolph. Yes, we have at least two.

Mr. Jacobs. And you do have elections where everybody is permitted to vote?

Mr. Randolph. That is right.

Mr. Jacobs. And you proceed upon the same theory as our concept of government, that the officers govern by the consent of the governed?

Mr. Randolph. They do not even govern; they just see that the law is enforced, if they can.

Mr. Jacobs. In a case of that kind, of course, a law that would require a union to have an election of officers would not affect your union in the least, would it? I mean, you are doing it anyway?

Mr. Randolph. We are doing it, but we would feel rather insulted about it.

Mr. Jacobs. Of course, would it not also be true that I might feel offended because of a law condemning a person for larceny, and I would say, "I do not intend to commit larceny." But the law is passed for a man who does.

Mr. Randolph. You are entering into another field entirely. This matter of labor relations is not a criminal action; it is clearly respectable and a free relationship of people who form unions, and they should not be interfered with by government as to how they should run their unions.

Mr. JACOBS. I have in mind particularly two or three cases I know about in regard to another union where the members of a local were denied the right to elect officers for some 16 years, and when the officers who were in charge of the local left, they took the books with them, and it was later discovered that about a third of the treasury was gone. And when the local union finally had an election of officers, they found the wage scale was about 25 percent below the wage scale in the area, and that was the first time in 16 years they had been allowed to elect delegates to go to the convention. There had been delegates going to the convention, but they had been appointed by the international union. The new local officers were going to question the financial report, and they were expelled—or, at least, one of them was expelled—and they were all denied the floor and were never permitted to come up on the floor at all. That is not democratic action, is it?

Mr. RANDOLPH. No.

Mr. JACOBS. In addition to that, when they came around to nominate officers—and I will give an example, a typical example—and, incidentally, the officers were elected by a referendum vote, and were not elected by a convention vote in this particular organization.

The general executive board member from the first district was nominated—and there are quite a few pages here in the nominating speeches—and after Charles Johnson, a member of local union 1456 was nominated, a delegate stated, "I want to second the nomination of Brother Charles Johnson, in behalf of local 874 and local 176."

And then President Hutcheson, of the carpenters' union, says: "Any further nominations?"

A delegate by the name of Tolve, local union 543, said:

> Mr. President, members of the executive board and members of the twenty-fifth general convention, it is a great pleasure to get up here today and nominate a man who did great work for our organization. His name is John S. Sinclair, Mount Vernon, N. Y. Brother President, I do not have any ax to grind; I have known Charlie Johnson for a good many years, and I want to say to you——
>
> President HUTCHESON. Just a moment—does the Chair understand now you want to second Charlie Johnson's nomination?
>
> Delegate TOLVE. No.
>
> President HUTCHESON. Then I will have to rule you out or order. Are there any further nominations?

Without expensive court litigation—I mean, how can those members cope with that sort of a situation? I am not out for regulating a union like yours, and say you have to have elections, but I am thinking about a union of that kind that operates in that way.

Mr. RANDOLPH. There is a line you know, separating the field where Government ought to interfere.

Mr. JACOBS. I think you are right.

Mr. RANDOLPH. And where it should not interfere and, I think, the line would be crossed if the Government undertook to transact the internal affairs for the members of the union. In other words, if they have sense enough to have a union they should have sense enough to run it, and no matter what the Government does they are not going to run it if the Government takes it over. And, as a matter of good law, I think the Government should stay out of the business. They can correct the condition internally. Our people, of course, being printers, can print circulars until they get in your eyes, but a little pitiless publicity directed against the general president and against the abuses of their own law would perhaps correct the situation.

Mr. Jacobs. As a matter of fact, you allot the opposition space in your magazine, do you not?

Mr. Randolph. Oh, yes; that is true. Each candidate has a certain allotment of space in each election, in the Journal, but that is not all. They go into widesperad publicity on the matter, and I lay it down as fundamental that if the members of a union do not have the ability to run it they should not have a union, and they would probably disappear by that kind of tactics.

Mr. Jacobs. May I state the members have done exactly that, and had circulated—the local, rather—a statement of the controversy with the general president. It was never denied it was the truth. That was why the delegates were denied the floor, and one was expelled.

Mr. Randolph. I do not think you should be discouraged so soon. It takes years, sometimes, to bring about such a condition. There was a definite policy enforced in our organization from 1900 to 1920, and the minority struggled to become a majority, and finally did become a majority in 1920, so do not get discouraged. It is the American way. I resent the interference of Government in any field where the voluntary associations of people are required to not only organize, but keep a voluntary association going.

Mr. Jacobs. You agree with me, assuming the circumstances I stated are true, that that is a very bad method for a union to conduct itself from the members' viewpoint?

Mr. Randolph. I would agree with you, and if I were in that union I probably would do a lot of printing.

Mr. Jacobs. I believe you would. But, on the other hand, if these carpenters are afraid of their union status—and I might go further and state that after they resisted this action, Mr. Hutcheson went into a local court and put up a $700,000 bond and got a mandatory injunction without notice and ousted the same officers who had just collected back a lot of money that had been taken from their treasury, and they did not have a quarter to defend themselves in court. And the judge knew that the officers were sitting in the anteroom trying to get an order themselves, and he did not even call them in.

Mr. Randolph. I do not think it is a place for legislation.

Mr. Jacobs. In other words, your feeling is that it is an evil, but is not something we should legislate upon?

Mr. Randolph. Unless you want to legislate all of the activities of all of the unions.

Mr. Jacobs. No; I would not go that far. I would suggest they must hold an election in accordance with their constitution and bylaws.

Mr. Randolph. Suppose the constitution called for an election every 100 years. Then you would have to move in further. If they had an election every 4 years, or every 3 years, you would keep encroaching when you step into that field. It is the natural tendency of not only the Government to encroach, but the tendency of the people to rely on the Government to tell them what to do, and that is bad.

Mr. Bailey. You have 1 minute, Mr. Jacobs.

Mr. Jacobs. At least, that is the problem.

That is all.

Mr. BAILEY. I wish to thank you, Mr. Randolph, and your associates, for your appearance.

Mr. RANDOLPH. Thank you very much, Mr. Chairman, for the opportunity to appear here.

Mr. BAILEY. I should like to include in the record some material submitted by Congressman Reva Beck Bosone of Utah, for the use of the committee, for reference, and not to be included in the formal record.

I also have a statement of citations which I desire to have printed in the record of Monday, March 14, 1949, in connection with the appearance of Carl Brown, president of the Foreman's Association of America.[1]

Mr. JACOBS. Is that an additional statement, Mr. Chairman?

Mr. BAILEY. No; just citations to clarify his position in appearing before the committee.

Without objection, we will receive for the record a statement by Miss Ella Best, executive secretary of the American Nurses' Association, and a statement by Gwilym A. Price, president of Westinghouse Electric Corp.

(Both of the above statements will be found in the appendix following today's testimony. See index for page numbers.)

The committee will now hear Mr. W. J. Van Buren, secretary of the national organization, Masters, Mates, and Pilots of America.

TESTIMONY OF W. J. VAN BUREN, NATIONAL SECRETARY-TREASURER, MASTERS, MATES, AND PILOTS OF AMERICA, A. F. OF L.

Mr. VAN BUREN. Mr. Chairman, if there is no objection, I would like to read my statement and then comment on it as I go along, or, more or less, clarify it.

Mr. BAILEY. That will be fine, Mr. Van Buren.

You may proceed.

Mr. VAN BUREN. Gentlemen of the committee, thank you for your courtesy in receiving my testimony on behalf of a union which for 62 years has maintained beneficial relations with employers in the marine and shipping industry.

The Masters, Mates, and Pilots of America, A. F. of L., is a union with 62 years' depth of experience in the field of good labor practices. In our entire history I can recall only two strikes in the industry. There have been times, of course, when we have remained idle because of a strike in which we were not engaged because our own immediate interests were not involved.

You no doubt understand that in our line of activity we work when all others work and when the others cease work we are forced of necessity to stop. In other words, Mr. Chairman, if we have no crew on the ship, we cannot sail it. We are what might be called in other branches of industry supervisors or foremen who are the overseers of some immediate projects, the transportation of cargo; it may be bulk in some instances and not in others.

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[1] See p. 705.

I am sure that most of you members of this committee who have entered or left New York Harbor have seen the tugboats hustling around shoving the big liners into their berths, and others escorting the barges across the Hudson River with supplies to keep the city going; or on the Great Lakes engaged in the less glamorous task at the heavy cargo terminals, or, further still, in the Gulf ports or the Pacific; and in many other places where vessels are engaged in State-side shipping. We are the men responsible for the safety of lives, property, and cargo on the vessels large or small on which we are employed.

Through no fault of our own or that of the transport industry, we among the Masters, Mates, and Pilots of America have been placed in not only a most difficult position as a result of the enactment of the Taft-Hartley Act, but also in a most unconventional location among unions as they exist today.

I offer ourselves as an example of what ill-considered legislation can and does do to a group of employees whose bargaining rights and relationships with their employers have always been well maintained.

For years we have been subject to all the provisions of the Railway Labor Act.

I might say at this time, Mr. Chairman, our organization contains two different classes of deck officers. We have deck officers employed on railroad vessels, and we have deck officers employed on deep-sea oceangoing and coastwise vessels. The railroad end of our organization comes under the Railway Labor Act. Any time 51 percent or more of those in any of our group—that is, the railway group—could demonstrate the fact that they represented the majority, we have been authorized and empowered by law to file a statement with the National Mediation Board, and proceed with negotiations on behalf of those whom we represent.

As I said previously, we have made progress with a minimum of confusion. Perhaps every one of us will agree that the Railway Labor Act has been the basis for a great deal of industrial peace. At least those of us who are under the act view it as such.

But now along comes this Taft-Hartley Act, carrying with it every indication that the technicians and advisers who worked on that legislation knew so little of what they were doing. All they needed to do was to reach for the nearest copy of the Railway Labor Act and read it and to make a few inquiries of the field to which it applies. I understand this committee had hired some high-priced, high-powered men to render competent advice.

What kind of advice must Congress have received when a union which suffers all the bad effects under one law is denied even the elementary benefits allowed to other unions, while at the same time that same union is definitely and completely included under another law which long since established the methods by which that union is to operate?

I refer there, Mr. Chairman, to that part of our group who come under the Railway Labor Act. We are supervisors in the full sense of the word, I believe, or foremen. The Railway Labor Act does not say that we cannot be organized. They do not say that we cannot bargain for those of our group who are working on railroad-owned and operated vessels, but the Taft-Hartley Act says that we are supervisors and we cannot organize.

We have, within the last few months, lost about 350 men out of the Great Lakes because the NLRB denied us an election. Our organizer organized those men out there, and we asked for recognition from the employers for six bulk carriers on the Great Lakes, and naturally they refused. We had hearings in Cleveland before a subboard out there, and it was referred to Washington, and they turned us down. I have a copy of the decision here with me. You see, one branch of our group is supervisors, and we do not deny that. They are in charge of the vessel and everything it does, and we do not deny that; but we do not like to be denied the privilege of organizing. We cannot, under the Taft-Hartley Act, organize that group of our employees.

If there is any other union that has received such unique and unfair treatment at the hands of the Congress, I shall be pleased to make note of the fact when anyone can point out the case in point.

Under the Taft-Hartley Act, we are called supervisors and for this reason, we are outlawed from pursuing the bargaining process. Under the Railway Labor Act, we have all the rights and privileges any union under its jurisdiction can have. I ask any of you Congressmen whose State has a coast line, or even if it has not, who is going to tell the Masters, Mates, and Pilots of America where we head in after that?

We are a bargaining agency, and we are not a bargaining agency—at the same time—by law, and I submit that here is a very good trick if it can be done. But it cannot be done. What could possibly have been the purpose in creating such a situation that we do and we don't at the same time, by law?

If any evidence were needed whether the Taft-Hartley Act in itself is in violation of already existing law, I need only call attention to the decision and order of the National Labor Relations Board in the matter of six steamship and transportation companies on the Great Lakes against the national organization, Masters, Mates, and Pilots of America, A. F. of L., dated January 1949, and that was the decision I was referring to, Mr. Chairman. I have a copy here.

In a petition to the NLRB, this union sought to establish itself as the recognized representative of the employees of these six companies whose bargaining rights fall within our jurisdiction. The Board found that the employers are employers engaged in commerce within the meaning of the National Labor Relations Act, as domestic owners and operators of bulk cargo on the Great Lakes. For the union, the Board well and accurately described the duties of the masters, mates, and pilots, but they did not give us any relief.

Our relief does not lie with the National Labor Relations Board or the court, but quite clearly with the Congress that created this intolerable condition. All we ask is that we be permitted to go our way in the same orderly manner to which we were so long accustomed. We can find no legal patchwork that would serve the purpose. In addition, we stand foursquare with the position taken by all the other 105 international unions in the American Federation of Labor. Now that we in the Masters, Mates, and Pilots of America have been done this grievous and reckless injury of putting us clearly under two laws in conflict, we call for outright repeal of the Taft-Hartley Act, and full restoration of the Wagner Act.

We have no quarrel with the National Labor Relations Board. That Board could have acted in no other manner than to our detriment because the Taft-Hartley Act has made it so.

I cannot too strongly call attention to the exceptional teamwork required of offices and men aboard a vessel. As I read the Taft-Hartley Act and its implications toward those of our union, I am left to wonder how far any one of us might go toward fishing out a man overboard just because we are classed by this law as "management." Did this law ever intend that because literally "we are all in the same boat" when we are on duty, that we must count 10 and decide whether management owns us or we, too, are laboring men? The Taft-Hartley Act has aroused some queer thinking, perhaps the queerest of which is the law itself.

Mr. Chairman, the story of the Masters, Mates, and Pilots of America can be simply and briefly stated. This, I believe I have done. I leave with you the same question I have asked earlier: How can we live under two laws in conflict? Under the one we are allowed to bargain for our members as full-fledged members of the human race and organized labor. Under the other law, also passed by the Congress, we are denied the rights granted us under the first law.

Gentlemen, in your hands lies the relief—repeal of the Taft-Hartley Act.

Mr. KELLEY (presiding). Mr. Van Buren, does your association embrace the pilots on the ocean?

Mr. VAN BUREN. We do represent those; yes, sir.

Mr. KELLEY. All of them?

Mr. VAN BUREN. Most all of them; yes, sir. I dare say 95 percent of them.

Mr. KELLEY. Captains are not included in this?

Mr. VAN BUREN. Yes; they are.

Mr. KELLEY. Are they?

Mr. VAN BUREN. Yes.

Mr. KELLEY. Captains of vessels?

Mr. VAN BUREN. Masters, Mates, and Pilots. That is our name.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. I have no questions.

Mr. VAN BUREN. We had been going on before the enactment of the Taft-Hartley Act without any trouble. We went in and organized those men and they have been our members, but since the enactment of this we have been stymied. Under some of the contracts we had on the ocean liners, when we went into negotiating following the enactment of this law, in some instances, we had to give a letter of indemnity whereby, if it was found the law was violated and suit was started against them, we would indemnify them. We had to do that, and we did not have to do that before. We did not have any trouble with the Railway Labor Act, those of our group who come under that.

Mr. KELLEY. Do I understand that heretofore you were under the Railway Labor Act?

Mr. VAN BUREN. One part of our organization is, those of us who are working on railroads and operating on vessels, and the others are ocean-going, coastwise, and on the Great Lakes.

Mr. KELLEY. Of course, the Taft-Hartley Act would forbid you to have an organization of the masters and pilots?

Mr. Van Buren. If the company does not want to talk to us they do not have to. That is what happened with the six companies on the Great Lakes. We had 350 of the men in the 6 companies, which comprised the majority, and we asked the company to talk with us about a cotnract and they refused even after we showed them the authorizations that we had in our files. We appealed to the NLRB, and they held a hearing in Cleveland, but they could not get any place, and it was referred to Washington, and we got the decision from Washington that we were supervisors and that we can only organize and represent those people if the employer is willing to negotiate and talk with us.

Mr. Kelley. Of course, under the present bill there is nothing said about that. You would be all right under the present bill?

Mr. Van Buren. We would be all right there.

Mr. Jacobs. Do you have pilots in the organization of the steamships known as the Far East Conference, Mr. Van Buren?

Mr. Van Buren. We are affiliated with those foreign groups.

Mr. Jacobs. I am talking about the ships that apparently run out of New York and are east coast; they are organized into an organization called the Far East Conference. Is that term familiar to you?

Mr. Van Buren. That might be the shipowners.

Mr. Jacobs. It is an organization of shipowners.

Mr. Van Buren. Oh, yes.

Mr. Jacobs. You are familiar with that term?

Mr. Van Buren. Yes. We represent those masters and mates.

Mr. Jacobs. On those ships?

Mr. Van Buren. On those ships.

Mr. Jacobs. Mr. Chairman, with your permission I would like to read into the record, as bearing upon this point, portions of an editorial from the New York Times, August 14, 1948, which reads as follows:

> Under the system (the Far East Conference) which is a part of most conference agreements, a shipper who agrees to use conference lines exclusively gets a lower rate. The companies excepting a few independents believe the practice stabilized trade and prevents costly rate wars in ocean commerce. History tends to support them. Maritime law exemptions—exempts steamship conferences from antitrust legislation which would were it not for such exemption prohibit the rate making, the exclusive features and other measures admittedly aimed at the lone-wolf operator. There is some ingratiating quantity in the lone wolf who bucks the crowd and whose very presence in many trades keeps the big companies on their collective toes.

I read that into the record to show the very people these people are bargaining with apparently are permitted under the law to operate as a combine themselves.

I should like also to read a couple of paragraphs from a letter that I received from Management Research Associates at Indianapolis, Ind.

> You asked the question about unionization of foremen. This is a touchy question because of the individual rights involved. However, if management does its job I think they would have no trouble at all in keeping the foremen from wanting to have the union. The first problem is that of selection. If the right man is selected for foreman, and if he is properly indoctrinated and obligated in the duties as a foreman, he will not want to join it. It may be that management will be forced to live up to its obligation, and the only way that that may be done is through the threat of unionization.

I would like to comment that as far as I know these people represent the management point of view on the matter.

Mr. Van Buren. Would you like me to comment on it?

Mr. Jacobs. Yes; go ahead and comment on it, Mr. Van Buren.

Mr. Van Buren. I believe, and I think the majority of us do believe, that if the employee was treated fairly in the first instance we would not have any labor unions today, because, after all, when you are paying dues in a labor organization you are paying for the protection of your job, and if those men did not need protection they would not pay dues in any organization.

Mr. Jacobs. I think you are right about that, and I think that is just what this man says and, as I say, so far as I know, he represents management's point of view. I think that I can agree with your statement, Mr. Van Buren, with the exception of page 2 where you say that the Taft-Hartley was drawn by technicians and advisers who knew little of what they were doing.

After I had studied it I came to the conclusion there were some pretty wise birds who worked on that.

Mr. Van Buren. I will agree with that, too. They were wise enough to leave us out.

Mr. Jacobs. That is all.

Mr. Kelley. Mr. Wier?

Mr. Wier. This is a new decision. I have never heard of this one before. I am glad you brought it up for this reason:

This question of foremen and supervisors having the right to self-organization has been strenuously stressed by management, particularly in heavy industries. They have pointed out to us here very specifically that that is one of the key sections of the Taft-Hartley Act that they want to reinstate under the bill.

If I get your picture correctly, you represent the masters, mates, and pilots. I know what the pilot does, and I know his responsibility, and the mates and masters—what is the master?

Mr. Van Buren. He is the captain of the vessel, in charge of the vessel. The mates are those who relieve him.

Mr. Wier. You are all employees of the steamship lines?

Mr. Van Buren. And the railroads, some of them.

Mr. Wier. I am coming to that. Your organization has been in existence quite a long while; has it not?

Mr. Van Buren. About 62 years.

Mr. Wier. And all of these 62 years you have been bargaining with your employers for contracts covering wages and hours and working conditions?

Mr. Van Buren. All except about 10 of them when we were more or less a fraternal organization; but then we went into the labor end of it, and we have been bargaining ever since, very successfully.

Mr. Wier. What portion of your entire membership is employed in the Great Lakes?

Mr. Van Buren. We do not have too many people out there. The only ones we have out there are those car ferries owned and operated by the railroads. We would have had more if it had not been for this decision. We have a combine out there called the Lake Carriers Association, which is spending lots and lots of money to keep the men employed on their vessels from organizing. Those were the men who were in the group of the six companies where we could not get recognition from the Board, and they classed us as supervisors and said we did not come under the act, and they would not hold an election.

Mr. WIER. Are your people pretty well organized on the east coast, on the Gulf, and on the Pacific coast?

Mr. VAN BUREN. Yes, sir.

Mr. WIER. Eighty percent?

Mr. VAN BUREN. Yes; more than that.

Mr. WIER. More than that. We come now to this question of the Taft-Hartley Act. All of these men were enjoying similar contracts without any interference by Government in your bargaining up until the passage of the Taft-Hartley Act?

Mr. VAN BUREN. Yes; and we have those contracts yet, but the only thing is when we go in to renew them, as I said before, in some instances, we had to give letters of indemnity because we were trying to get a preference of employment. We could not get the closed shop; they would not give us that, but they would go along with the preference of employment rule, but we had to give a letter of indemnity.

Mr. WIER. Did you ever have trouble over the masters and mates in collective bargaining?

Mr. VAN BUREN. They never raised the question that we were not entitled to be recognized in collective bargaining. We never knew we were placed as such a big boss as we are today.

Mr. WIER. After the passage of the Taft-Hartley Act, as I interpret your story, you took that to the employers there and asked them for a renewal, and to change the conditions in them?

Mr. VAN BUREN. That is not correct.

Mr. WIER. You made mention of the Great Lakes.

Mr. VAN BUREN. We got turned down there. We had the railroad operators, and we never had any trouble there.

Mr. WIER. Where did you have the trouble?

Mr. VAN BUREN. The bulk carriers.

Mr. WIER. On the Great Lakes?

Mr. VAN BUREN. Yes.

Mr. WIER. That is what I am talking about.

Mr. VAN BUREN. We never had any contract. We have some excursion boats there.

Mr. WIER. I would like to get together with you here and find out where we are going. Some place in your organizational field you went to renew an agreement, as I understand?

Mr. VAN BUREN. To renew an agreement; yes.

Mr. WIER. And the employer said, "No, we are not going to deal collectively with you from now on"?

Mr. VAN BUREN. That is right.

Mr. WIER. You had not recognized the Taft-Hartley Act carried the indication of nonforemen; you have not recognized that yet?

Mr. VAN BUREN. We were told a long time ago, when the law was passed we did not come under the act because we were foremen.

Mr. WIER. Who told you that?

Mr. VAN BUREN. We had counsel tell us that when it was first enacted.

Mr. WIER. And you tried to renew the agreement and the employer said, "No," and you wound up before the National Labor Relations Board?

Mr. VAN BUREN. That is right.

Mr. WIER. Let me ask you this: If you people are eliminated from the provisions of the National Labor Relations Board, how about the chief engineers on all the boats?

Mr. VAN BUREN. They are, too.

Mr. WIER. They are not members of the union, your union, though, are they?

Mr. VAN BUREN. That is a separate organization. They are limited.

Mr. WIER. Did the National Labor Relations Board draw a line of demarcation between those who could enjoy the freedom of organization, and those who could not? Did they draw a line some place, or did they just say the chief engineers, the masters, mates, and pilots?

Mr. VAN BUREN. In their decision with us they said we were licensed deck officers, in substance, and therefore we were supervisors or foremen.

Mr. WIER. This is going to come on the House floor—I will conclude with this—I know they are going to attempt to put this in the bill, because it has been so heavily stressed and I want to get all the information I can as to the status of it, and I would ask you to file with the chairman a copy of the decision of the National Labor Relations Board in relation to their decision.

Mr. KELLEY. Without objection, it will be made a part of the record.

Mr. WIER. That is what I want; yes.

Mr. VAN BUREN. This is the only copy I have.

Mr. WIER. Will you have a copy made?

Mr. VAN BUREN. Yes, I will do that.

Mr. WIER. That is, unless you want to go by default.

Mr. VAN BUREN. I want to get it in.

Mr. WIER. Yours is the first case that has a good groundwork. If you want to be returned to the status of a worker instead of a boss——

Mr. VAN BUREN. I will get it to you. I will have a lot of copies made.

Mr. WIER. And give us some ammunition. I have never heard of this status before. That is all.

(The decision referred to will be found in the appendix following close of today's testimony. See p. 1112.)

Mr. KELLEY. Thank you very much, Mr. Van Buren.

Mr. VAN BUREN. You are welcome, Mr. Chairman, and I want to thank the members of the committee for listening to me.

Mr. KELLEY. Mr. Oliver? Mr. Oliver is president of the International Federation of Technical Engineers, Architects and Draftsmen's Union.

Mr. Oliver, do you want to read your statement, or do you want to summarize it?

Mr. OLIVER. I would like to read it, if I may.

Mr. KELLEY. If you insist, but it is very long.

Mr. OLIVER. Mr. Chairman, if there is no objection, I would like to file the statement and only comment on it briefly.

Mr. WIER. I was going to say, Mr. Chairman, I have some knowledge of their difficulties since the Taft-Hartley Act, and it is closely related to the question brought up by the last witness.

In other words, the Taft-Hartley Act says supervisory employment is not included and, I think, that is the thing you are interested in.

Mr. OLIVER. Yes, sir.

Mr. Wier. So, I think, if he lays some stress upon what the Taft-Hartley Act has done as to making determinations, and what the Taft-Hartley Act recognizes, I think that will cover your field.

TESTIMONY OF STANLEY W. OLIVER, PRESIDENT, INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS, AND DRAFTSMEN, A. F. OF L.

Mr. Oliver. Mr. Chairman and members of the committee:

Under the Taft-Hartley Act, clauses were inserted which defined professional employees. They were defined in these terms:

> (a) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution—

and so forth.

And then the act states that the National Labor Relations Board shall never include people in this category with nonprofessional people in the same collective bargaining unit.

The way that is worked out, as far as our organization is concerned—and we represent engineers, architects, draftsmen, and other types of technical personnel—is what we have a large design office the National Labor Relations Board has to come along and decide which of the technical personnel are professional and which are nonprofessional, and find out whether all the people want to be in one bargaining unit or not, and if they do not, to hold separate elections. This provision was inserted almost wholly as a result of the activity of the engineers' joint counsel, which is an employer group which represents a number of the professional societies. I happen to belong to three professional societies myself, and I do not believe they should represent me in matters that involve working conditions and conditions of employment. To have this program is absolutely nonsensical.

For example, time-study men in plants are one group of people that we quite often represent. Those time-study men are former mechanics of some kind, and quite often machinists, or apprentice machinists, and certainly they could not be considered professional, and none of them are ever college-trained people; and yet, during the legislative history of the Taft-Hartley Act there was an attempt made by the employer group to call them supervisors. Time-study employees are those who go around with stop watches and determine the rates of pay by which other people earn their money, based on the way in which they work. That part of it was thrown out in conference, but somebody got the idea these people were professional, and so the NLRB has been required to hold that they are professional, so that when we get two groups in one of our design offices, professional and nonprofessional, of all things, the time-study people are in the professional, and it does not make sense.

Another thing about it that does not make sense is that all these people are technical people. They are doing similar work, sometimes identical work. They have the same identical conditions of employment, and we think they ought to be considered together.

This has caused us considerable trouble. We just had a case in the F. W. Sickles Co. up in Providence, R. I.; the company carried on long drawn-out litigation, first with the National Labor Relations Board and then with the district court and then with the Supreme Court, and the NLRB was upheld in its original decision that time-study men, for example, were not supervisors.

Aside from this professional aspect that we have trouble with, we have trouble with these designations of some of our people as supervisors when they are not, in fact, supervisors. Engineers quite often have technical control over work, but they do not supervise anybody. They do not have any right to hire and fire them, and they have no administrative responsibility. But they have technical control over a job, because they determine what job should be done and how it should be done. Yet there is a continual attempt by men in their groups to have them classed as supervisors, not because they are supervisors, but because they want to have them classed that way.

So we are opposed to the inclusion of a separate definition of professional employees. We think that all nonadministrative and nonexecutive people who are wage and salary employees should have the right to organize and to be grouped into logical collective-bargaining groups. We also think that supervisors should have the right to self-determination in organizing. I include there bona fide supervisors.

A lot of people are trying to compromise on that. They say, "Yes, supervisors should organize, but they should not be permitted to organize in the same unions that their subordinates are organized in."

I do not think that holds water, either. My organization is opposed to that. We do not think that the Government should tell people who should represent them, any more than they should say, for example, that an attorney who customarily represents employers may not by law represent employees. I think that every person who works for a living should have the right to determine which union, or whether any union, should represent him.

In addition to the points which I have made in my statement, that about summarizes my position, Mr. Chairman.

Mr. KELLEY. Do you have any questions, Mr. Bailey?

Mr. BAILEY. No questions, Mr. Chairman.

Mr. KELLEY. Mr. Jacobs.

Mr. JACOBS. I am hardly in a position to ask the gentleman any questions, since I did not show him the courtesy of being in when he read his statement.

Mr. OLIVER. Mr. Jacobs, at the request of the Chair, I did not read my statement.

(Mr. Oliver's prepared statement is inserted at the close of his testimony.)

Mr. JACOBS. I did not hear what you said; so it would not be fair to ask any questions.

Mr. KELLEY. Mr. Wier?

Mr. WIER. Yes; I want to review this field, because I have some interest and experience in it, and for your enlightenment, I will tell you something about the problem as I found it.

It is another one of those relationships to workmen, the exemption of foremen and supervisory employees that we are going into. Now, Mr. Oliver, follow me and correct me if I am wrong.

Mr. Chairman, I went into the General Mills, who have quite a large-sized mechanical division. I went into that under the Wagner Act and organized about 55 technical engineers, draftsmen, and affiliated workers. Management demanded an election, and we had the election covering that department. The election was held and we won it by a substantial majority. We presented management with a contract. Management began to negotiate with us, and in the very opening stages of the negotiations, management said, "Now, here, out of all these men that you cover in your contract, we maintain exemption for all of the heads of the departments."

The question came for hearing before the National Labor Relations Board as to the exemptions under that contract. And in 99 cases out of 100, management and the union reached an agreement as to who had authority under the National Labor Relations Board to hire, fire, and was a part of management. There was no disagreement under that.

Beyond that, we covered the rest of the employees and secured a good agreement.

Now, under that same process today, there would have been about 12 of those employees who were eligible under the Wagner Act to become members of this union who today would be exempted from it.

Is that correct?

Mr. OLIVER. That is about the average.

Mr. WIER. That is the average. Now, let me ask you another question. If I get the information correctly, in the Eightieth Congress I think there was a gentleman sitting here who happend to be a member of one of the engineering societies, was there not, a Member of Congress, who initiated this particular section on the engineering field?

Mr. OLIVER. It is my understanding that this wording was initiated by the Engineers Joint Council. I have referred to the Engineers Joint Council in my statement. They are an organization which represents a number of professional societies, of which I am a member of one. That is, professional societies such as the American Institute of Electric Engineers——

Mr. WIER. Pardon me. But I think I am familiar with that. We know the engineers' societies, the bourgeois, were for this amendment. But the man who engineered it in Congress, I understand, was a member of one of those societies. He is not here. You were not in office then?

Mr. OLIVER. No. I have only been in office about 6 months.

Mr. WIER. Well, this might be news to you. But he is not here now; so they will not have that help on the floor.

But I want to say that I join in saying that this Taft-Hartley Act did go far afield, and the National Labor Relations Board followed suit by their decision as to who was eligible under that professional title. And I want to be of some help to you in clarifying that.

Mr. OLIVER. Thank you.

Mr. WIER. In accordance with the old Wagner Act. That was far enough.

That is all.

Mr. KELLEY. Thank you very much, Mr. Oliver.

Mr. OLIVER. Thank you.

(Mr. Oliver's prepared statement is as follows:)

STATEMENT BY STANLEY W. OLIVER, PRESIDENT, INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS, AND DRAFTSMEN, A. F. OF L., RELATIVE TO H. R. 2032, THE NATIONAL LABOR RELATIONS ACT OF 1949

The membership which I represent is composed of technical and professional engineers, architects, scientists, as well as allied subprofessional workers employed throughout the United States and the Territories. About 20 percent of our members are employed in engineering capacities by various city, county, State, and Federal governments, and the remaining 80 percent are employed in private industry. Most of these members are college graduates or have equivalent technical experience. Many are registered professional engineers under their respective State registration laws.

My purpose in appearing before you is to discuss those features of the present Labor-Management Relations Act which affect "professional" employees. I refer specifically to section 2 (12) and to section 9 (b) (1) of Public Law 101, Eightieth Congress.

Section 2 (12), which is a definition of the term "professional employees," states that—

"(12) The term 'professional employee' means—

> "(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
>
> "(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)."

Section 9 deals with "Representatives and Elections." In subparagraph (b) of that section it is stated that—

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit."

The enactment of such legislation in 1947 placed a new definition on the word "professional," a definition designed to include far more than the three commonly referred to as the learned professions of theology, law, and medicine.

In the engineering world, professional engineers are those engineers who have been licensed under their respective State laws to offer their technical services to the public on a fee basis. These engineers, however, are not employees, do not have employer-employee relationships and, thus, are not considered in any legislation designed to promote good labor-management relations. There is another small group of upper-bracket engineers who probably consider themselves in a professional category, who are employed by large industrial firms on a consulting basis. With few exceptions, however, such engineers also have bona fide executive or administrative functions and they, also, are automatically excluded from labor legislation since definitely they are management personnel. Self-employed engineers, as well as bona fide executives and administrators, should not be named and defined any more than bank presidents and other top-management personnel in legislation dealing with labor-management relations. Thus, in the language of the engineering profession which I understand those engineers who are employees, whether college graduates or not, should be accorded the same treatment in relations with employers as all the other employees.

Many technical engineers, probably for reasons of personal ego, are prone to consider themselves in the same category with professional doctors, lawyers, dentists, etc. An analysis of this situation, however, reveals that not more than about 5 percent of all engineers ever become actively engaged in direct consulting engineering work on a professional-fee basis and the remaining 95 percent serve their entire careers as employee engineers. The exact opposite is true, of course, in the case of professional doctors, lawyers, and dentists.

Prior to enactment of the Labor-Management Relations Act of 1947, no exclusion, either real or implied, existed for employees in technical categories, professional or nonprofessional. During the years of operation under the Wagner Act, however, the old National Labor Relations Board gradually established the policy wherein technical engineering employees having similar conditions of employment, regardless of the degree of difficulty and educational background required for specific jobs, were all included in the same collective-bargaining units. The Board, on numerous occasions, excluded from such units nontechnical employees such as clerks, timekeepers, stenographers, typists, etc. Our organization accepted that arrangement as being the most practicable and desirable, free from the standpoint of both employers and employees, for collective-bargaining purposes. Our organization does not seek to represent the nontechnical clerks and stenographers since, under the American Federation of Labor, they belong with the Office Employees' International Union.

Under the old National Labor Relations Board a number of decisions were rendered establishing a precedent wherein technical and professional engineers and allied workers were grouped separately from clerical and production workers. Several examples are quoted as follows:

Chrysler Corp. (1 N. L. R. B. 164, February 14, 1936): The designing engineers were considered a homogenous, professionally trained group, distinguished in function and training from clerical and production workers on the one hand, and from electrical engineers on the other. This group thus included body designers, including lead-off men, lay-out men, checkers, detailers, and beginners, engineering designers, including tracers as well as groups just mentioned; tool, special machine and die designers, including process engineers as well as the groups first mentioned, and except such who had authority to hire or discharge. All these were ruled to constitute an appropriate unit for purposes of bargaining.

Underwood Machinery Co. (59 N. L. R. B. 42): Engineering department personnel were excluded from industrial unit of employees of special machinery and steel fabricating plant upon finding that engineers are college graduates and work on salary basis at much higher rate than production and maintenance employees, and that draftsmen are also technically trained for their positions and work under the same conditions as the engineers.

American Bridge Co. (67 N. L. R. B. 776): Appropriate unit determined to consist of draftsmen, tracer draftsmen, squad leaders, and civil and mechanical engineers of structural steel and bridge fabricating plant.

A precedent for including all technical engineering employees in a single collective-bargaining unit has long been established on the railroads, administered under the Railway Labor Act. It is customary for the National Mediation Board to include in the same unit, "Technical engineers, architects, draftsmen, and allied workers, including such job titles as assistant engineer, instrumentmen, rodmen, chairmen, draftsmen, and other engineering and technical employees in the maintenance of way and structures, signal, and mechanical departments of the carrier." In this connection, the Railway Labor Act is customarily cited as an instrument of successful labor-management relations.

At the present time we have under contract technical engineers, architects, draftsmen, etc., earning wages varying all the way from a minimum of $112 a month to well over $600, covering the nonexecutive, nonadministrative positions. Those in the lower brackets, of course, are beginners—mostly high-school graduates who are in-service trainees learning to become draftsmen or engineering aides. Many of them later enter college for formal training and become qualified engineers. In the higher brackets many of our members have masters' and doctors' degrees.

In private industry, engineers employed in the design offices vary in numbers from a handful to several thousand or more. The salary levels in each office vary all the way from the minimum to the maximum figures quoted above, depending upon responsibility of the particular jobs and the education and experience required of the incumbents.

Prior to 1947 it was customary to consider all such engineering employees in an office as constituting a single bargaining unit and contracts were negotiated both by our organization and by others, as well, customarily covering the entire group. Since the passage of Public Law 101, however, the NLRB has had a mandate to draw a line through the engineering office to decide which of these people are professional and which are nonprofessional employees and some of the jobs are necessarily border-line cases and may land on either side of the line. Then, it is directed that the two groups thus formed be considered in separate negotiations. This is forced on the employer as well as the union and may work to the disadvantage of both. Our experience has been that where formerly we encountered little trouble in carrying on peaceful and orderly negotiations with employers, division of the bargaining unit under Public Law 101 has served to encourage lengthy arguments with employers, resulting in lowered morale, less production, and general chaos in the very vital sections of the plants upon which direct production activities depend for satisfactory operation.

It has been the contention of our organization that the Congress should not pass legislation encouraging the division of logical bargaining units. Elimination of the language of section 2 (12) and that portion of section 9 dealing with professional employees is a proper solution to the problem. We believe that a reversion to the Wagner Act will work to the ultimate advantage of both engineers and employers. Such legislation would permit the National Labor Relations Board to render its decisions on the same basis that it did prior to 1947.

It is my understanding that sections 2 (12) and 9 (b) (1) were included in the Taft-Hartley Act largely at the request of an organization known as the Engineers' Joint Council, a coordinating body representing a number of professional engineering and scientific societies. This group has suggested the same provisions be continued. The most active of the professional societies attempting to block the organization of engineers in legitimate employee groups has been the American Society of Civil Engineers. Mr. E. Lawrence Chandler, assistant secretary of the American Society of Civil Engineers, is also chairman of a panel representing the Engineers' Joint Council, and testified in their behalf a few days ago before this committee. For the committee's information I might point out that, according to the Bureau of Labor Statistics, United States Department of Labor, there are a total of about 95,000 civil engineers in the United States. About half of all the civil engineers are employed by various Federal, State, and local governments and are not involved in the legislation under consideration. About 45,000 are employed in executive and administrative positions and also are not under consideration. It is from this latter group that most of the professional society members come, and they represent employer engineers, consulting engineers, construction superintendents, college professors, etc., and others who are not covered, and properly so, in legislation dealing with labor-management relations. However, their organization continues to inject its views into legislative matters affecting the welfare of employee engineers who, largely, work for their members. It should not be misconstrued that they are a bona fide employee group for such is not the case.

In furthering the interests of the employers they represent, the professional societies continually spread the canard that sections 2 (12) and 9 (b) (1) of Taft-Hartley are the only saving clauses which save engineers from being forced to join unions along with "janitors, roustabouts, window washers, and the like." Nothing could be further from the truth. The organization which I represent has been in existence for over 30 years representing engineers in collective bargaining. It has always been, and still is, an organization of engineers, run by engineers, and for engineers. Many of the problems of engineering employees, however, are identical to those of other people who work for wages or salaries. This is true particularly of legislative matters—hence our affiliation with the American Federation of Labor is of great benefit to the engineering profession as a whole because of the assistance, cooperation, and coordination effected through that affiliation. Such affiliation, however, does not mean that we are not a separate and distinct organization with complete autonomy and authority to manage our own affairs insofar as they affect the welfare of engineers.

In connection with the statement presented to this committee by Mr. E. Lawrence Chandler, representing the Engineers' Joint Council and a number of other professional societies, I would like to submit several observations. I, myself, am a member of the American Institute of Electrical Engineers, one of the professional engineering societies which endorsed the statement presented by Mr. Chandler. I have been a continuous and active member of the organization since I joined as a student engineer in 1935. As a matter of fact, in my senior year in college I was student chairman of the campus branch of the AIEE. Without doubt, most of the technical progress which has been made in the field of electrical engineering in the United States has been coordinated and aided by the activities of the American Institute of Electrical Engineers. The same thing may be said for the mechanical engineers, the civil engineers, and the other professional societies.

It is noteworthy, however, that the professional societies, interested primarily in advancement of technical progress in their respective fields, are, in the main, dominated by employer groups. The reason for this is quite obvious. Large corporations engaged in building or manufacturing engineered products are naturally interested in improving the quality of the goods they produce. Thus, they are interested in seeing the particular branch of engineering with which they are concerned advance to the highest possible level. It is common practice in many industrial plants for engineers in the higher-salary levels, particularly, to be given time off with pay to attend the conventions and meetings of the professional societies. Some companies pay the dues and expenses of their society members. Engineers serving as officers in the local branches of the societies oftentimes have secretarial and mailing facilities of their employers placed at their disposal, so that actually many employers are, in fact, closely identified with the societies themselves—if not officially, at least in practice. In addition, such activities, of course, furnish good and legitimate advertising for the products the companies manufacture and sell.

When it comes to representing engineers on an economic basis, I believe we should draw the line. I do not believe that any group which is so closely supervised by employers and employer engineers, should be given much credence when it comes to determining what kind of working conditions should be enforced for those engineers who are employees.

As I pointed out earlier, I am a member of the American Institute of Electrical Engineers. The AIEE has endorsed a statement made to this committee relative to proposed legislation affecting electrical engineers. I would like the committee to know, for the benefit of the record, that I, as a member, have not been asked for an opinion as to how I think the labor legislation should be amended or repealed and I do not know of any other member who has been asked for an opinion. The same condition prevailed 2 years ago when the Labor-Management Relations Act of 1947 was under consideration by the Congress. The president of the AIEE at that time, J. Elmer Housley, was also an executive of the Aluminum Corp. of America. Under his direction a similar statement was made before the committees of Congress, placing AIEE on record favoring discrimination between professional and nonprofessional engineers in relation to collective-bargaining rights. Approximately 1 month after the testimony had been presented to Congress, Mr. Housley sent out a questionnaire to all members to find out what they thought should be recommended for testimony. At that time I sent a letter of protest to President Housley but, of course, it was too late. The damage had already been done.

So that there may be no question as to whom Mr. Chandler was speaking for in his testimony before this committee several days ago, I am including herewith the names and business connections of recent presidents of a number of the various professional societies which have presumed to come here and tell the committee what the employee engineer should have in the way of protection:

American Institute of Electrical Engineers: 1947–48, Blake D. Hull, retired chief engineer, Southwestern Bell Telephone Co.; 1946–47, J. Elmer Housley, district power manager, Aluminum Corp. of America; 1944–45, C. A. Powel, assistant to vice president in charge of engineering, Westinghouse Electric Corp.; 1943–44, Nevin E. Funk, executive vice president, Philadelphia Electric Co.; 1941–42, David C. Prince, vice president, General Electric Co.

American Society of Civil Engineers: 1948, Richard E. Dougherty, vice president and assistant to president, New York Central Railroad; 1947, Edgar M. Hastings, chief engineer, Richmond, Fredericksburg & Potomac Railroad; 1946, Wesley W. Horner, consulting engineer, Horner & Shifrin, St. Louis, Mo.; 1945, John C. Stevens, consulting engineer, Stevens & Koon, Portland, Oreg; 1943, Ezra B. Whitman, Whitman, Requardt & Associates; 1942, Ernest B. Black, consulting engineer, Black & Veatch, New York City.

American Society of Mechanical Engineers: 1948, E. G. Bailey, vice president, Babcock & Wilcox Co.: 1947, Eugene W. O'Brien, vice president, WRC Smith Publishing Co.; 1946, E. Robert Yarnall, president, Yarnall-Waring Co., Philadelphia; 1945, Alex. D. Bailey, vice president, Commonwealth Edison Co.; 1943, Harold V. Coes, vice president, Ford, Bacon & Davis, Inc.; 1942, James W. Parker, president, the Detroit Edison Co.

Obviously, the continued attempts of employer groups to weaken and divide engineers into separate units is intended to result in their effective elimination from coverage under the act through weakened bargaining power and consequent company domination. There is always an attempt by these management groups to speak in behalf of engineers employed in industrial establishments. It has been charged by them that the duties of technical engineering employees engaged in the development of industrial processes or the design of equipment or products may be such as to make necessary continuous and prolonged application of their individual services. It has been stated by management groups that the very nature of those services is such that the employee must be granted "prerogatives" such as access to various portions of the plant at all hours, the right to work with continuing shifts, as cases may demand, latitude as to hours and location of employment, and freedom of judgment as to the best method of carrying out special assignments. I want to say here and now that such arguments are pure nonsense and are based on nothing more solid than folklore. In most cases in industry where technical engineers are employed, their hours of work are easily adjusted to meet occasional abnormal conditions, just as easily as are the hours and conditions of employment of production employees who are building the equipment designed by the engineers. Whenever any employee, whether he is an engineer or a craftsman, cannot complete his work regularly during the normal scheduled hours of work, then it is reasonable to assume that another employee is required to give him some assistance. If it is necessary to work longer hours as an occasional thing, then an engineering employee should be entitled to all of the usual provisions accorded other employees in order to prevent exploitation by management.

There is also a serious effect upon the morale of any group of employees who are given separate treatment as to wages and hours of work from other employees located in the same plant or general area, e. g. in many plants there are technical, professional and subprofessional employees who work adjacent to skilled artisans under almost identical working conditions. It is common practice of employers to place the technical and professional employees on weekly, monthly or annual salaries where, allegedly they have the advantage of a steady income (so long as they are employed). There is little advantage in salaried employment, however, if it serves merely as a cloak for longer hours of work or lower rates of pay. Another practice is to confer fancy titles on mediocre jobs which infer executive or administrative functions. The proposal of the professional societies which has been made before this committee is that the language of Public Law 101 be retained, which not only seeks to divide the treatment of technical engineering employees from that accorded other employees in the plant; but seeks to divide them among themselves. We are opposed to any such consideration. We are opposed to the deliberate division of technical engineering employees as suggested by the employers.

In closing, let me sum up by stating that we endorse the principle of repealing Public Law 101; we endorse the reenactment of the Wagner Act.

I wish to thank the committee for affording me an opportunity to appear before it.

Mr. Kelley. Mr. Mitchell, president of the National Farm Labor Union.

TESTIMONY OF H. L. MITCHELL, PRESIDENT, NATIONAL FARM LABOR UNION, A. F. OF L.

Mr. Mitchell. Mr. Chairman, I would like just to make a very brief statement, submit my full statement to the committee for the record, and show the members of the committee this motion picture that we have prepared to show you.

We are prepared to show you a 15-minute motion picture involving the Di Giorgio strike and the conditions under which agricultural workers live throughout the country. I think it is appropriate to the purposes of this hearing, inasmuch as these members have been victimized by the Taft-Hartley Act. I would like just to read two paragraphs of my statement, if I may.

Mr. Kelley. Very well. Proceed.

Mr. Mitchell. I want to bring to your attention the use of the Taft-Hartley Act in an attempt to break the longest strike of agricultural workers in American labor history. On Independence Day, 1948, the 1,100 men and women employees of the Di Giorgio Fruit Corp., in Kern County, Calif., were notified that an injunction under the Taft-Hartley law had been secured by the National Labor Relations Board in behalf of their employer.

The Taft-Hartley Act specifically excludes any agricultural worker from its provisions. Because these members of the National Farm Union are agricultural workers, they were excluded by the Taft-Hartley Act from using the National Labor Relations Board. But while the Di Giorgio strikers cannot by law enjoy any of the Taft-Hartley benefits, they have had a temporary injunction hanging over their heads for the past 8 months.

Thus the great majesty of the law which a wise man once observed "lets poor men and rich men alike sleep under bridges," has found its parallel in this application of the Taft-Hartley Act.

The committee has heard one side of this strike involving the use of the injunction in agricultural disputes from a former witness, the Secretary-Treasurer of the Associated Farmers of California, Inc., who is known among California farm workers as "Pick Handle Hank" because of his strike-breaking activities in the past.

If you will bear with me, I would like the operator to show you this film.

(Whereupon, a film, entitled "Poverty in the Valley of Plenty," was presented.)

Mr. Mitchell. There is just a little bit more that I would like you to see in connection with the Taft-Hartley Act, in other instances.

Mr. Kelley. How long will it last?

Mr. Mitchell. Just a minute.

Mr. Kelley. Very well.

(Whereupon, a film was presented.)

Mr. Kelley. Mr. Bailey, do you have any questions?

Mr. Bailey. No questions.

Mr. Kelley. Mr. Irving? You were not here. Do you have any questions to ask Mr. Mitchell?

Mr. Irving. I have no questions. I want to say that I have not receded from my position on including the agricultural workers in the Fair Labor Standards Act.

Mr. Kelley. I agree with you.

How about you, Mr. Jacobs? Have you any questions?

Mr. Jacobs. No, I believe not.

Mr. Kelley. Mr. Wier?

Mr. Wier. I think we were considering this very problem in the wages-and-hours bill. It became a problem then as to whether we were going to include this kind of institution. Well, we have this bill off our hands, and now we come to this one.

I heard Congressman Smith say one day in the course of our discussions on the wages-and-hours bill that he had visited this situation out on the Di Giorgio Farm because it came in the argument. I never did hear any report. Did he ever make a report, Mr. McConnell?

Mr. McConnell. What was that, Mr. Wier?

Mr. WIER. During the discussions of the wages-and-hours bill, we had this farm situation up, when this farm came into the picture a couple of times, and Congressman Smith made some statement one day that he had visited this farm as a representative of the Labor Committee.

Mr. McCONNELL. I do not recall. I know that Bakersfield, mentioned here, is the home town of Mr. Werdel. I thought he was the one who was most interested in it.

Mr. WIER. No, Mr. Smith, I think, was delegated to go out there during the heat of the controversy.

Mr. MITCHELL. I do not know if Mr. Smith was there, Mr. Wier. If any congressional committee came, none of our people was contacted by them, to the best of our knowledge.

Mr. WIER. Then I take it for granted, Mr. Mitchell, that you feel that you have been unjustly treated in being eliminated from the provisions of the Labor Act, and your management has been eliminated from it, and you feel that this kind of worker ought to be given the protection of the law?

Mr. MITCHELL. I think so sir. It seems to me that the people who work on these farms—I would like to say that it is in the statement there are 17,742 large-scale farms in the State of California alone, and they produce 66.4 percent of all agricultural production in that State. The size of those farms averages 1,248 acres, whereas the 100,000 or so other farms in the State average about 12 acres. Now, that is the situation you are up against. Throughout the United States, there are 102,136 class I farms, so classified by the Department of Commerce, Bureau of the Census.

On those farms, 53 percent of the hired labor, or about 1,250,000 workers, are employed.

Mr. WIER. When you leave this Di Giorgia Farm on its tremendous scale, where else have you got a problem of the kind? This is a pretty good illustration. Is this the only place where you have a problem with industrial relations? Maybe you do not have them, but there are contracts out there between management and labor covering farms of this type.

Mr. MITCHELL. No, sir. To the best of my knowledge, there is not but one contract in the United States that covers agricultural labor, and that is up in south New Jersey.

Mr. WIER. How about Salinas, Calif.?

Mr. MITCHELL. There are no contracts that cover agricultural workers as such. They do cover men who pack the fruit and vegetables.

Mr. WIER. That is what I am talking about.

Mr. MITCHELL. There are some contracts of that type. I think they are held by the CIO, or the teamsters union.

Mr. WIER. There are contracts overing these types of workers?

Mr. MITCHELL. Yes, with the exception that they are not with the ones that do the work on the farms. They are with the ones who are in the packaging and processing period.

Mr. WIER. I see.

Well, I wish you luck.

Mr. JACOBS. Will you yield?

Mr. WIER. Yes. I am through.

Mr. JACOBS. Do you happen to have a copy of the decision of the Board in this case?

Mr. MITCHELL. Yes; I do.

Mr. JACOBS. Or was there a decision preceding the injunction?

Mr. MITCHELL. No. The Board applied for an injunction in the Federal court which was granted, and then there were hearings held by the Board, the regional representatives of the Labor Board.

Mr. JACOBS. What was it? An unfair labor practice charge?

Mr. MITCHELL. Yes, that these workers whom you saw in the pictures there—they brought in the Mexican workers, or strikebreakers, and produced a crop. Well, our pickets followed the trucks loaded with produce, and rode carloads of wine to their destination. And they persuaded the other unions not to handle those products. It was on that basis that they issued the injunction.

Mr. WIER. That was a secondary boycott.

Mr. MITCHELL. Claiming it was a secondary boycott. There were several other unions who cooperated.

Mr. JACOBS. It was under section 8 (b) (4) (A), I imagine.

Mr. MITCHELL. I do not know anything about that.

Mr. WIER. That is all I wanted to ask, Mr. Chairman.

Mr. JACOBS. Do you have a copy of the court decision? Can you cite it to me? I can find it.

Mr. MITCHELL. I can get that for you. I do not have it.

Mr. JACOBS. If you would, I would appreciate it. I would like to read it.

Mr. MITCHELL. Yes. I would be glad to furnish you with that.

Mr. JACOBS. That is all.

Mr. KELLEY. Mr. McConnell?

Mr. MCCONNELL. No questions.

Mr. KELLEY. Very well, Mr. Mitchell. Thank you very much.

Mr. MITCHELL. Thank you very much for letting me make this presentation.

Mr. KELLEY. Very well.

(The balance of the prepared statement of Mr. Mitchell is as follows:)

I would like to tell you a few of the facts in this case since it involves members of the National Farm Labor Union, A. F. of L.

Early in 1947 a group of workers employed by the Di Giorgio Fruit Corp. began organizing on a ranch which covers 18 square miles. They made application to the National Farm Labor Union, an affiliate of the American Federation of Labor, for a charter as a local union.

After the local union had 858 paid members who were employed by the Di Giorgio Fruit Corp., they appointed a committee to meet with officials of the corporation to discuss their grievances. The corporation employment figures which were published later showed that there were 1,345 employees on the ranch. The local union therefore represented a clear majority of employees of the big farm.

The grievances of the workers were similar to those that normally arise in an unorganized factory. Indeed, the Di Giorgio Fruit Corp. is a typical example of the factory in the field type of farm operation. It is one of 17,742 such farm factories in California that produce 66.4 percent of the total farm production in that State. According to the Bureau of Census reports for 1945, there are 102,136 such class I farm units in the United States and they produce 24.2 percent of all food and fiber products grown in the United States. I cite these figures to show that Di Giorgio is first of all not a small farmer, nor is he alone in being one of the largest. It just happened that his workers were among the first in California to respond to an organizing campaign supported by the American Federation of Labor.

The grievances the workers wanted to discuss with their employer largely concerned working conditions on the large ranch. Among their grievances was a practice in use whereby a foreman had the sole right to hire and fire, and a worker was subject to discharge regardless of the number of years he had been employed on the ranch. Skilled irrigators complained that they were employed on 12-hour shifts without relief and were only paid for 11 hours. Other workers objected to overcrowding on company trucks which transported them to and from the fields, and to the lack of drinking water or toilet facilities in the fields and packing shed. The most serious grievance was a practice of calling in workers and holding them at the ranch headquarters often for as long as 4 hours, and then telling the workers there was no work for them that day but to return the next. Other men complained that they worked 14 hours and sometimes 24-hour shifts. While the workers wanted an increase in wages, the rates of 85 cents an hour, except for certain classifications, were about on a par with those paid other farm workers nearby.

The corporation officials refused to meet with a committee of their employees. The Kern County Central Labor Union with headquarters in Bakersfield, which represented all A. F. of L. unions in the county, intervened but the council too was rebuffed. The local union sent an appeal to Mr. Joseph Di Giorgio, the owner, who has homes in San Francisco, Florida, and on Park Avenue in New York. Mr. Di Giorgio never replied to the registered letter, although his receipt was returned.

On September 31, 1947, over 700 of the employees of the Di Giorgio Fruit Corp. met in the Grange Hall in the community of Weedpatch. The sheriff of the county, Mr. John Lousalot, was present. A strike vote was taken. The workers voted unanimously to walk out the following day.

On October 1, 1947, over 1,100 employees stopped work. No one remained at work except the foremen, supervisors, and a few company stooges. There were less than 300 workers on the job when I arrived there the second day. A group of Mexican nationals working under Government contract were forced by local officials of the United States Department of Agriculture to return to work on the threat of being deported to old Mexico. These foreign nationals were removed only after a series of protests by officers of the American Federation of Labor addressed to our State Department.

The first day of the strike the pickets observed a blue Cadillac stopping at the ranch headquarters. They saw the president of the Associated Farmers, Mr. Robert Schmeiser, alight and go in to a conference with the corporation officials. Soon afterward there began a barrage of publicity, directed by an under cover publicity man known to be an agent of the Associated Farmers. The strikers were accused of being strangers and not employees of the Di Giorgio Fruit Corp. The strikers on and off the picket line began wearing their brass buttons bearing the name "Di Giorgio Fruit Corporation" and adopted a greeting to each other of "hello stranger." The local union offered to submit its records to any impartial agency to determine whether or not it represented the majority of Di Giorgio workers. The strikers were regular employees of the corporation. The average length of service on the ranch was over 4 years and many of them had been with the corporation for 10 years or more. The leader of the strike, James B. Price, president of the local, had been with the corporation for 9 years and was foreman of the packing shed at the time of the walk-out.

Following this the Associated Farmers prepared a brochure printed on slick paper and costing hundreds of dollars. This pamphlet entitled "A Community Aroused," purported to be a report of a committee of citizens. It was immediately noted that the representative citizens were mostly members of the Associated Farmers, big-farm operators, ginners, businessmen, newspaper owners. The brochure reprinted in full a copyrighted newspaper column by Harold Ickes, former Secretary of the Interior, reporting the strike. This reprint was made without M. Ickes' permission and an attack was centered on statements made therein. Homes of supervisors were pictured as homes of contented workers. A small swimming pool was featured as one of the recreational facilities provided by the benevolent corporation for its 1,345 employees, when in reality the pool was kept locked for the use of corporation officials only.

After attempts to start a back-to-work movement, the Di Giorgio Corp. assisted by the Associated Farmers began recruiting strikebreakers, bringing them in under cover of darkness. Many of the Mexicans were imported from El Paso, Tex. The union, in cooperation with the Texas Federation of Labor, secured warrants for the recruiters of Mexican strikebreakers but the recruiters promptly skipped the country. The slums of nearby towns and cities were searched for strikebreakers. Winos and men with cauliflower ears were noticed on the trucks going through the picket lines. There were many Mexicans, whereas 90 percent of the strikers were Anglo-Americans. The labor turn-over behind the picket lines was very high, for the strikebreakers were inefficient farm workers. Decent men and women quit work when they found they had been hired as strikebreakers.

The United States Immigration Service made a number of raids on the ranch and rounded up illegal alien Mexicans known as wetbacks. Forty-six were apprehended in 1 day.

On March 22, 1948, Congressman Elliott of the Tenth District of California inserted in the Congressional Record a list of about 1,200 names, purporting to be the regular employees of the Di Giorgio Fruit Corp., who had prepared and addressed a letter to county sheriff, John Lousalot, stating that they were all satisfied with conditions on the Di Giorgio Ranch. It is significant that the list is headed by one of the company officials, Walt Paladino, who was busy recruiting strike breakers for the company at the time the letter was dated. It is also significant that the letter with this list of names did not appear publicly until March 22, 1948, whereas it is dated December 19, 1947. For the convenience of the committee I am submitting a copy of the list of names of strikebreakers, alphabetized and classified in accordance with names of Anglo-Americans and Mexicans. There are over 400 Mexican names listed. We suspect that if a thorough check were made it would be found that the vast majority of these Mexicans came directly from Old Mexico and never heard of the Di Giorgio Fruit Corp. prior to the strike.

In spite of many provocations there was little violence. The members of the union were taught that they would lose the strike if they resorted to violence. Following the arrival of a caravan of cars and trucks loaded with food sent to the strikers by A. F. of L. union members from all parts of California, there was an attack on the picket line at the ranch headquarters. A mob of 40 strikebreakers led by the personnel director of the corporation beat up 5 men. Warrants were secured for one or two of them identified as wielding the clubs. The sheriff's deputies, normally on duty, were nowhere to be found when the mob attack occurred.

Four strikers were arrested for cutting down some fruit trees which were located very near the heavily guarded ranch headquarters. They were held in jail on a $15,000 bail each for several days. Bail was reduced and later the cases were dismissed. According to the strikers who know all about the particular orchard, the trees that were cut were diseased, and since they were located so near headquarters, no one except persons employed by the corporation could possibly have done the cutting.

On May 17, 1948, when the strike was over 7 months old, there was an attempt to assassinate the entire leadership of the local union. Unknown gunmen fired into a private home in Arvin, Calif., a community located near the Di Giorgio Ranch. James Price, the local's president, was shot while presiding over a meeting of the strike committee. While Price lay bleeding profusely, a telephone call was made to the corporation's doctor, the only one available at the time, asking him to come and render first aid. The doctor refused. Price was badly injured and has not yet fully recovered. Governor Warren denounced this as attempted assassination and offered a reward for information leading to the arrest of the gunmen. The would-be assassins were never discovered. At that time I made a statement that although we had no idea who did the shooting, we suspected the Associated Farmers, the Di Giorgio Corp., or the Communists. The latter, we knew, had attempted to muscle in on the strike, without success.

Meanwhile, the Di Giorgio Fruit Corp. with the use of strikebreakers, many of them Mexican "wetbacks" recruited from Mexico, had produced a crop and began shipping it to market. The union pickets followed the trucks and also tank cars of wine to their destination and there persuaded other A. F. of L. union members to refuse to handle the products. On July 4, the Di Giorgio strikers were notified that the National Labor Relations Board, acting on behalf of the corporation, had been granted an injunction in the Federal district court on the basis of a secondary boycott. I understand the injunction was not formally docketed until July 15, but the news was received on the picket line on Independence Day 1948. This application of the penalties of the Taft-Hartley Act against agricultural workers without granting to them any of its alleged benefits, justifies its immediate repeal.

MAN TO MAN

(By Harold L. Ickes)

[From the New York Post, New York, N. Y., Monday, March 7, 1949]

As Members of the Fair Deal Congress have been doing figure skating on that patch of thin ice known as the Taft-Hartley Act, I have been expecting every day to see some soul, hardier than the rest, do an exhibit labeled "Di Giorgio." A long-drawn-out strike of farm workers against a corporation operating a fruit ranch covering 14 square miles in Kern County, Calif., throws an extraordinary light on how the provisions of the Taft-Hartley law can be used to protect and maintain a system of industrial feudalism.

Several times I have called attention to this struggle of farm workers to better their condition, and twice have had held over me a threat of legal action. The notorious Associated Farmers of California, with which the Di Giorgio Corp. is affiliated, has even gone so far as to reprint one of my columns in full (despite the fact that it was copyrighted) in an expensive brochure which, by one less tolerant than I, might have been regarded as an attempted smear. As for my involuntary contribution to it, I heartily recommend it as concise statement of the essential facts back of the Di Giorgio strike.

The walk-out occurred on October 1, 1947, when company officials turned down the workers' request for a hearing of their grievances. They had organized in the preceding spring, and had been chartered as a local of the National Farm Labor Union, an affiliate of the American Federation of Labor.

Mediation efforts of the Kern County Central Labor Council having failed, a direct appeal was made to Joseph Di Giorgio, head of the farm corporation. Mr. Di Giorgio had won respect by his amicable dealings with other A. F. of L. unions, and an open-minded hearing by him had been confidently anticipated. But no reply came, and 1,100 of the 1,345 Di Giorgio farmers stopped work. Picket lines were set up around the ranch, and the longest strike of farm workers in American labor history was under way.

At first the company tried to smother the strike with imported labor. The union has charged in hearings before the United States Senate that it even went to the extreme of hiring, in defiance of law, Mexican nationals smuggled across the border in the dead of night. Strong-arm methods failed to choke off a flow of supplies contributed to the strikers. The more bitter the company attack, the more solid became the support of the A. F. of L., whose president, William Green, made personal appeals on behalf of the strikers.

An attempt to smear the striking union as Communist-led was exploded in hearings by State authorities, and the union was given a clean bill of health. During this phase some gunman, whose identity is still unknown, shot through a window in an attempt to murder the president of the striking union, and very nearly did so.

The events leading up to the farm corporation's resort to the use (or misuse, according to the point of view) of the Taft-Hartley law, were summarized in a statement recently made to the Senate Committee on Labor and Public Welfare by President H. L. Mitchell, of the National Farm Labor Union:

"Between raids by the Immigration Service," he said, "which apprehended aliens on the ranch, the Di Giorgio Fruit Corp. managed to produce a crop with scab labor, and began shipping it to market. Union pickets followed the trucks and rode tanks of wine to their destinations, and there appealed to other A. F. of L. union members to refuse to handle the products."

It was at this point, its own efforts to crush the strike having failed, that the Di Giorgio Corp. fell back on the Taft-Hartley Act. Charging a secondary boycott, it appealed to the National Labor Relations Board for an injunction. Its lawyers argued that although farm workers are denied any benefits under the law, its penalties apply to them. Ironically, from the workers' viewpoint, it was on Independence Day of last year that the striking farmers were notified that the Federal court in Fresno, Calif., had issued an injunction forbidding them to secure the help of other union men and women through the refusal of the latter to handle Di Giorgio products.

Since then, the story has been chiefly one of litigation. Meantime, the strike goes on, with the farm worker seemingly at the short end of a grotesquely un-American doctrine "made in California," that while he is subject to the restrictive provisions of a law, he is ineligible when it comes to those which would protect him. At this distance, so far as the striker is concerned, it looks like a case of "Heads you win, tails I lose." A shell game by comparison would seem altruistic.

In view of the great respect for the law so far evidenced by the Associated Farmers of California, I hereby waive the protection of my copyright, and would be glad to have that group of liberty-loving Americans reprint this column in another brochure.

Mr. Kelley. Mr. Daggett, of the International Brotherhood of Paper Makers.

Mr. Wier Mr. Chairman, how about making a recommendation that the Labor Subcommittee recommend that this picture be shown on the floor of the Congress just previous to the vote on the Taft-Hartley Act?

Mr. Kelley. You do the recommending and see how far you get.

Mr. Daggett, are you going to read your statement or just summarize it? Would you prefer to summarize it a bit and leave it for the record?

TESTIMONY OF R. E. DAGGETT, DIRECTOR, MIDDLE ATLANTIC STATES REGION, INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, A. F. OF L., PHILADELPHIA, PA.

Mr. Daggett. Gentlemen of the committee, my statement deals principally with one situation in which the manufacturers testified here last week, giving their side of the situation. I felt it was essential that we have a statement on the record. Now, due to the fact that the company did testify here last week, there might be some questions you would have to ask. And whether I could summarize it any more quickly than I can read it or not, I would not be sure. It is not a long statement.

Mr. Kelley. I would appreciate it if you would just read the high points of it, Mr. Daggett.

Mr. Daggett. To begin with, as you may or may not know, the International Brotherhood of Paper Makers is a comparatively small union, but it is one of the oldest ones, and like the typographical union, a very democratic one. Everything is handled by the referendum vote, both in the writing of their bylaws, their constitution, and any changes in it, and the election of international officers.

It has been a rather conservative organization. It has rarely made the headlines until recently when the National Planning Association picked this organization and the paper industry of the west coast as their first case study in their series Causes of Industrial Peace. You have probably seen or heard of that.

Now, we had not planned an appearance before the committee until we learned of the testimony of the Paterson Parchment Paper Co., as submitted by Mr. Walter Richter, their personnel director, here last week.

As I said before, we then felt it was essential that we bring the facts concerning the strike at the Paterson Parchment Paper Co. to your attention, and correct some of the erroneous statements made by Mr. Richter, and also to show the committee how a company motivated by a desire to destroy a union, may operate, and also to express to you this organization's position on proposed labor legislation.

In 1945, we were certified by the National Labor Relations Board as the bargaining agent for all of the maintenance and production employees at the Paterson Parchment Paper Co. We negotiated a 1-year union-shop contract, and in each of the succeeding years, 1946 and 1947, due notice was given and a new contract negotiated.

Then, in 1948, we gave a 60-day notice as required by the contract and by the Labor-Management Relations Act of 1947. Mr. Richter in his testimony told you gentlemen that no notice was given. I have included here in my statement a copy of the notice which was given. I will not bother to read it, as long as you are in a hurry. But the notice is there. That notice is our customary notice that we have been using for a number of years, and has been ruled by the National Labor Relations Board as constituting due and sufficient notice of termination.

Following that, you will find the company's reply to that notice, signed by John R. Dufford, assistant general manager of the company.

We started negotiations on that new contract on or about June 15. Those negotiations continued for over 2 months. The expiration date of the contract was August 15. We continued negotiating until the 20th of August, at which time the strike became effective.

Now, Mr. Richter in his testimony had much to say about a secret ballot. The constitution of our organization requires a two-thirds vote on the question of a strike. In this instance, it was obvious to the international officers that the company was not bargaining in good faith, that they were trying to provoke a strike. And the international representatives, due to that and the fact that the company was temporarily on short-time operation, advised against a strike. But in spite of that advice, the vote was taken by secret ballot and was carried by a vote of, I believe it was, 197 to 95. It is in here somewhere. Anyway, it was over the two-thirds point, in spite of our advice against the strike at the time.

Then the company had been warned beforehand. They knew that. But before the final break came, they were sure enough that they were going to have a strike, so that they had covered their machines and prepared for it in the plant. We cooperated in every way possible. We assigned firemen, engineers, filter-house operators, maintenance men, watchmen, in order properly to protect the plant and to keep the pumps operating for fire protection, and to furnish electricity to the office and to a few comany houses which they had.

After the strike became effective, the company made no effort to negotiate to try to reach a settlement. We met on only two occasions at a meeting called by a United States conciliator. The company showed no good faith in the way of bargaining. They consistently refused our offers to arbitrate the wage question and the recommendation of the conciliator to take it to arbitration.

It would have cost the company, to have given them the difference in the wage increase between what they had offered and the 11 cents which we were asking—and 11 cents was the pattern in the paper industry last year—it would have cost them approximately $45,000 for the year covered by the contract which we were negotiating. However, they spent, according to their figures in fixed costs, $336,500 fighting it. They used every means to try to break the strike and the union. These means included letters to the employees and newspaper advertisements which distorted the facts.

There was heckling of the pickets by company supervisors and officers. The company hired an outside agency to circularize the employees, and there was submission of ballots by this agency in an attempt to get them to return to work. The company started an injunction action in equity court, and the damage suit in the Federal court in the amount of $336,500. Even strikebreakers were brought in.

Regardless of the fact that no violence had occurred and there had been no threats or intimidation, and even though the union had cooperated to the extent of furnishing the employees that I enumerated previously, the company used all of these techniques.

It is very important to note that in the opinion of the union the company used and is still attempting to use its legal suits and maneuvers in order to undermine the union. In our opinion, the appearance by the company representatives before your body was for the purpose of trying to strengthen and protect its suit for damages now pending in the United States District Court for the District of Eastern Pennsylvania. As I have stated, the lengthy negotiations and all of the other facts clearly show that the company knew that the union intended to strike after the expiration date of the contract if there was no new contract reached by that time. This is not a case where a union strikes in the middle of a contract.

With regard to that portion of section 15 in the agreement which states—

> However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed—

it should be noted that there was no delay in the negotiations. The negotiations proceeded for over 2 months and even went beyond August 15, 1948. Accordingly, this provision does not apply. It was intended to cover a situation where the parties would be unable to meet before August 15, 1948, or would be unable to meet on a sufficient number of occasions to determine whether any agreement was possible. In our case, there were sufficient meetings before August 15, 1948, to clearly indicate that an impasse had been reached. Under the Taft-Hartley Act the union shop could not automatically be renewed and furthermore could not continue beyond August 15, 1948. Since the union shop is a very material part of the agreement, it is obvious that the agreement could not have automatically renewed itself in full. Furthermore, since the company kept negotiating throughout June, July, and August, it must have felt that the contract did not automatically renew itself because if it had, there would have been no basis for negotiations at all.

Since the settlement of the strike, the company has consistently refused to write or sign a new contract covering the provisions of the settlement. We are, therefore, in effect working with only a verbal agreement. This is obviously for the purpose of bolstering their suit for damages. It is significant to note that the company did not start its suit in the Federal court until on or about October 26, 1948. This was approximately 2 months after the strike began. The company knew that it had no basis for its action and thus delayed using the courts until it was to the company's advantage to make its final push in its effort to break the strike.

Since the date that the company brought its suit in the Federal court, the National Labor Relations Board in the case of "In the matter of Paterson Parchment Paper Co., Employer, and International Printing Pressmen and Assistants' Union of North America, A. F. of L., petitioner, Case No. 4–RC–199" held that the contention that the contract with this union was a bar to an election was without merit because timely notice by the intervenor (this union) was given on June 1, 1948, effectively forestalled automatic renewal of the contract. Here is a decision of the National Labor Relations Board involving the same plant and the same contract which holds that the notice given by this union was timely.

This union is of the opinion that the suit for damage is punitive and constitutes an attempt to use section 301 of the Labor-Management Relations Act of 1947 as a club to disrupt good labor relations. Certainly this committee does not desire to be used by this company, or any company, as a means to strengthen a pending court case which, in the obvious opinion of the company, is weak and will not hold up under the true facts.

From the foregoing, it can easily be seen how a company or a group of companies, so disposed, can by use of the injunction, trumped up charges and damage suits, destroy a union. It is conceivable that two or three such damage suits as that filed by the Paterson Parchment Paper Co., if successful, could financially break this international union. Therefore, gentlemen, you can readily understand why the position of this organization is definitely and unequivocably for repeal of the Labor Management Relations Act of 1947.

Operating under this law, we believe that comparatively few companies, especially in a time of depression or unemployment, could destroy trade-unionism in this country, and should that be true, we believe that the door would be opened to foreign ideology and that our way of life and the free enterprise system would be seriously threatened.

Mr. Kelley. Are there any questions, Mr. Bailey?

Mr. Bailey. No questions.

Mr. Kelley. Mr. Irving?

Mr. Irving. I do not have any questions.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. As I recall, Mr. Richter told me, in answer to questions, that all this litigation had been dismissed. I remember questioning him. I know he said the Labor Board case was dismissed. I cannot find his statement here.

Mr. Daggett. I remember in reading the testimony you did question him on that. We agreed to dismiss the charges which we had pending before the Labor Board. However, the company refused absolutely to withdraw either their case in equity court or the case in Federal court. In the case in equity court, a preliminary order had been issued, but a final order had not, and later, after the settlement, that was dropped.

Mr. Jacobs. Just one final question. This language that you quote here on page 8 of your statement—as I recall, it is on page 8—from the Labor Board; is that substantially the language that the Labor Board used—that the contract had been terminated?

Mr. Daggett. I believe so. I think I have that order here.

Mr. Jacobs. That is, that it was not a bar to an election because of the timely notice?

Mr. Daggett. Yes. It says:

> This contention is without merit because timely notice given by the intervenor on June 1, 1948, of its desire to modify the contract effectively forestalled automatic renewal of that contract.

Mr. Jacobs. That is all.

Mr. Kelley. Mr. Wier?

Mr. Wier. What was the amount of the suit that they brought against you, and for what?

Mr. Daggett. They claimed that we did not give them notice of termination. Of course, their lawyer is basing that merely upon the wording of the notice given. The notice is the customary notice that we use and has never previously been questioned. So although we had negotiated for over 2 months, and although the company had presented a new contract in its entirety as a counter proposal to the contract which we had introduced, now they claim that the contract was automaticaly renewable, and therefore they are basing their suit on that in the amount of $336,500.

Mr. Wier. That is all.

Mr. Jacobs. Thank you, Mr. Daggett.

Mr. Daggett. Thank you, gentlemen, for the privilege of appearing.

Mr. Kelley. Thank you for furnishing us this valuable information. We appreciate your coming here.

(The prepared statement of Mr. Daggett is as follows:)

Statement of R. E. Daggett, Director, Middle Atlantic States Region, International Brotherhood of Paper Makers, AFL, Philadelphia, Pa.

The International Brotherhood of Paper Makers is a comparatively small union, but one of the oldest. It was founded over 60 years ago and affiliated with the A. F. of L. since the early nineteen hundreds. It has been a rather conservative organization, rarely making the headlines until recently, when the National Planning Association picked this union and the paper industry for the west coast as its first case study in its series Causes of Industrial Peace.

We had not planned an appearance before this committee until after we learned of the testimony of the Paterson Parchment Paper Co., as submitted by Walter Richter, the company's personnel director. We then felt that it was essential that we bring the facts concerning the strike at Paterson Parchment Paper Co. to your attention and correct some of the erroneous statements made by Mr. Richter—to show the committee how a company, motivated by a desire to destroy a union, may operate under the present law. Also to express to you this organization's position on proposed labor legislation.

As related in the Paterson Parchment Paper Co.'s testimony, the National Labor Relations Board in 1945 certified this organization and our Bristol Local, No. 500, as the bargaining agent for all production and maintenance employees at the company's Britsol plant.

Following certification, a 1-year union-shop contract was negotiated between the company and the union. In the succeeding years of 1946 and 1947, due notice (in those years, 30 days' notice) of termination was given by the union, and each year a new contract was negotiated to succeed the expiring one. In 1948, notwithstanding Mr. Richter's testimony to the contrary, the following 60 days' notice as required by the contract and the Labor-Management Relations Act of 1947 was served on the company:

International Brotherhood of Paper Makers,
Philadelphia 7, Pa., June 1, 1948.

Mr. King Evans,
Personnel Manager, Paterson Parchment Paper Co., Bristol, Pa.

Dear Mr. Evans: This letter is to serve as notification in compliance to the 60 days' notice stipulation in our contract that Bristol Local, No. 500, desires a meeting with the company for the purpose of discussing changes in the contract for the coming year.

Will you kindly let me know as soon as possible the date and the place most convenient for you to meet with the union committee and a representative of the union so that this contract can be concluded by the expiration date?

With best wishes, I am,

Very truly yours,

R. E. Daggett,
Regional Director, International Brotherhood of Paper Makers.

You will remember that in the company's testimony, they denied that any notice of termination was given.

Under date of June 7, 1948, the company replied to this notice, as follows:

Paterson Parchment Paper Co.,
Bristol, Pa., June 7, 1948.

Mr. R. E. Daggett,
Regional Director,
International Brotherhood of Paper Makers,
930 City Centre Bldg., Philadelphia 7, Pa.

Dear Mr. Daggett: We have your letter of June 1 addressed to Mr. King Evans requesting a meeting with the company for the purpose of discussing changes in the contract for the coming year.

The company will be very glad to meet with you at 10:30 a. m. on June 15, this being the earliest possible date that we can all get together, and I hope this will meet with your approval. If not, please suggest to us another date not earlier than the fifteenth.

Kindest regards.

Very truly yours,

Paterson Parchment Paper Co.,
John R. Dufford,
Assistant General Manager.

Within 30 days after the June 1 notice—specifically, on June 30, 1948—we notified the Federal and State Conciliation and Mediation Services, as required by the Labor-Management Relations Act of 1947, that no agreement had been reached.

The notice sent by this union and the reply thereto by the company was in accordance with the practice that had prevailed for the years previous to August 1948. In all those years, the parties negotiated a new entire contract which was typed and signed. Although some of the provisions may have been unchanged from year to year, it was definitely understood that a new contract was being negotiated to succeed the expiring contract.

Negotiations for a new contract with the company were started at the middle of June 1948, and continued thereafter until August 20, 1948. There were seven conferences and during these conferences the company presented a proposed entire agreement as its counterproposal to an entire new agreement presented by the union. At no time during the lengthy negotiations did the company state that the contract had automatically renewed itself and at no time during the negotiations did the company declare that the union would have no right to strike at the expiration date of the contract.

Although the pattern of wage increases in the paper industry last year was 11 cents per hour and although the company's profits for 1947 were the greatest in their history, they consistently maintained up to August 12, 1948, that they could give no wage increase whatsoever. Finally on that date the company offered a 2½-cent increase, stating that that was their final offer.

This offer was taken to a meeting of the local's membership and was rejected. A strike vote was taken. The company was notified of this action and at a meeting with the company on August 20, the company increased their offer to 5 cents per hour. Another meeting of the local was called on August 20, and this offer was submitted to the membership. The offer was rejected and a strike vote was taken by secret ballot.

The constitution of the International Brotherhood of Paper Makers requires a two-thirds vote on the question of a strike. The representatives of the international union advised the membership against striking, inasmuch as it appeared obvious to them that the company was deliberately trying to provoke a strike and further, they, the representatives, did not believe a strike was timely due to temporary short-time operations by the company.

In spite of this advice by the international representatives the strike vote was carried by a vote of 197 to 95.

The company knew of this action. They knew that the vote was by secret ballot, and in spite of the advice of the international representatives, and yet they testified here that they believed "the strike was called and promoted by a very small group, most of whom were on the negotiating committee, and the strike was not the majority of the employees."

The strike became effective on the evening of August 20, 1948. From that date on, the company made absolutely no attempt to negotiate with the union, meeting only at two meetings called by a United States conciliator. They consistently refused our offer and the recommendation of the conciliator to submit the wage question to arbitration. They resorted to every possible means to break the strike and the union. These means included letters to the employees and newspaper advertisements which distorted the facts. There was heckling of pickets by company supervisors and officers; the company hired an outside agency to circularize the employees and there was a submission of ballots by this agency in an attempt to get them to return to work. The company started an injunction action in equity court and a damage suit in Federal court in the amount of $336,500. Even strikebreakers were brought in.

Regardless of the fact that no violence had occurred and there had been no threats or intimidation and even though the union had cooperated to the extent of assigning employees to work in the powerhouse, filter house, maintenance department, and watchmen in order to properly protect the company's property and supply steam to operate the pumps and furnish electricity, the company used all of the above tactics.

It is very important to note that in the opinion of the union the company used and is still attempting to use its legal suits and maneuvers in order to undermine the union. In our opinion, the appearance by the company representative before your body was for the purpose of trying to strengthen and protect its suit for damages now pending in the United States District Court for the Eastern District of Pennsylvania. As I have stated, the lengthy negotiations and all of the other facts clearly show that the company knew that the union intended to strike after the expiration date of the contract if there were no new contract reached by that time. This is not a case where a union strikes in the middle of the contract.

With regard to that portion of section 15 of the agreement which states, "However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed," it should be noted that there was no delay in the negotiations. The negotiations proceeded for over 2 months and even went beyond August 15, 1948. Accordingly, this provision does not apply. It was intended to cover a situation where the parties would be unable to meet before August 15, 1948, or would be unable to meet on a sufficient number of occasions to determine whether any agreement was possible. In our case, there were sufficient meetings before August 15, 1948, to indicate clearly that an impasse had been reached. Under the Taft-Hartley Act the union shop could not automatically be renewed and furthermore could not continue beyond August 15, 1948. Since the union shop is a very material part of the agreement, it is obvious that the agreement could not have renewed itself in full automatically. Furthermore, since the company kept negotiating throughout June, July, and August, it must have felt that the contract did not automatically renew itself, because if it had, there would have been no basis for negotiations at all.

Since the settlement of the strike, the company has consistently refused to write or sign a new contract covering the provisions of the settlement. We are therefore, in effect, working with only a verbal agreement. This is obviously for the purpose of bolstering their suit for damages.

It is significant to note that the company did not start its suit in the Federal court until on or about October 26, 1948. This was approximately 2 months after the strike began. The company knew that it had no basis for its action and thus delayed using the courts until it was to the company's advantage to make its final push in its effort to break the strike.

Since the date that the company brought its suit in the Federal court, the National Labor Relations Board in the case of *In the matter of Paterson Parchment Paper Company, Employer, and International Printing Pressmen and Assistants' Union of North America, A. F. of L., Petitioner* (case No. 4–RC–199) held that the contention that the contract with this union was a bar to an election was without merit because timely notice by the intervenor (this union) which was given on June 1, 1948, effectively forestalled automatic renewal of the contract. Here is a decision of the National Labor Relations Board involving the same plant and the same contract which holds that the notice given by this union was timely.

This union is of the opinion that the suit for damages is punitive and constitutes an attempt to use section 301 of the Labor-Management Relations Act of 1947 as a club to disrupt good labor relations. Certainly this committee does not desire to be used by this company, or any company, as a means to strengthen a pending court case which, in the obvious opinion of the company, is weak and will not hold up under the true facts.

From the foregoing, it can easily be seen how a company or a group of companies, so disposed, can by use of the injunction, trumped-up charges, and damage suits destroy a union. It is conceivable that two or three such damage suits as that filed by the Paterson Parchment Paper Co., if successful, could financially break this international union. Therefore, gentlemen, you can readily understand why the position of this organization is definitely and unequivocably for repeal of the Labor-Management Relations Act of 1947.

Operating under this law, we believe that a comparatively few companies, especially in a time of depression or unemployment, could destroy trade-unionism in this country and should that be done, we believe that the door would be open to foreign ideology and that our way of life and the free-enterprise system would be seriously threatened.

Mr. KELLEY. Mr. Theodore Brown, of the Brotherhood of Sleeping Car Porters, AFL.

Mr. Brown, before you proceed, without objection, I wish to insert in the record the statement from Mr. Pokras, from the newsboys' division, International Printing Pressmen and Assistants' Union of North America. Mr. Pokras was here and said that the Taft-Hartley Act had destroyed their union completely.

(The statement referred to is as follows:)[1]

STATEMENT OF HYMIE POKRAS ON BEHALF OF THE NEWSBOYS' DIVISION, INTERNATIONAL PRINTING PRESSMEN'S UNION

My name is Hymie Pokras, and I am a representative of the International Printing Pressmen and Assistants' Union of North America, in charge of its newsboys' division, and have occupied this position for the past 8 years. Prior to this, I was a news vendor, operating a stand in the city of Philadelphia, Pa. In my present position it is my duty to assist various local unions consisting of newsboys and newscarriers affiliated with the international union, in matters pertaining to their union, employment, and collective-bargaining contracts. I am familiar with the development of these local unions, and was personally responsible for the establishment of local union No. 473 (Newsboys', Philadelphia), local union No. 504 (Newscarriers', Philadelphia), and local No. 471, the New York Newsboys' Union.

The international union has for many years organized groups of newsboys and newscarriers, recognizing the economic importance of this group of the industry and the inescapable fact that the distribution in the newspaper industry is equally as important to the industry as other divisions.

Many of such local unions were formed prior to the passage of the original National Labor Relations Act, and with the advent of the act, much stimulus was given to the organizational movement in the newsboys, news vendors, and newscarriers' field of employment. This movement encountered much resistance from the daily newspapers of America, who found it to their advantage to term those persons distributing or offering for sale their newspapers "independent contractors," or "merchants." Their motive, of course, was to prevent this grouping from securing the protection of the National Labor Relations Act. Reliance was placed upon antiquated common-law tests of the master-servant relationship, which tests, if applied, would have operated as a bar to the purpose and intention of the Federal legislation, which was to extend the processes of collective bargaining as widely as possible for the purpose of minimizing labor disputes which burdened or tended to burden interstate commerce, and to that end to assist in establishing stable industrial relations. Inevitably, this issue was thoroughly litigated, and was passed upon by the United States Supreme Court in *Hearst Consolidated Publications* v. *National Labor Relations Board* (322 U. S. 111), which held that common-law tests were irrelevent to the determination of the relationship, and that the relationship should be determined by underlying economic facts, considered in the light of the policies and purposes of the Federal legislation. Accordingly, the Court held newsboys of the character represented by the international pressmen's union to be employees for the purposes of the National Labor Relations Act.

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[1] See also Mr. Pokras' supplemental statement on p. 1643.

This represented the law until the Taft amendments contained in the Labor-Management Relations Act, 1947. Among these amendments was one attempting to define the term "employees" to exclude individuals having the status of "independent contractors." Its legislative history reflects an intention on the part of Congress to specifically remove from the coverage of the statute newsboys and newscarriers, and to overrule the Hearst cases, which were mentioned by name.

It is, of course, true that the language of the amendment taken literally, which denies coverage to "individuals having the status of independent contractors" would not have changed the rule at all. The National Labor Relations Board itself had frequently determined that the attributes of certain groups required that they be held independent contractors, and accordingly denied the protection of the act; *Matter of Philadelphia Record Company* (69 N.L.R.B. 1232). It has been the express intention of Congress to override the Hearst doctrine, which has created the industrial unrest necessitating remedial legislation. Under the Hearst cases many local unions of newsboys and newspaper publishers entered into wide collective-bargaining agreements, which contracts assured industrial stability. In accord with the purposes of the act, contracts were entered into prior to the Taft-Hartley Act in Philadelphia, St. Louis, San Francisco, Cincinnati, and in other cities. Since the amendments to the act, which I have described, the publishers have again reverted to their original view that they are under no duty to deal or bargain with duly selected representatives of the newsboys or newscarriers.

An outstanding example of the unrest and injustice occasioned by the Taft amendment is found in the case of the St. Louis newspapers. In that case the St. Louis Newscarriers' Union, affiliated with the international union I represent, was certified by the Board as the exclusive representative for the purpose of collective bargaining for the newscarriers of St. Louis who, of course, were held to be employees within the meaning of the act, *Pulitzer Publishing Company* (62 N. L. R. B. 229). Thereafter negotiations ensued for and resulted in a collective-bargaining contract, which was periodically extended or renewed until its last expiration date, which was subsequent to the effective date of the amended definition of the term "employee," inserted in the act in 1947. In lieu of negotiating, the publishers of St. Louis claimed that they were relieved of this obligation, and failed and refused to deal or bargain with the St. Louis carriers, basing their refusal upon the amended definition of the term "employee," and claiming that the prior certification of the Board was vitiated by such amendment. As a consequence, considerable unrest has resulted, where before industrial peace prevailed. The situation in St. Louis is still in a state of suspense, but the important point is that in lieu of preserving industrial peace, the amended term "employee" has resulted in discord to such an extent that the union there, absent the protection of the act, has only its economic pressure which it can bring to bear to secure the representation rights it has heretofore enjoyed and undoubtedly believes it should continue to enjoy. This is but one example.

In the city of Philadelphia the Philadelphia Bulletin (daily and Sunday newspaper), after the Hearst decision, entered into a collective-bargaining contract with the Philadelphia Newsboys' Union there. The contracts were renewed as they expired, and relations were maintained without any sort of industrial strife or threat of strife until the Taft amendments. Thereafter the Philadelphia publishers assumed the position that they had no longer an obligation to deal with the union involved as the representative for collective-bargaining purposes of its newsboys, and accordingly refused to negotiate for a new contract to succeed the one just expired. This situation has resulted in discord, occasioned by the fact that this newspaper itself imposed unilateral terms and conditions of employment, and will not deal with the union on any matters pertaining to the conditions under which its members must work.

A still further example is found in Cincinnati, Ohio, where the newspaper there refused to bargain with the newsboys' union for a contract, although concededly such union represents a majority of the newsboys, and is entitled to be recognized and bargained with. Similarly, this refusal to bargain is likewise based on the amended definition of the term "employee." The result is the same there.

What I have said merely demonstrates the fact that this amendment has created discord, where prior thereto harmony prevailed, which result is in the teeth of the purposes of the act. It does not take into account the injustice worked upon thousands of newsboys all over the country; the resentment among these workers, occasioned by unilaterally imposed terms and conditions of employment where heretofore collective bargaining has prevailed. It does not take into account the injustice occasioned by the denial of this large segment of the industry of the right to have a voice in matters affecting their economic welfare. It does not reveal the possibilities of exploitation presented to the publishers when they are placed in the position of being able to drive the best bargain they can with the individual newsboys, where heretofore collective bargaining was required. This denial of the equality of bargaining power is similarly inconsistent with the basic purpose of the statute.

We respectively urge that the term "employee" be redefined to the end that it may be sufficient in scope to restore to this underprivileged and deserving group, representation rights under the statute, which they have heretofore enjoyed.

Mr. Bailey. Mr. Brown, you may proceed.

STATEMENT OF A. PHILIP RANDOLPH, INTERNATIONAL PRESIDENT OF THE BROTHERHOOD OF SLEEPING CAR PORTERS, PRESENTED BY THEODORE E. BROWN, RESEARCH DIRECTOR

Mr. Brown. The International Brotherhood of Sleeping Car Porters strongly urges that the Eighty-first Congress take immediate action to repeal the Labor-Management Act of 1947, generally known as the Taft-Hartley law. We sincerely believe that sound labor-management relations can best be served by reenacting the National Labor Relations Act of 1935, with subsequent amendments deemed necessary in the light of past labor management relations and for the best interest of the national welfare.

Real independent and strong unions are vital to the developing of a democratic society. Too long have some proclaimed to the world the great and enduring democratic institutions in these United States without seriously analyzing the industrial role of the masses of American citizens who daily toil for an economic existence. Until such time as we have attained full and inseparable industrial and political rights for the workers in the United States without regard to race, religion, color, national origin, or ancestry, our pronouncements about democracy are illusions and our fight against totalitarian communism and fascism is a bigoted farce.

I urge that this present Congress take immediate steps to repeal the Taft-Hartley Act, since it has failed to promote the general welfare; it has failed to bring stability and industrial peace into labor-management relations.

The Taft-Hartley Act has sought to justify its existence on such charges as labor monopoly, widespread and disruptive strikes, jurisdictional disputes, and secondary boycotts, the closed shop, democracy in trade unions, political expenditures by unions, featherbedding, non-Communist affidavit, and health and welfare funds.

Although these are subjects of serious import the Taft-Hartley Act has not met the issues, in failing to restore equality between labor and management and permitting free collective bargaining. It has failed to contribute to the stability in labor-management relations so essential to the development of sound collective bargaining. The act has not increased democracy in trade unions. It does not provide a basic policy for a sound democratic and constructive Federal policy for the promotion of the national public welfare.

The Taft-Hartley law has failed, as did the Wagner Act, to protect American citizens of minority status from discrimination because of race, color, religion, nationality, and ancestry, resulting from collective bargaining provision.

I do not argue that the public interest should not be recognized and receive prior consideration in settling disputes involving national health and safety, but I do contend that American labor is a part of the public and should therefore receive equal consideration with management in determination of mutually related problems.

Whereas the Wagner Act prohibited discriminatory discharges, espionages, threats, and other forms of employer interference, the law has impaired their effectiveness by technicalities and the development of "splinter groups" in unions.

The right to withhold or condition one's services as a worker is of equal validity as the right of a manufacturer to withhold or condition the sale of his product. This is basic if collective bargaining is to be meaningful. Unions must be free to decide when disagreement is more expensive than concession.

With the power of the big employers the need by unions for greater union security as expressed by the closed and union shop has increased. Effective union security is the life line of responsible trade unions, if such unions are to reach a parity with industrial management in its ever increasing tendency toward greater monopoly power.

However, I earnestly believe that strong and effective unions which receive their power by virtue of the closed shop have a grave responsibility. No longer should the Congress ignore the tendency of some unions to use the closed shop as a means of discriminating against American workers because of their race, color, religion, national origin or ancestry. Both the Wagner Act and the Taft-Hartley Act failed to guarantee against minority discrimination along these lines. I urge this Congress to pass legislation which will legalize and encourage union security developed and processed in a manner that will not exclude any American citizen of minority status because of his race, color, religion, national origin or ancestry.

I also urge that the provision of the act and the services of the Board, established or continued as a result of the act, be denied to any union and/or company which discriminates against a worker or an applicant for employment because of race, color, religion, national origin and/or ancestry.

The fact that American workers do regard the Taft-Hartley law as a slave act completely nullifies it as an effective instrument for industrial peace. An atmosphere saturated with suspicion and mistrust on the part of the American worker is only conducive to further industrial strife.

Finally, the Tart-Hartley Act should be repealed because:

(1) Evidence is lacking that it has decreased the number of strikes.

(2) It has seriously impaired the collective-bargaining strength of labor.

(3) It has reduced the effectiveness of union security and resulted in greater tension between management and labor.

Reenacting the National Labor Relations Act of 1935 with amendments along the lines herein expressed, by the Congress, would be a start toward sound labor-management relations. The Congress has a mandate from the people by virtue of the results of the last election; it has a challenge from the times by virtue of the efforts of this Nation to lead the world in realizing a dynamic industrial democracy—a necessary foundation of our political democracy.

Mr. BAILEY. Mr. Irving, do you have any questions?

Mr. IRVING. I do not have any questions, Mr. Bailey.

Mr. BAILEY. Mr. Jacobs?

Mr. JACOBS. Just one question.

Mr. Brown, I observe that you mention on page 1 of your statement the fact that democracy in trade unions is used as one of the excuses for a passage of such laws as the Taft-Hartley law. I think you are correct.

Do you think that possibly the requirement of democracy in labor unions might do away with some of the ammunition that the Taft-Hartley advocates would have?

Mr. BROWN. Specifically what are you referring to?

Mr. JACOBS. I am referring specifically to those instances where unions have been denied the right to elect their own officers, for example, do you not think if the law provided they had the right to elect their own officers, and those abuses were legislated, that that might do away with some of the demands to pass the Taft-Hartley Act?

Mr. BROWN. I do not advocate, Congressman, that the Congress pass it, or that there is a need for the Congress to step in and attempt to legislate it.

Mr. JACOBS. I am talking about simple law that says there must be elections according to the constitution and laws of the union.

Mr. BROWN. We are not advocating that.

Mr. JACOBS. Do you not think that might clean up some of the situations that the Taft-Hartley advocates point to as an excuse?

Mr. BROWN. I do not think so.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Wier?

Mr. WIER. I just want to ask one question. In your organization I presume you represent the Brotherhood of Sleeping Car Conductors?

Mr. BROWN. Brotherhood of Sleeping Car Porters.

Mr. WIER. You are covered by the Railway Act?

Mr. BROWN. We are covered by the Railway Act; that is right.

Mr. WIER. You are enjoying a little freedom there?

Mr. BROWN. Were are not enjoying too much.

Mr. WIER. We would like to have what you got back.

That is all.

Mr. BAILEY. Mr. McConnell?

Mr. MCCONNELL. I have no questions.

Mr. BAILEY. Thank you for your appearance. You read your entire statement into the record, did you?

Mr. WIER. Yes; he read it completely.

Mr. BROWN. Yes. Thank you.

Mr. BAILEY. Apparently that concludes the appearances for the day. The subcommittee will stand recessed until 10 o'clock on Friday next.

(Whereupon, at 6:30 p. m. the subcommittee adjourned until Friday, March 18, 1949, at 10 a. m.)

APPENDIX

STATEMENT AND TESTIMONY OF WOODRUFF RANDOLPH, PRESIDENT, INTERNATIONAL TYPOGRAPHICAL UNION, BEFORE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE ON THE PROPOSED NATIONAL LABOR RELATIONS ACT OF 1949, FEBRUARY 10, 1949

The CHAIRMAN. Mr. Randolph, for the record, will you state your name, your position, address, and so on, and anything else you want to have appear about you?

Mr. RANDOLPH. My name is Woodruff Randolph. I am president of the International Typographical Union, residing in Indianapolis, Ind.

Chairman Thomas and Senators, I will read a short summary of the written statement that has been presented.

The written statement which we have submitted to your committee consists of three documents. The first is a statement of the views of the International Typographical Union on S. 249 as amended by the chairman. The second is a booklet entitled "Taft-Hartley and the I. T. U." which sets forth briefly the agonizing experience of the I. T. U. under the Taft-Hartley Act. And the third is a summary of a contempt case in which we were involved under the Taft-Hartley Act, stating the background and the implications of that case. I express the hope that the members of the committee may find time to peruse these documents, particularly the second, which demonstrates exactly how the Taft-Hartley Act is a continuing threat to the existence of any craft union.

To summarize these documents is not easy, for each of them is itself a summary of a mass of experience and a body of litigation without parallel in the labor history of the United States, which will, we trust, never be repeated. But, in brief, they demonstrate that since it was founded in 1852 the I. T. U. has consistently adhered to four principles upon which voluntary trade-unionism is necessarily based. These are (1) an insistence upon respect for the rules laid down by our members concerning the conditions upon which they will sell their services, in order that each union member may democratically and directly participate in determining those conditions, (2) the refusal to work with competing nonunion men whose willingness to work at lower wages and under substandard conditions threatens each member of our union, (3) an insistence upon respect for our jurisdiction in order that craft standards may not be undermined by the assignment of work to lower paid and inferior craftsmen, and (4) the refusal to work on struck or substandard goods produced under sweatshop conditions.

We demonstrate that without being guided by these principles, a union cannot live. We show that the Taft-Hartley Act makes impossible the attainment of these objectives and thereby makes free trade-unionism impossible.

Section 8 (b) (3) requiring unions to bargain collectively has been used to attack the very concept of union rules; our duty to enforce those rules has been attacked as "restraint and coercion" under section 8 (b) (1). The legality of over 30 of our internal laws has been challenged. The right of our members not to work with nonunion men has been limited by denying our right to a closed-shop agreement, and the right itself has been questioned and is doubtful. A form of involuntary servitude, we are told, is set up by which our members can be required to work with nonunion men against their will. Our right to strike to defend ourselves against the assignment of work to nonunion men is denied by section 8 (b) (4) (D). Our members are made slaves by the provisions of section 8 (b) (4) (A) which compel them, under the whip of an injunction, to act as strikebreakers and to process goods made by men working in opposition to us.

In each of these instances—and each is vital to the preservation of our union—our right to strike in self-defense against efforts to destroy us is denied.

The Taft-Hartley Act may be summed up by saying that it denies the right to strike whenever an object of a strike is to preserve the union—and that right is, of course, more fundamental even than the right to strike for better wages or hours.

We demonstrate in our statement that we decided, shortly after the Taft-Hartley Act was passed, to go down fighting, if we had to, rather than submit to slow decay.

We formulated certain policies which, in our judgment, would protect us, within the law, against the worst ravages of that act.

In pursuit of those goals, and in an effort to preserve an organization which has a century of tradition behind it, which has enjoyed amicable relations with the employers in the industry, which has contributed more than any other single factor to stabilize this industry and the conduct of the men and women employed by it, we have suffered the following:

1. We have been compelled to spend over $11,000,000 of members' hard-earned dues in support of strikes and other defense activities to preserve the union against the Taft-Hartley Act.

2. We have been subjected to the issuance of eight complaints, containing substantially identical allegations and relying on the same evidence, by General Counsel Denham of the NLRB.

We have been forced to engage in five long drawn-out NLRB proceedings, covering substantially the entire country, at great expense to ourselves and our members, without having obtained a single decision from the NLRB in the course of 16 months of litigation.

3. We have been forced to submit to a sweeping injunction and to a contempt action under that injunction, brought by NLRB attorneys for the chief purpose of breaking a strike of our members at Chicago, Ill., which has continued since November 24, 1947. The only redeeming feature of our experience under the Taft-Hartley Act has been that, despite the best efforts of a coalition of newspaper publishers, General Counsel Denham, the NLRB, and the Federal courts, that strike has not been broken. Nor will it be ended until we have the employers' assurances that they will concede us the same right to live that we so freely concede to them.

4. Collective bargaining in our industry has been carried on, not with our employers, but with General Counsel Denham and the Federal courts.

We demonstrate that this interference with the processes of collective bargaining has gone so far that we were held in contempt of court for, among other things, failing to include a provision for a neutral "tie-breaker" in a proposed contract clause setting up a joint employer-union committee for the training of apprentices.

We believe that this is the first time in American history where either a union or an employer was held guilty of violating the law for failing to place some language in a proposal made in the course of collective bargaining which the employers were free to reject, and frequently did.

I should emphasize that, during this entire course of litigation, when NLRB attorneys cooperating with employers watched the behavior of every member of the ITU, it has never been alleged that the officers or members of the ITU:

1. Have engaged in violence, fraud, misrepresentation, threats, or any other conduct which could properly be called improper.

2. Have discriminated in employment, or caused employers to discriminate in employment, against any individual. No person has even filed a charge that he has been discriminated against by any action of our organization.

3. Have unjustly or improperly suspended or expelled any member from our organization, or improperly or unjustly refused to admit any person to membership.

4. Have been guilty of any financial impropriety, or have denied any member the democratic rights which he has as a member of our union, or have done other than enforce the union rules, democratically adopted by the members themselves.

As Trial Examiner Leff found in the case brought by the American Newspaper Publishers' Association:

"Respondents (the ITU) urge in justification of their conduct that their motive and intent was to preserve the union and promote its economic interests. I have no doubt that this was true."

But, under Taft-Hartley, "preserving the union and promoting its economic interests" is illegal. It is for that reason that it should be repealed.

Our statement further shows that the injunctive power under Taft-Hartley is far worse than anything that preceded the Norris-LaGuardia Act; that General Counsel Denham, certainly not with the disapproval of the National Labor Relations Board, has administered the Taft-Hartley Act in a biased and hostile manner; that the so-called watchdog committee has been used to interfere with the affairs of the executive branch of the Government; that injunctive actions under Taft-Hartley are speedy, but clarification of the law by the NLRB is delayed for weary months running into years; and that the law is so unjust, confused, and contradictory that amending it is impossible.

This experience, plus our analysis of S. 249 as amended, convince us that the Taft-Hartley law should be immediately replaced by S. 249, with certain reservations noted in our analysis of the measure.

We do not welcome all of the amendments to the Wagner Act which are proposed. We foresee the gravest dangers if, through a process of further amendment, more restrictions are placed on free management-union relations. But, recognizing that there are problems with which S. 249 has attempted to deal, we are prepared to accept it on an experimental basis in the interest of speedy repeal of the Taft-Hartley Act. If, in practice, S. 249 as amended operates to interfere unduly with the carrying on of the normal and legitimate business of our organization, we shall of course bring such matters to the attention of the Congress.

The CHAIRMAN. Mr. Randolph, before we start with the questioning, are you a party to any litigation now that is in the courts?

Mr. RANDOLPH. We are under an injunction by the Federal court of the Seventh circuit, and under a citation for contempt for having violated that injunction.

The CHAIRMAN. Are you personally part of that litigation, or is your union?

Mr. RANDOLPH. I am personally, and as officer of the union, under those court restrictions.

The CHAIRMAN. I deem it a duty as chairman of this committee to point out that we do not want to, and I do not want to, allow any question that may in any way prejudice that case or that may have influence upon the feeling of the public in regard to it, and I do not want to proceed if in any way our actions here may in any way hurt the case one way or the other, hurt you as an individual one way or another, or hurt your union one way or another.

I realize that this is not a matter of rights, and am not going to get into conflict on any law, but I do know how things in our Government work and function, and I do not want to be unfair to anyone.

I think we ought to have that understanding among ourselves, and with you, in case some question or type of question that you should not answer or you do not wish to answer, please let us know.

We surely do not want to mix up the litigation any worse than it is.

Mr. RANDOLPH. Thank you, Mr. Chairman.

(The statement submitted by Mr. Randolph in his appearance before the Senate Committee on Labor and Public Welfare is as follows:)

STATEMENT OF WOODRUFF RANDOLPH, PRESIDENT OF THE INTERNATIONAL TYPOGRAPHICAL UNION, REGARDING THE THOMAS BILL, S. 249

The International Typographical Union had, by June 22, 1947, attained an enviable position in the trade-union movement. With about 90,000 members in 850 local unions, all of them skilled craftsmen in the printing industry and all experienced trade-unionists, with a tradition of almost a century of democratic and progressive trade-unionism, and with a loyal and active membership, it had kept its place since it took the lead in organizing the American trade-union movement. For that very reason—since its practices represented the best in trade-unionism—it has suffered (under the outrageous provisions of the Taft-Hartley Act) more than any other union. No other union has been compelled to spend over $11,000,000 in protecting its existence since June 22, 1947; no other union has been the target of so many complex, arduous, and expensive legal actions in the course of a year; and we venture the opinion that few other unions could have survived this trying ordeal. For that reason, I have a special interest as president of the ITU in making this statement to your committee. In accord with the rules adopted by the committee, I shall not dwell upon our Taft-Hartley experience and shall limit myself to commenting on the pending proposals, but with the observation that our bitter experience of the past year and a half give a special emphasis to our views.

Certainly the wisest provision in the proposed bill is section 101 of title I which repeals the Taft-Hartley Act. I am confident that the ITU could not have long withstood the united attacks, under that act, of the employers in the industry, the general counsel of the National Labor Relations Board, the National Labor Relations Board, and the Federal courts for an extended additional period. No craft trade-union could survive indefinitely the pressures which our members have borne since the Taft-Hartley Act became the law, and the continuance of that act on the statute books would spell the doom of the free American trade-union movement. We likewise welcome the restoration of the Wagner Act; for 12 years that act was on the books without harming employers, without undue industrial strife, and without altering our free institutions.

The elimination of any liabilities accrued under the Taft-Hartley Act—as provided in section 105—is a matter of simple justice. Repeal of that act will certainly not be accomplished if actions instituted under it must drag their weary way through the NLRB and the courts for a period of years to come, wasting working man's money and time.

One of the principal changes from the Wagner Act proposed by the bill is the new section 8 (b). Candor compels me to state that I do not relish the principle of introducing into Federal labor legislation unfair labor practices against unions. Our long experience has shown that language in the hands of hostile courts and boards can be twisted into something far different than was intended. When the Wagner Act was being debated, Senator Norris pointed out that "No one thought there was a labor question involved in it (the Sherman Act). * * * But, as it developed, the Sherman antitrust law became a weapon by which labor was almost crushed out of existence because of the construction placed upon the law by the courts. We passed the Clayton antitrust law amendatory to the Sherman antitrust law. * * * The constructions which were put on that law by the courts from time to time practically took away all its force and effect. * * * The courts are going to construe this measure, if it shall become a law, and when we get through we may not know our own child. One man, sitting as a district judge, can nullify, by a stroke of the pen, the acts of the President, the Senate, and the House of Representatives, even though their action be unanimous." The history of labor legislation in this country, from the Clayton Act through the Norris-LaGuardia Act up to the present measure—excluding, of course, the Taft-Hartley Act—is the history of the effort to free labor from the pressure of hostile and ill-informed judges. I think we can be confident that any slightest opening in our Federal law will be pried wide open by the judiciary. While my own strong preference is that no unfair labor practices against unions be included in this measure, the limited and restricted provisions of this bill could, I believe, be tolerated in the interests of early repeal of the Taft-Hartley law.

But if they are to be included, it should be made crystal clear, in presenting the bill, that injunctive relief is not to be available as a method of enforcement. Unfair labor practices by employers were never enforced through injunctions under the Wagner Act, and it should be stressed in every possible way that there is to be an equality of procedural treatment under the new bill. Under Taft-Hartley, unions alone were the targets of injunctions, except in two cases. In the Boeing case, a district judge refused relief against the employer, and in the General Motors case the company was enjoined from paying out benefits under a pension plan to its employees—hardly the kind of restraint about which the company could be expected to complain bitterly. Taft-Hartley was a one-way injunction street against unions; and unless great caution is exercised a new bill containing unfair labor practices against unions may suffer the same fate. For these reasons we should welcome a clear statement that injunctive relief will not be available in connection with section 8 (b) except that the Norris-LaGuardia Act shall not apply, as now stated in section 401 of title IV, to the enforcement of Board orders. And we feel that this should also be made quite explicit in the committee's report on the bill.

Section 8 (b) (2), which is to be read in conjunction with the proposed new section 9 (d), arouses considerable misgivings. The jurisdiction of a union is the area in which it solicits its membership. That area is determined by underlying economic factors; it is our necessary objective to protect the jobs and the working standards of our members by assuring, so far as we can, that union standards are met on all printing processes or substitutes therefor. We have never resisted the introduction of new processes which were advancements in the art, but we have studiously attempted to see to it that new processes were not made economically advantageous by wage-cutting at the expense of our members. With its long tradition, the ITU cannot be enthusiastic about a law which states that the Government will perform the function for the labor movement of determining which union shall perform particular work tasks. The problem of jurisdictional strikes is not serious—they constitute only a trivial percentage of all strikes—but the right of a union to fight for its jurisdiction is important. If a weak or conniving union were to enter the printing field and seek to extend itself by agreeing to conditions below those which are standard in the trade, our members would rightly insist that we seek to meet that kind of competition by every means at our command. The jurisdictional strike is not merely or solely a question of union membership; it may and does involve basic economic issues in maintaining or extending the standards of a craft.

Happily, we have in the past had few jurisdictional disputes with other unions, for our craft is well-established and our position generally respected. But, if in the future, it becomes necessary for us to maintain the standards of our craft against raiding by another organization which seeks to undermine our standards, we feel that we should retain the elemental right of self-defense. For these reasons, we view with grave concern a grant to the Federal Government of the power to shape the growth of the trade-union movement—and that is the power conferred by these sections. It is a continuing intrusion upon the right of self-help, which is the basic premise of trade-unionism.

Even though we hold such misgivings the provisions of section 9 (d) do provide a guiding procedure for the Board to follow, which is a vast improvement over the devastating provisions of the Taft-Hartley law on the same subject. Because of the urgent need for quick repeal of the Taft-Hartley law so that normal contractual relations between employers and our local unions may be resumed, we will not oppose these provisions of the bill, but accept them on an experimental basis.

The language of this bill seems quite clear in outlawing the secondary boycott only where used in an effort to secure recognition against a Board order or certification of an existing agreement, or in furtherance of a jurisdictional dispute. To go beyond this in dealing with secondary boycotts means the destruction of the trade union movement. The blanket prohibitions of the Taft-Hartley Act had the result that our members were compelled to act as strikebreakers against one another against their will. The theory of the common law was quite clear in allowing either employers or unions to seek allies in an economic dispute by proper means. Under Taft-Hartley unions not only could not seek allies, but were forced to work against their direct interests, while empolyers remained scot-free of any restraints whatsoever in seeking assistance in a war against unions. And while, as I have already indicated, we do not welcome the restraints retained by this bill, we feel we would not be destroyed by them as we could be by the Taft-Hartley provisions.

I offer enthusiastic approval of section 107. We have in recent years come to recognize that the laws applicable to industries engaged in interstate commerce should be uniform, for where competition runs across State lines, industry will inevitably gravitate to that State with the worst laws. Certainly one of the most outrageous provisions of the Taft-Hartley Act was that which encouraged States to adopt the most progressive laws dealing with union security by giving them Federal recognition. This section of the bill effectively eliminates that injustice, while performing a service for the economy of the country as a whole.

It seems clear from an examination of the bill that no sanctions are intended for the obviously desirable objectives stated in sections 204 and 205, dealing with the settlement of disputes arising during the life of an agreement. The ITU has been a pioneer in this field, and our techniques are, we feel, among the best that can be devised. But Government compulsion is another matter; to require that these things be done is to substitute compulsory arbitration for free collective bargaining. We hope that here, as in the case of sanctions for the unfair labor practices against unions, no slightest room for uncertainty concerning the intention of the Congress should remain, and that both the bill and the reports on the bill should make it clear that these sections are not enforceable through any methods other than those set forth in the bill itself. And the same observation is to be made of sections 301 through 303; the unavailability of injunctive relief should be spelled out.

We attest the wisdom of title II of the bill transferring the United States Conciliation Service to the Department of Labor, where it was for many years from its inception, and where we believe it belongs. There was no evidence of its having functioned in a partisan spirit or improperly during all those years and both labor and management respected it and made use of it whenever it suited their purposes. It was truly impartial because of that fact; not because of any law to that effect.

The administration bill does provide that "the Director and the Service shall be impartial." That provision obviously directs their course of conduct as does succeeding language of the section. There is no other definition of impartiality in the law and since our courts with great powers to make decisions need no such injunction, a mere conciliation service having no power can at least bear such an injunction in mind until it learns that in order to be of any service at all both employers and unions will have to be satisfied with the acts and functions of the person seeking to mediate or conciliate.

One great fault of Mr. Ching's testimony is that he "protests too much." Whether he is "impartial" does not depend on testimonials to that effect nor on whether he has been appointed by an impartial Republican or Democrat, if such there be. According to Mr. Ching, impartiality is important but difficult to find, especially in the Department of Labor. The assumption that any other department such as his is more competent to find and trap that illusory quality for appointment to the Conciliation Service seems quite unwarranted. This is more especially true since nearly all the present personnel (now acceptable to employers) was inherited by him from the Labor Department.

Thus Mr. Ching's impartial personnel was also impartial when working under the Department of Labor.

As a practical labor executive I have followed the Biblical advice, "By their works ye shall know them," not by whom they were appointed nor by their titles; neither by their politics nor background.

The emphasis by Mr. Ching on the employer's acceptance or nonacceptance of the personnel of the Service somewhat tarnishes his impartial brilliance. He expressed no worries as to the attitude of the unions. As a matter of fact, acceptance by unions of the personnel of the Service is far more important to the accomplishment of any practical results.

The conciliators are ambassadors of good will and cooperation, ready to help either side on procedural chores and do more than one good turn a day. To magnify their importance does not help them in their work.

As a labor union executive for over 20 years I am glad to say I have never had cause to complain about the Conciliation Service unless its desire to be helpful expressed so often and in so many places could be objected to. As a matter of fact, the well-established collective-bargaining procedures of the ITU hardly left any room for use of the service.

Mr. Ching testifies that employers are less "suspect" of the service since it has not been under the Department of Labor. I testify that so far as our organization is concerned, I am more suspicious than before. The reason is not because of the personnel, but because the personnel was placed under a new head through the Taft-Hartley law. The historic impartial activity was then subject to a different direction by one serving the purposes of what I regard as a labor-destroying law. That is no reflection on Mr. Ching personally.

Mr. Ching stated he wanted no phony statistics from his regional commissioners. I recently received a questionnaire which is being mailed to unions filing 30-day notices under the Taft-Hartley law. That form represents a correspondence method of conducting the service. It is easy to see where the follow-up form requesting information as to the final results attained can be used to show cases settled at a cost of only two postage stamps and the forms.

It would be inappropriate not to praise this bill for what it omits. As compared with the Taft-Hartley Act, it gives collective bargaining a shot in the arm by restoring the freedom to negotiate concerning such matters as union security, the check-off, health and welfare funds, struck and substandard work, union jurisdiction, and all other matters. Even without the clarifications we have suggested its provisions represent a notable improvement in draftsmanship over the vague, confused, and conflicting provisions of the Taft-Hartley Act. We have been proud of the fact that access to courts and governmental agencies in our country has not been limited by race or color or political beliefs, and the elimination of the insulting anti-Communist affidavit requirement marks a return to a healthy tradition. The restoration of the full vigor of the Norris-LaGuardia Act—passed by a Republican Congress and signed by a Republican President—revives another cherished labor freedom.

If Senate bill 249 with amendments in the nature of a substitute as proposed by Senator Thomas becomes law:

1. It will restore the opportunity to bargain for the closed shop which has been essential to the maintenance of the International Typographical Union as a craft union. It is obvious from the experience of the past year and a half that employers have attempted to destroy the union by the use of the Taft-Hartley

Act. The adoption of the Thomas bill will largely halt that destructive effort. A craft or trade is made up of many kinds of tasks, jurisdiction over which is necessary if the trade is to be maintained as such and if a trade or a craft union is to live.

The closed shop in no way limits the democratic freedom of our members. Under our constitution and bylaws they have a complete and untrammeled right to vote on any issues affecting their interests. The ITU is the members' union and it is the members who determine how the union shall operate and what duties its officers shall perform. No member may be expelled or suspended except in accordance with the rules which the members themselves have adopted, and these rules include the right to a fair hearing, an appeal to the executive council of the union, and, finally, an appeal to the convention of the union itself. It is unthinkable that we would not follow the rules we have laid down for our own government, but if we did there would be a further right of appeal to the courts against arbitrary or unfair action.

The closed shop in nowise limits the democratic rights of nonunion printers. By his own choice, the nonunionist denies himself democratic rights, for only by coming into the union does he have a voice in determining the rules which will govern his relations with his employers. So long as he remains nonunion, he is, by his own choice, outside the process by which the rules that govern most workers is made. Any individual who is qualified at the trade may demonstrate his competency and become a member of our union. We are constantly admitting new members and we want all qualified printers in our union.

2. Adoption of the Thomas bill will restore the opportunity for the International Typographical Union to continue to bargain unhampered for the training of apprentices in the trade and maintain unhampered the unimpeachable system of apprentice training so long carried on by the International Typographical Union and used as a model by those attempting to further apprentice training through Government help.

The closed shop does not unduly limit employment in the industry. It is true that over the years we have, in cooperation with employers, taken over a large share of the task of training new apprentices at the trade; frequently, because of the lack of interest of the employers, we must take over the whole job. Our collective agreements establish apprentice ratios; that is to say, a certain number of apprentices only may be hired in relation to the number of journeymen. This is done largely on the employer's insistence, for he understandably does not wish his working journeymen to spend all their time instructing apprentices and none turning out his work. In many enterprises throughout the country employers have refused to take on the quota of apprentices to which they are entitled and thereby participate in the training of new men in the field.

We say without apology that the apprentice quotas perform another valuable service to the industry by limiting the number, though not designating the individuals, who learn the trade. Until 1940 there was always unemployment among printers despite the operation of these ratios, so that it cannot be said that they have been fixed to cause a scarcity of printers. The peculiar conditions of World War II, when almost no apprentices entered the field, did cause a temporary scarcity since that time which has now all but disappeared. Through upgrading apprentices and by cooperating to place veterans, we have cooperated with the industry to overcome this temporary shortage. But the unlimited acceptance of apprentices would (*a*) be unacceptable to employers who were asked to supply facilities for training them, (*b*) flood the market, in less prosperous times, with trained craftsmen for whom there were no jobs, (*c*) depress the wage standards in the industry. Our objective is to raise wages and working conditions, not to depress them, and it will hardly be expected that we will cooperate in a program either of unlimited access to the industry or unlimited access to our union with the sole objective of reducing the employers' wage bills. Our members have an interest in how this industry is run, and it is our job to protect that interest.

3. Adoption of the Thomas bill will make it possible for unions to support the members who refuse to handle struck work or nonunion work produced by nonunion competing employees. This right, so long enjoyed, has made it possible for those employers who are willing to pay fair wages and grant fair working conditions to continue in business, to compete among themselves and to compete with those who choose to run nonunion shops and operate under substandard conditions. Experience of the past has indicated that fair employers can compete with unfair employers under the stabilizing influence exerted by the better trained craftsmen supplied by the historically fair practices of the International

Typographical Union. The nonunion shops have followed union wages and practices to the degree necessary to hold their help. The ability to produce under fair conditions has made up for the unfair advantage the nonunion employer had by virtue of lower wages and longer hours. It is only through the successful closed shop in the printing industry that this stability has been maintained. Otherwise cutthroat competition will become the rule and the industry composed of over 30,000 units will lose its opportunity to pay fair wages and operate under fair working conditions.

4. The union has been flexible enough to supply trained craftsmen to man shops in the less favorable areas and by maintaining a high degree of organization cut off the supply of poorly trained craftsmen who may be available for competitive and strikebreaking purposes. The International Typographical Union issues charters to competent craftsmen in cities were eight or more desire to form a union. Obviously, such small unions must have assistance from an international organization if they are to maintain high standards and be a credit to the industry. There are over 400 unions in the International Typographical Union having less than 25 members each.

5. Adoption of the Thomas bill will make it possible for the International Typographical Union to pursue, unhampered by bureaucratic interference, its historic policy of collective bargaining based on the very cornerstone of stability arrived at through democratic methods. For over a hundred years the fundamental basis of a union shop has been the acceptance by employers, as a prerequisite to all other conditions of the laws of the union. Such laws as were of an economic character and which established a minimum basis for union shop operation all over the country provided a floor upon which collective bargaining was erected. Most important of these laws were those requiring a closed shop, a system of priority, a system of apprentice training, and the regulation of the number of apprentices to be employed at a given time, laws governing the method of determining the fairness of discharges and methods of handling grievances and procedure for the arbitration of disputes arising as to interpretation and enforcement of agreements. No variation has been permitted in the application of the basic fundamentals constituting the floor of collective bargaining and their interpretation has rested with the union which has adopted them. Their universal application and interpretation has provided a desired stabilizing influence in the industry.

6. The adoption of the Thomas bill will make it possible for the union to continue to maintain the Union Printers Home at Colorado Springs, Colo., and make it possible to continue to pay pensions of $15 per week to more than 7,000 aged and incapacitated members as well as to pay mortuary benefits of up to $500 on the death of a member. Obviously, these features cannot be maintained if the closed shop is permanently abolished and nonunion men work in shops as free riders on the efforts of union men. Such nonunion men refuse to bear their fair share of the laudable and necessary efforts of union men. Obviously no strike for better wages or conditions can be successful if an employer can dilute the personnel of a shop with enough nonunion men selected by him and perhaps paid more than the union scale so that they will supply a strikebreaking nucleus for continued operation during a strike. Without question such a strikebreaking nucleus of nonunion men would destroy the morale of the union and while preventing the possibility of a strike would also prevent reasonable progress of working people obtained through bona fide collective bargaining.

7. The rights of an individual as regards securing a job have been overstressed to a point of being ridiculous and fantastic. The rights of an individual are important, but the rights of 10 individuals or a thousand individuals are 10 times or 1,000 times more important. It is a sound premise that individuals may do collectively what they have a legal right to do individually. If 1 individual has the right to contract for a job, there is no reason why 1,000 individuals or any number may not contract with an employer for jobs. Neither one individual nor a thousand may walk into a plant and declare themselves in.

The closed shop as it exists in our industry has denied no one the "right to work." In the first place, there is no "right to work"; if there were, our members could go into court during a depression and enforce that right instead of remaining idle.

To say that a man must know his trade in order to work in this business is true of every other line of endeavor, and if he knows his trade, is of good character, and is willing to pay his dues, he can come freely into our organization. Under the Taft-Hartley Act, a man can be forced into a union at the end of 30 days; we do not want and have never accepted the principle of compulsory unionism and accept into membership only those who freely apply for such membership. We deny no one the right to work at this trade; we do impose certain conditions upon working in certain shops. Thos conditions are not onerous, are democratically fixed by the action of the vast majority of the men employed in the craft, and are designed solely to protect the interests of those working at the craft and the competency of persons employed in it. If there are only 500 jobs available and there are 1,000 persons seeking employment in a plant where there is no union at all, 500 are going to be unemployed and the rights of the individuals to a job are wholly nonexistent. If, on the other hand, the employer and the union maintain stable conditions for 500 men in the plant and such replacements as are needed, it is a laudable effort and one which will result in not attracting greater numbers hoping for work and tending to force down labor standards. Since labor unions are recognized by law as necessary to protect workers against the greed and oppression of employing corporations, the law should not, directly contrary thereto, also provide laws under which organizations of labor can be destroyed by the very forces the law seeks to check.

The existence of a substantial number of closed shops means that there is a pool of jobs available to our members. Under our seniority system, which we call "priority," a union member who has established his seniority in an enterprise receives a preference in hire over those junior to him, and thus skill and experience are recognized and rewarded. Out of their long experience, our members have developed an antipathy for working with nonunion men; not because they dislike them personally except in some cases, because they recognize in the nonunion man one who is unwilling to be bound by the rules by which our members govern their conduct and who is, therefore, a threat to the stability, solidarity, and bargaining power of the union. The closed shop agreement avoids any difficulties which might arise from the hiring of nonunion men. Our employers recognize this tradition, and only a neophyte in the business would undertake to introduce a nonunion man into a union shop.

I have indicated some doubts about some provisions of this bill. But on balance, it represents so marked an improvement over present legislation that the ITU is prepared to give its support. If the reservations which I have expressed raise difficulties, in the event this bill becomes law, we shall of course call them to the attention of the Congress. If they do not materialize, so much the better. But I am confident that this bill represents the maximum of regulation which should be inflicted upon unions and that no amendments of it should be countenanced. To go any further than does this bill can only entail a repetition of the Taft-Hartley experience. That experience should by now have indicated that the labor movement of this country is prepared to fight hard to retain those essentials of free trade-unionism which are also the essentials of our political and economic democracy.

Mr. RANDOLPH. I suppose you have noticed that I am buttressed by a couple of good lawyers, and I shall rely on them to at least nudge me to keep me from answering a question that might get me in trouble.

Senator TAFT. They can answer for you, perhaps, without being subject——

Mr. RANDOLPH. On the contrary, they are enjoined likewise.

Senator TAFT. Are they? [laughter.]

The CHAIRMAN. I cannot help but repeat, and I think everybody agrees here—I hope they do, at any rate—that our first duty should be to protect the witnesses.

Mr. RANDOLPH. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Neely.

Senator NEELY. Mr. Randolph, you have been an officer of this union for many years, have you not?

Mr. RANDOLPH. Yes, sir; for some 20 years.

Senator NEELY. You are at present the president and have been since 1944, I believe?

Mr. RANDOLPH. Yes.

Senator NEELY. Would you please describe the procedure of the union, in general, so that the committee may know that you have actually been proceeding along democratic lines?

Mr. RANDOLPH. Yes, Senator Neely; I think that such a statement will help materially, and I believe in convincing Senator Taft that the ITU is a very fine organization.

Senator TAFT. I have always thought so. I have not been much in touch with them, but I have always heard that.

Mr. RANDOLPH. The history of our organization is one that I believe is really the best evidence of the trade-union movement of the country.

It existed in typographical societies almost from the beginning of our country, and some of those societies have had a continuous existence for a great many years.

For instance, this local union in Washington, D. C., has a continuous existence since 1815; and in 1850, a group of those societies held a convention looking toward the formation of a national body. They had another convention in 1851 for the same purpose, and at the third convention in 1852 arrived at the basis for the National Typographical Union.

It persisted under that name until 1869 when, upon receiving into the union a group of Canadian societies, Canadian unions, the name was changed to the International Typographical Union.

Basically it has been completely democratic from the beginning. In our offices in Indianapolis you can find the printed proceedngs of the conventions beginning with the convention of journeymen printers of 1850 and every action taken by the international union since then, in convention, is found printed and preserved along with the laws of each year since 1850.

With the exception of very few times, the international union has met every year. I recall noting in the proceedings that the president of the international union severly criticized the secretary-treasurer for calling off a convention during the Civil War. I think we only missed two during that time.

The union has always functioned through a constitution, bylaws and general laws and convention laws since that time.

The constitution has always been reserved to the members. In other words, any amendment which is to be made to the constitution embodying our basic policies must be referred to a referendum vote. Every question concerning the rates of dues, and the raising of money, has to be voted on in a referendum vote, and it has always been so.

The bylaws have contained the regulations for the internal affairs of the union, the procedure to be followed by the international and local unions, the duties of the officers and so on, and the bylaws have been subject to change by convention action or by referendum vote if desired by the members.

We have more democracy in the typographical union than you have in the Government of the Untied States or any State, because we can change our laws through the initiative and referendum——

Senator TAFT. When you speak of bylaws, does that cover the so-called international laws? Is that the same, or how are they differentiated?

Mr. RANDOLPH. The international laws is a book composed of the constitution, the bylaws, the general laws, convention laws, the Union Printers' Home laws, resolutions.

Senator TAFT. I mean, how are the international laws passed? What is the procedure?

Mr. RANDOLPH. Convention.

Senator TAFT. If you want a new international law, how do you go about it?

Mr. RANDOLPH. I am just trying to get to that, and if I do not cover it, you remind me, please.

The constitution is only made and amended by referendum vote of the members. The bylaws may be made in a convention or there may be also an amendment to the bylaws by referendum vote through an initiative petition, whereby 150 unions at this time may petition for an election to change any law in the book, any law in the book can be changed by referendum vote of the members on the petition of 150 out of 850 unions.

The general laws contain a series of laws adopted by the members, either in convention or by referendum vote, and from the beginning the officers of the International Typographical Union and of local unions were democratically elected. Until approximately 1898 officers of the international union were elected in conventions.

Since that time they have been elected by referendum vote of all of the members of the union each 2 years.

The local unions elect their officers through a referendum vote of their local members. Local unions may not change their constitution or bylaws until they have first proposed the changes at union meeting, laid them over for 30 days, informed the members of the changes, and then voted on them at a succeeding meeting.

The international conventions are made up of delegates elected by referendum vote of each local union and, therefore, the finest type of democracy is exhibited through the members in referendum vote in electing delegates to a convention, and these delegates do the work of amending the bylaws and general laws or proposing amendments to the constitution for referendum vote.

They may change the convention laws with a majority of two-thirds. So that the orderly procedure, and the absolute guaranty of protection for every individual member of the organization, is evident, and has been from the beginning.

No member may be expelled or suspended by a local union until after due trial in accordance with a very well developed set of rules, and until after the member has had an opportunity to appeal to the executive council of the International Typographical Union.

No verdict of a local union providing for either reprimand, suspension, or expulsion may be enforced until after the man charged with the crime or convicted of it has had the opportunity to get a review by the executive council of the International Typographical Union.

Now, the democratic character of our organization, I say, even exceeds the democracy of the country itself.

There is a very close parallel, however, on the relationship of local unions to the international, and the relationship of States to the Nation.

For instance, from the beginning, a local union has had the right to adopt any law it saw fit so long as it did not conflict with the laws of the International Typographical Union; and the laws of the international were made by the delegation of powers from local unions to the international union in convention or by referendum vote, so that when the international union speaks it is speaking as a voice of all of the members of the International Typographical Union.

The international gets its power from the members of the union, as the governments of the States and the United States get their powers from the people.

That is a parallel condition, and local unions have put upon themselves, through their own delegates, the laws that are found in the international lawbook, so that the international lawbook is not something that is enforced upon people, but it is a restriction that people lay upon themselves for the purposes of international coordination of unionism.

Now, we have in the general laws, and from the beginning, a series of laws that have to do with the economic conditions of the industry.

As the union developed, and until some time between 1880 to 1886, there was no such thing as collective bargaining. The local unions simply met, and formulated their scales of prices, and the conditions under which the members would work.

Any employer that would pay the scale and comply with those conditions could get union printers. Those who did not, did not get union printers. That is all there was to it.

There was no collective bargaining, and employers generally, as of years gone by, especially back in those days, did not even think about bargaining with unions in any way near the sense they think of it today.

The simply complied with their scales of prices, and rules, if they hired union people. With the development of the linotype machine around 1885 to 1890, a great deal more printing could be produced. Industry got a spurt of development.

It became desirable to employers, to employers, if you please, to have collective bargaining with the International Typographical Union, and it was to their interest to have a scale of prices stable for a period of time, rather than depend upon the scale of prices which may have been adopted at any time by the local unions in each city.

So, obviously, at their request and obviously also for the benefit of the union, the development of collective bargaining began. But there was no change whatever in the fact that the union rules of conduct in shops, the union conditions that had been laid down in the international lawbook, persisted as a basis of collective bargaining, and has persisted to this day.

I shall deal with that, perhaps, a little bit more later on, but suffice it to say at this moment, to this very day, even though the American Newspaper Publishers' Association has since 1916 made several attempts to change that basis, it has not been done. It could not be done without destroying the union because in these general laws we tie down the economic progress that has been made over the years.

The first move for an 11-hour day was made by order of the union that thereafter no union should make a contract or could make one or have a scale of prices, as it was in those days, for a work-day exceeding 11 hours, nor at a later time when the union ordered the same action with regard to the 10-hour day, and the 9-hour day, and the 8-hour day.

The CHAIRMAN. Can you date those 10-hour, 9-hour days, Mr. Randolph?

Mr. RANDOLPH. No, I cannot. The 8-hour day was 1906, and beyond that I cannot give you the exact date, but I could get it out of our records.

In other words, the union—and it was necessary to strike to obtain it—simply stated that on or after a certain day 11 hours or 10 hours would be the workday, and any employer that did not pay for it, for the work under those conditions, got no union printers, the equivalent of a strike, but that action had to be taken each successive step on up to the 8-hour day of 1905 and 1906.

It required a strike in every reduction of hours since the organization was founded. So that the general laws adopted by the members——

Senator NEELY. May I interrupt you there? If you had been prohibited by law from striking against the 11-hour day, for instance, do you think you would have gotten rid of it?

Mr. RANDOLPH. No. In fact, we could not have gotten rid of any workweek without a strike, as our long history has proven.

Senator NEELY. You think if you had been under the Taft-Hartley Act at that time you could have gotten rid of the 11-hour day?

Mr. RANDOLPH. We would not have lived if we had a Taft-Hartley Act in those days. It took a good quality of pure unionism to exist under circumstances of the days preceding 1880, as perhaps many of you are aware, if you have read the industrial history of this country.

Senator NEELY. I do not believe the members of your union were persecuted or abused as they were in many of the other unions, for instance, in the coal fields.

Of course, it is a matter of common knowledge, and it was in the county in which I lived, that if a union man came to our town to make a speech on the front steps of the courthouse recommending in the most peaceful way that the miners organize, a goon for the coal company would beat him up and put him in jail and keep him there until he left town.

You did not have that kind of violence? That kind of violence was not used against your members, was it?

Mr. RANDOLPH. No, Senator; and perhaps the reason why is because our folks from the beginning were skilled in a way that could not be replaced immediately, and if they beat them up, certainly they would have to take time to recuperate during which no paper would be gotten out. [Laughter.]

In fact, I have seen some pictures of some of the old-time printers of 1880 and before, and I noticed they had heavy gold chains across their vests, and there was one with a swallow-tail coat and a plug hat, and all with big mustaches and they looked very dignified. [Laughter.]

But in the development of the industry the skill was a factor, as was also the fact that until recent years a piecework system was the rule.

It has taken 40 years to eliminate the piecework system slowly and without too much strife. In the old days everything was piecework, and a printer would be assigned a set of cases, to set from a case full of type, and his job was to set type out of those cases 7 days a week, and he got paid so much a thousand ems for setting type.

Well, the type had to be thrown into the case again after use, so he came down in the daytime if he was a night worker, and distributed the type so he would have some more to set up at nighttime.

Likewise, in reverse if he were on the day job he, of necessity, had to see that the type was distributed cleanly so that when he set it up he would not have too many typographical errors. In that system, and that system of making the man responsible for his job his feeling of responsibility has persisted on through the years.

If a man does not take care of his job, then he is guilty of what we call "jumping" his job, and he can be discharged for doing that. That has always been the case; and from the beginning the man who was assigned a set of cases had the responsibility—that was called a situation—and if he wanted to be off, he had to employ a substitute to cover his situation, and set type from that set of cases.

That was his obligation, and to this day a union printer has the right to employ a substitute without consultation or approval of the foreman so long as he covers his situation.

Now, I can well understand that someone reading the book of laws, as of now, and without that history, without that knowledge, and without knowing that it is the tradition of the industry, might feel, "Well, what business has an employee go to interfere with management and inject a man in the composing room?" It sounds silly to some of these modern people, but we, of the typographical union, regard that as a right, and a right that we will not give up. That is so firmly entrenched in our organization and in our industry as to provide a certain amount of economic democracy and make it possible for a man not to be unfairly treated by an employer as regards being absent from his job.

We also have, from the beginning, rules concerning the protection of men from discharge, and until recent years the matter of discharge was one wholly handled by the union.

If a man was discharged, his fellow workers in the shop—we called it a chapel—we inherited the word "chapel" from England, in the early days. A shop was a chapel. The members in the chapel passed on the justice of that discharge, and in the early days that finished it. In later days the matter of discharge was appealable to the local union and executive council of the International Typographical Union, and that decision was final until reversed by a convention, if a man wanted to carry it to a convention, and some have.

But the security on the job, and the stability of the service that we have rendered has been one which has been a responsibility of the union, and one which the union has enforced uniformly all of these years.

Now, there are other laws in the general laws, having to do with other working conditions in the shop that have been established over long periods of time. Each reduction in hours has been nailed down in the lawbook so that no subordinate union may make any agreement for a longer workday than 8 hours a day, nor more days per week than five, and all of the time local unions have negotiated through agreements with employers contracts for less number of hours than eight per day. At the present time there is a 37½-hour average or less in the entire industry.

Now, the effect of these laws simply means this, as was the case with piecework: When we have secured a sufficient part of the industry operating under these favorable conditions and elimination of piecework, when there were only, I believe, thirteen remaining piecework scale, the international convention then adopted a law prohibiting local unions from having a contract with the piecework provision in it. These stragglers in the establishment of the favorable conditions are thereby served notice that from now on they cannot make a contract with piecework in it.

Then, the same way with hours, the same with regard to the use of the union label. It has been the same with regard to a minimum wage by employers who use the union label. In other words, whatever the development of the industry has produced through the process of collective bargaining .is nailed down in the law book so as to make it uniform throughout the country for members of the union. The union rules as regards economic matters are obviously and, by the very necessity, limited to that degree of what could be established throughout the country without having to strike for them, because if you adopt a rule that you have to have a national strike about, you want to be pretty sure that that rule is one that the overwhelming majority of the members in the organization will strike to enforce, because if they do not, the procedure of making rules for international enforcement absolutely breaks down.

In other words, the trouble that you might be put to is a brake on the type of a rule that you might make. These rules, I say again, are made by the members themselves. The members themselves in local unions, through delegation of their authority to a delegate, democratically elected, make them themselves. The international union is not just a group of officers inflicting anything upon the members. The members are the international union, and the members' rules are the international laws.

Senator NEELEY. It is truly a self-governing body.

Mr. RANDOLPH. A self-governing body completely and absolutely.

When it comes to collective bargaining, that is the business of the local union. It is the authority of the local union and the local union acts under its own restraints through international law.

The international officers are executive officers to see to it that these laws are enforced generally.

Now, the effect of these laws in an industry that has over 30,000 units of manufacturing plants is to stabilize it.

Here are a group of employers, we will say, in, take Chicago, I know more about it, I was president there in 1926-27, before I became international secretary-treasurer.

At one time there were less than a third of our members employed in offices belonging to an association of employers, but we always dealt with an association. We made an agreement with an association, with the understanding that we, as a union, had to enforce these same conditions in all of the other shops in the city. That has been the situation which has obtained ever since, and not only that, but the newspaper publishers in the city have always had a clause in the contract we made with that association whereby the union would see to it that that was done, and if the union granted a different or better condition to any other daily newspaper in the city, upon request of the association the union would also permit the contract to be changed to give them that same favorable condition. Stabilization of the industry through union laws is a recognized principle, and without it, it would be impossible to operate with any degree of stability in an industry which has so many units and so much competition that the industry would cut its own throat by competitive processes.

The union has laid a floor for stability. It has laid a floor for collective bargaining by having the same working conditions operate all over the country.

A man can learn the trade in New York and go to Los Angeles and know what is expected of him and perform. He can go from Seattle to Florida or from Canada to the Gulf, and everywhere he goes he can practice his trade, as we call it, his profession, with the same assurance of knowing what is expected of him; and the employer has the same assurance that he is getting a competent man who knows how to work in the composing room.

It has been of benefit to the employers as well as to the union, and with it has gone over the years an apprenticeship training program whereby it was assured that these craftsmen did learn the trade, and that they did know what they were to do when they went from place to place.

We have not only supplied through democratic procedures and collective bargaining a competent staff of workmen, which have been of benefit to the employer and of benefit to the union, but in the establishment of that force we have provided a mobility that was important: a man going from place to place, as the volume of work might grow, or moving from town to town. We have a mobility as well as an apprenticeship training that guaranteed that workers knew a trade when they went from town to town.

Senator SMITH. Mr. Chairman, I regret exceedingly that another responsibility of mine calls me away at this moment. I am profoundly interested in the testimony of Mr. Randolph.

I have always had the highest regard for this particular union, having had many friends in it, and I am just raising the question of whether you plan to have Mr. Randolph here after lunch today, because I would like to ask him some questions to clarify my own thinking. I am unable to do that now because I have to go to another appointment.

The CHAIRMAN. That depends entirely on the committee. If I may judge from what has happened in the past, I judge he will be here this afternoon.

Senator SMITH. That is my assumption. I sincerely hope so. I regret that I have to leave, but I want to thank Mr. Randolph for what he has said up to this time, and I hope to talk with him later.

Mr. RANDOLPH. If we do not, Senator, I would be glad to visit your office and spend several hours with you.

Senator SMITH. We will do that if I do not get a chance to talk to your here. Thank you.

Mr. RANDOLPH. A final word about the democracy of the organization. For all of the time that there has been an organization of employers we have had a convention rule that employers' associations may send a representative to our conventions and discuss any matter that is of importance to them.

I would like to read to you section 4 of article I of the Convention Laws on page 127 of the law book—that is the 1948 law book—and it is as follows:

"No person other than duly elected delegates and officers shall be accorded the privilege of the floor during the sessions of the International Union except by unanimous consent of the Convention; but when requested, a representative of the American Newspaper Publishers' Association, the United Typothetæ of America, the Printers' League of America or the Printers' National Association shall be heard on important changes in the laws affecting their interests."

They can debate any question before the convention, but they cannot vote on it, and dating back to the time when local unions adopted their own scales of prices, we have had an international law that provided for local unions to permit employers to discuss with them any important changes made in the scales of prices, granting to an employer access to a union meeting to discuss his side of the question. And at no time in the history of the organization is there any record of any such refusal. They are ofttimes welcomed into union meetings to discuss these matters, and any time they have requested it, they have had the opportunity to do it.

The CHAIRMAN. They talked freely during the operation of the National Labor Relations Act without question of what they said? Did they feel that they had free speech with you or did you say, "You cannot say that here?"

Mr. RANDOLPH. Oh, yes; there was no question of free speech in our organization. We have always welcomed it, and if an employer can out-argue the members of the union, he has that opportunity within the union meeting if he requested it.

I recall one publisher requested that privilege not so long ago in Louisville. He was granted the privilege, and the union asked me to come and state the views of the international union on the same subject he was to discuss, and the publisher and I debated the question before the local union.

The CHAIRMAN. Was there ever any restraint during the operation of the old Wagner Act about their talking freely?

Mr. RANDOLPH. None at all; none at all.

The CHAIRMAN. Were you ever accused, your union ever accused, of being a company union at all?

Mr. RANDOLPH. Absolutely not.

The CHAIRMAN. And you had no difficulties now with any of the representatives of these employer organizations that you have mentioned; were they parties to the various petitions asking for modification of the Wagner Act so that they could have freedom of speech? Do you know whether they considered themselves hurt by the way in which the National Labor Relations Board carried on the operation of the law?

Mr. RANDOLPH. So far as I know they had made no such representations.

The CHAIRMAN. There was not any talk about it in your meetings when they came?

Mr. RANDOLPH. No.

The CHAIRMAN. Did anybody say, "Well, I have got to be careful now because I might find myself in contempt with the Board if I express my will openly by saying certain things"? They felt free, did they, as free after 1935 and 1936 as they did before?

Mr. RANDOLPH. Oh, they always did, and if you would attend any of our meetings or conventions you would find that there is always somebody that will take the hide off of the officers or anybody he sees fit.

The CHAIRMAN. Do they say now, as they come in, since the operation of the act of 1947, do they say, "Well, now, I feel fine; I can come in and talk to you freely without restraint"? Have you noticed any difference, in other words?

Mr. RANDOLPH. There is no difference except the heat that the Taft-Hartley law has generated. There is more conversation and it is hotter.

The CHAIRMAN. We have sometimes heat in this committee, but we all remain brothers.

Mr. RANDOLPH. So I notice.

Senator TAFT. Brothers, you said?

The CHAIRMAN. Brothers.

Excuse me, Senator Neely, for breaking in there.

Senator NEELY. Are you through with that comment, Mr. Randolph?

Mr. RANDOLPH. I think I have indicated that we are a democratic organization along the lines of your questions, and our democracy——

Senator NEELY. I personally had no doubt about it before, but I thought it ought to be in the record.

Mr. RANDOLPH. I think it is very important in view of the general situation to understand that the economic provisions that are contained in our book of laws are the minimum basis of the nationally applied union regulation, and that our members make those rules, and the position in the union is that they have a right to stand on that book of laws as a general economic law throughout the whole Nation for any collective bargaining that is done. That is one of our basic and fundamental positions which we will not desert, and which we will defend to the absolute end of the union because it would mean the end of the union if we did not operate under such conditions.

Senator NEELY. Mr. Randolph, would you now please briefly discuss the relationship of your organization or rather its members with the employers, with their employers, from a standpoint of hostility or peacefulness of the relationship, first before the Wagner Act was passed, secondly under the Wagner Act, and thirdly under the Taft-Hartley Act.

Mr. Randolph. The relationship between the subordinate unions and the international union and employers has always been on a very friendly basis, and one of the really best that you can imagine. We have had recognized the idea that there is any such thing as class consciousness about this matter.

The union has never undertaken to do other than to discuss the economic phases of our existence, and to arrange the best deal that we can arrange by collective bargaining.

That persisted under the Wagner Act, and the Wagner Act had practically no effect on our union whatsoever. We made very few efforts to even use the Wagner Act.

As regards the matter of collective bargaining, that is one of our historic purposes, and we never presumed to collective bargain with anybody unless we had a big majority of his employees in our union.

Our organization efforts have been made along the lines that I have set down, so that we did not use the Wagner Act except in a very few instances. To my way of thinking, in our industry, it was of no particular value because in the essence of the situation, it all depends upon either the good will of the parties' bargaining with each other or the economic ability of the union to withdraw sufficient members to stop the production of the plant, so that the employer would be willing to bargain for wages and conditions, and so on.

The Wagner Act, as I say, had very little effect, and we very seldom used it.

Obviously, it was for the purpose of protecting other unions and the formation of other unions against what was adequately proved before the senatorial committee to have been a move on the part of big employers to prevent organization by the use of various illegal methods. The Wagner Act, as I understood it, was simply to take the foot of the employers off the neck of the workers, so that they could organize and could bargain.

We have been doing that for a hundred years, so that it has no effect upon us, and in the final analysis economic strength is the only thing that will determine whether a union wins or loses.

Our relationship was not disturbed at all when the Wagner Act was adopted. It was not bettered at all.

Senator Neely. Did you live at peace or were you at war constantly with the employers before the Wagner Act?

Mr. Randolph. We were always at peace.

Senator Neely. Were you at peace with them under the Wagner Act?

Mr. Randolph. Yes; we were.

Senator Neely. Have you been at peace or war with them since the Taft-Hartley Act was passed?

Mr. Randolph. Well, we have been at peace with a large majority of the individual owners of newspapers and commercial establishments. A war has been put upon us by representatives of the American Newspaper Publishers' Association, and representatives of the Printing Industry of America, which representatives testified here the other day.

Now, this war is one of representatives, and I venture to say, without knowing their internal affairs, that there is far less democracy in determining the course of policy in that organization than there is in the International Typographical Union.

The Chairman. How old are their orders?

Mr. Randolph. Well, the Printing Industry of America is only a few years old. It is sort of a successor of the Printers' League mentioned in our book of laws. We have tried to keep this up to date in giving the various national organizations an opportunity to talk to us, but it is not a very old organization in the commercial field. The very fact that the vast majority of employers in both commercial and newspaper fields are doing the contrary to the advice of their national organizations proves that they do not approve it and that they did not go along with it to begin with except as a general proposition whereby they might weaken the organization through the abolition of the book of laws as a foundation for collective bargaining.

Senator Taft. Or that they have no choice because your power is so great that they have to sign or go out of business?

Mr. Randolph. Senator, I wish our power was as great as you say. It has cost us millions of dollars each time we tried to exercise any power, and in establishing the 8-hour day it cost the international $5,000,000 in 1906 and local unions some $8,000,000 to get the 8-hour day in 1906. Being inclined to do a statesmanlike job, as they refer to some of these acts of unions, in 1919, at the conclusion of the war, when the shorter workweek could easily have been prescribed and taken, the international officials made an agreement with a group of employers on a national basis to institute a 44-hour week in 1921, giving them 2 years to bring it about. When the 2 years rolled around, the employers said in effect, "There is a depression on. You are going to keep on working 48."

The result was it cost us $16,000,000 to make good on an agreement we made in 1919, and that is not very powerful. It lost us some 6,000 members and hundreds of shops went into the nonunion column.

Senator PEPPER. Will the Senator yield for a question?

Senator NEELY. Surely.

Senator PEPPER. Mr. Randolph, you say that was in 1921. State whether or not after World War I there grew up in the country and in the administration then in power an antilabor policy at that time which was reflected in the attitude that you just described, on the part of management?

Mr. RANDOLPH. The attitude against the fundamental policy of the ITU was very well indicated by the American Newspaper Publishers' Association in 1922, when at the expiration of the arbitration agreement in effect between the international union and the ANPA, it refused to renew it because of the provisions of the book of laws. From 1922 on the machinery of arbitration was kept intact for any local union and publisher that wanted to use it, but there was no international commitment on arbitration as a means of settling disputes.

Senator PEPPER. Did you get any help from the Government in that crisis of yours?

Mr. RANDOLPH. Well, Senator, we have never appealed to the Government and we have always regarded this matter of industry and labor as one for them to settle themselves, if allowed to do it.

Senator NEELY. Well, has the Taft-Hartley law been productive of peace or of strife so far as your union is concerned?

Mr. RANDOLPH. It has been productive of strife in this way, Senator Neely. The Taft-Hartley law provided various alternatives that an employer might use through which he could destroy the craft.

It permitted him to transfer our work, the work upon which we have earned our living for 100 years, to any other trade craft or class of employees, union or nonunion, and it prohibited us from striking to prevent him from doing it. Well, obviously, that is such a simple way of putting the squeeze on the union that whether he does it or not, he has the present opportunity to do it, and if he does not, it is only because he wants to maintain the union strong enough at least to give him the stability that he has always been accustomed to having, but it does give him the opportunity to club the union by saying, "Unless you do this or that, I will do this so it will ruin you."

That was one of the worst things the Taft-Hartley law did, and if I recall the legislative history I once read of the act—and once was enough—that provision was put in during the sessions of the conference committee. It has not been on the floor for debate at all. Somebody brought it to the conference committee and at once it was adopted and we were subjected to the very tool by which the employer could slice up the union and the various tasks that go to make up a trade.

Senator TAFT. Which provision was that? You said "conference."

Mr. RANDOLPH. The provision of the trade craft or class, 8 (b) (4) (D).

Senator TAFT. It is in a House bill. I assume it was debated in the House, but was not debated in the Senate.

Mr. RANDOLPH. Well, that is, as I recall, a restraint of the Taft-Hartley law, and the powers given to employers to do as they please interfered with all of the stabilizing influences we had built up over a hundred years.

Senator NEELY. What policy of collective bargaining, if any, has your union adopted under the Taft-Hartley Act?

Mr. RANDOLPH. We were immediately aware of these dangers to our organization, and we consulted an attorney who we thought was one of the best, an ex-judge of the Supreme Court in the State of Indiana. He spent many hours with us working on the problem. He attended our convention in Cleveland and assisted and guided us in preparing a collective-bargaining policy which he thought was within the law and which we thought was within the law and which would not sacrifice unnecessarily any of the rights that we had established .

We conceived that some portions of the law meant what they said and proceeded along that line. We conceived the idea we could proceed to bargain collectively within the whole mandate of the law, as we always had done, but that we would not proceed to the point of signing a contract which would bind us to the employer while he could exercise some legal rights under the Taft-Hartley law to split us up.

The employer has some rights to grant us certain conditions that we cannot strike for but, as I say, the collective-bargaining policy adopted by the Cleveland convention was to continue, as we always had, to bargain with our employers, but that we would not ask for a contract and we would indicate that we did not want one.

The adoption of that proposition plainly stated, and I quote: "There should not be and will not be any attempt on the part of the international or subordinate unions to violate any valid provisions of this law or of any law, Federal or State," and we proceeded under that policy to try to bargain.

Senator NEELY. What was the result?

Mr. RANDOLPH. Well, the immediate result, shortly after our convention, was at least a newspaper account of a speech made by Mr. Denham, general counsel of the National Labor Relations Board.

Senator NEELY. The man who has been on the witness stand here for 3 days?

Mr. RANDOLPH. Yes, indicating that we were off-side in our attitude, and it was not legal.

Senator TAFT. When was that, what was the date of that?

Mr. RANDOLPH. I did not keep a copy of it. I recall it was not too long after our convention, which was in the latter part of August of 1947.

Senator TAFT. And his speech was a result of the resolution adopted at that convention, I assume? He was commenting on that?

Mr. RANDOLPH. Yes.

Senator TAFT. That was this resolution:

"It will be our policy to refrain from signing contracts in order that we avoid agreeing, or seeming to agree, or voluntarily accepting the conditions created by such a relationship under the Labor-Management Relations Act of 1947 * * * our members may accept employment only from employers who are willing to employ them under the 'Conditions of Employment' which the several unions adopt, after approval of the Executive Council of the I. T. U. A 'Conditions of Employment' form, which must be used by all unions and which is uniform except for local scales and practices, has been printed for the convenience and use of all subordinate unions. The form sets out the conditions under which our members offer their services."

He was commenting on this first statement, I assume: "It will be our policy to refrain from signing contracts in order that we avoid agreeing, or seeming to agree, or voluntarily accepting the conditions created by such a relationship under the Labor-Management Relations Act of 1947."

That was the occasion of his speech, was it not?

Mr. RANDOLPH. I think so, yes, and likewise not too long after a speech by Mr.——

Senator NEELY. Pardon me for interrupting. Where did he make that speech?

Mr. RANDOLPH. It is my information or memory that it was before the Bar Association in Cleveland, either the Bar Association or Bankers Association, I do not know.

Senator NEELY. Would it be possible to obtain a copy of that speech?

Mr. RANDOLPH. I would not have a copy of the speech. All I know is what was stated in the paper and I was not concerned too much about it, so I did not keep a copy of it.

It indicated to me a prejudging and a hostility which I just registered in my mind as such and let it go. We had too many other things to think about to try to find the way to handle this thing without taking ex parte judgment on the facts.

Senator NEELY. Were you intimately acquainted with Mr. Denham at that time? Did you know his attitude toward labor unions?

Mr. RANDOLPH. No; I did not.

Senator NEELY. Did you know at that time he was opposed to the closed shop, for instance?

Mr. RANDOLPH. No; I did not know about Mr. Denham, I say, because we used the Wagner Act almost never, very seldom. I did not keep track of the various governmental personalities or functions that went along in the operations of that——

Senator PEPPER. Will the Senator yield a moment? I think it would be appropriate for this record to contain either a copy of Mr. Denham's speech, if there was one made, and if not, any newspaper account of it that might be had, and I would like to voice the request, if there are any of Mr. Denham's representatives here, that Mr. Denham see if he has a copy of his speech and be kind enough to supply it to the committee.

If not, would he give the date of it and furnish us any newspaper clippings he has on it? If not, our own staff can seek to obtain that.

The CHAIRMAN. Mr. Johns, will you do that?

Mr. JOHNS. Yes, sir.

Senator PEPPER. As soon as possible.

Mr. RANDOLPH. Secondly, an instance was the fact that Mr. Tom Shroyer appeared before a meeting of commercial printing employers, in French Lick, Ind., where he made similar comments. They were printed in the Indianapolis newspapers.

Senator TAFT. I ask that that speech also be put in the record.

The CHAIRMAN. No objection.

(Committee insert.) [Mr. Denham's speech referred to above; not reproduced herein.]

Senator PEPPER. That is Mr. Shroyer who was at that time general counsel of the Joint Labor-Management Committee of the Senate and House under the Taft-Hartley Act?

Mr. RANDOLPH. That is right. The only effect those speeches, or the published accounts of them, had on me was to indicate that the Government agencies were hostile to us, and had accepted vilification or some other reason for that hostility.

Senator PEPPER. Will the Senator yield for a further question?

Senator NEELY. Yes.

Senator PEPPER. Would you be kind enough to tell us whether either Mr. Shroyer or Mr. Denham had heard argument from you or your representative or from any legal representative of the International Typographical Union on the merit and the legality of your action before such speeches and comments were made?

Mr. RANDOLPH. He had heard nothing from us.

Senator TAFT. Except your official statement, which could only be interpreted in my mind as a defiance of the law which they were trying to enforce, that is all. I think that is an exception, I should think.

Mr. RANDOLPH. I wish you would read the official statement that indicated defiance of the law, Senator.

Senator TAFT. "It will be our policy to refrain from signing contracts."

Now, the law prescribes that unions shall engage in collective bargaining, collective bargaining shall be the signing of a written contract—"in order that we avoid agreeing or seeming to agree or voluntarily accepting the conditions created by such a relationship under this act."

If that is not a defiance of the law, I would like to know what it is. I cannot interpret it in any other way.

Senator PEPPER. Excuse me. Will the Senator yield? I wonder, Mr. Randolph, if it might not be appropriate to recall the definition of due process of law given by Senator Daniel Webster to the effect that in due process of law one is heard before he is condemned.

Mr. RANDOLPH. I hope that is still the law, although I am commencing to doubt it.

Senator NEELY. In this case you know it was not, do you not? Here is an official blowing off. This witness has been blowing here for the last 3 days, crying out against everything that could not be approved by, I had assumed, the American Manufacturers Association.

Senator TAFT. I object to the Senator's statement, Mr. Chairman, as an imputation and motive of a Government official without any justification whatever. I think it should be withdrawn by the Senator.

Senator NEELY. No; I do not withdraw it. I am not making any implication against you, sir, or any Member of the Senate. I am not violating any rule of the Senate.

I reiterate what I have said about this man. I think his conduct here as a witness is such as to impel and force every labor union in the United States to petition for—he has shown such bitter prejudice that he has no business sitting, being on any Government pay roll that involves relationships between toiling men and those who hire them.

Senator TAFT. Mr. Chairman, the record will show, so I will not argue with Mr. Neely—if the distinguished Senator will excuse me for interrupting—I think the record will show his statement is wholly and completely out of accord with the facts of the testimony of Mr. Denham.

Senator NEELY. Well, I will leave that to the public, and I hope they will read his testimony. It is the most biased, prejudiced testimony I have ever heard given by any Government official or any other self-respecting man at a witness stand in this Senate or in the House, and I have been 26 years sitting in these hearings.

Senator TAFT. Apparently anybody except the Members of the Senate, and perhaps those, who defend the Taft-Hartley law or try to enforce it or interpret it fairly is indicted as a criminal and a generally undesirable person.

Senator NEELY. No, Senator, I want to except to that statement. I think there are a great many people who are in favor of it, who are defending it. I think some of them defended it in a temperate manner. I do not think this witness has. I think he is the most biased man I have ever heard testify in any sort of a legal or semilegal or social or political investigation.

Go ahead, Mr. Randolph.

Mr. RANDOLPH. I want to reiterate that the collective bargaining policy has stated categorically: "There should not be and will not be any attempt on the part of the international or subordinate unions to violate any valid provisions of this law or of any law, Federal or State."

Now whether or not we violated the law, certainly could only be stated after we had been tried and found guilty of violating the law. One of the unfortunate things about the Taft-Hartley law is that it gives to the general counsel the authority to proceed on his interpretation of what the law means, and in that procedure hamstring any local union for a sufficiently long period of time that the union can be completely destroyed.

We do not believe, did not believe at that time, that the general counsel was right in his attitude of hostility without having first heard the facts concerning it, or at least consulted us about the facts, and at least found some opportunity to really see what the other side had to say about it.

Senator PEPPER. I think the quotation I was trying to recall awhile ago was the process is to inquire before condemning and rendering judgment through due process of law.

Senator TAFT. May I not ask whether the Baltimore case had not been already instituted at that time?

Mr. RANDOLPH. Not to my knowledge, Senator.

Senator TAFT. It was not?

Mr. RANDOLPH. As I recall it——

Mr. KAISER. October 6 was the Baltimore case.

Senator TAFT. What was the date of the speech?

Mr. KAISER. The date of Shroyer's speech was before then, I know that. I do not recall the date of Mr. Denham's speech.

Mr. RANDOLPH. Now the unfortunate part about this law is that so many people get so many things out of it. I attended a conference of some 75 or 80 lawyers in Washington, D. C., here, labor lawyers who were going to have to represent unions about this law, and I explained our situation and the opinion of that group was that we were absolutely legally right.

That was before our convention and then after discussing this matter with Judge Martin, who was with us at the convention and helped us draw up this policy within the law as he saw it, we found this Government hostility against us, and we then decided that if this thing was going to be a matter that was going to be kicked around in Washington, we wanted some Washington lawyers, so we hired a couple more. We have had three lawyers for all this time when before we never had to have any.

We could pursue our collective bargaining and friendship with honor and arrive at satisfactory conclusions, and have done so for a great many years, but now instead of having some 1,200 contracts, we had less than 100, and the major portion of employers are fully content to go along with a satisfactory increase in wages, while all of these numerous lawyers and trials and what not go on. They are interested in running a printing business or a publishing business, and they are not interested in all the refinements of technical torture that can be applied to us.

The unfortunate part is that here are some representatives of associations of employers taking it upon themselves to refine these tools of torture to be used as they desire for any employers throughout the country.

Naturally the employers are waiting to see if they are going to get any such tools, all the time knowing the character of the International Typographical Union and its members, all the time having not the slightest idea that they can destroy that book of laws by any law whatsoever, and that the members of the organization will remain intact as they have remained intact in Chicago for some 16 months or more on strike against this law, not 16 months, but since November 1947.

Senator TAFT. Strike against the law? I am glad to have you state that frankly, because that is what it is, of course. How can any enforcement officer possibly condone a strike against the law? That is what I would like to know.

Mr. RANDOLPH. Senator, I will be glad to tell you.

Senator TAFT. I mean you said, and you mean, I assume, that it is a strike against the law.

Mr. RANDOLPH. No, no, no.

Senator TAFT. You said so.

Mr. RANDOLPH. No; that is not the purpose of my statement, and if it can be so interpreted I want to correct it.

The strike in Chicago was for a wage rate only, and every day since that strike has been in effect the publishers have known that the members of the union would return to work if they paid a fair rate of wages, and no other condition attached to that rate of wages.

Senator TAFT. That was not according to my information, but I have not checked up. You may be right.

Mr. RANDOLPH. That is a fact, Senator, and the reason why we could not get a fair rate of wages was because the Chicago newspaper employers took the position that they would not grant a fair rate of wages until the union signed a contract to their liking which would make it possible to destroy our organization.

Senator TAFT. No, until the union signed a contract in accordance with the law, I think, Mr. Randolph.

Mr. RANDOLPH. That may be your opinion, and it may be the publishers' opinion, if they are honest, but let me call to your attention, Senator, that you are not permitted to be authoritative with regard to interpretations of that law. Neither are the Chicago publishers, and neither are we, and neither was the judge of the Federal court that enjoined us and found us in contempt of that injunction.

Neither was he permitted to determine whether or not we violated the law, and not until the National Labor Relations Board—God knows when they ever will, not until they do—make an interpretation, will any court of authority say that we violated the law.

Senator TAFT. But still you say it was a strike against the law.

Mr. RANDOLPH. No; it was not a strike against the law.

Senator TAFT. You take back what you said then. Is that right?

Mr. RANDOLPH. If what I said can be so interpreted——

Senator TAFT. You said so in so many words, a strike against the law for 16 months. That is what you said, Mr. Randolph.

Mr. RANDOLPH. I correct that statement.

Senator TAFT. I am afraid you meant it. It seems to me perfectly clear that is what it is.

Mr. RANDOLPH. If so, I correct it. The point is that we struck for wages in Chicago, and the point is that every day since that strike the men would have returned to work had they paid that rate of wages.

That is sufficient, I think, to answer your point, and I say further that your interpretation and the Chicago employers' interpretation, or our own, has to proceed along legal lines to the tribunal set up by the law to render a decision, and the Lord knows when they will ever render one, and in the meantime the general counsel's interpretation is accepted by the court because the court only has to decide that he is satisfied that there is a probable violation of it, and thereupon gives the Government an injunction against us in sweeping terms that makes it almost impossible for us to do anything without fear of being found in contempt of court. When we were, the ridiculous basis upon which we were found in contempt of court is self-condemnatory. I do not have to say anything about it.

Senator DOUGLAS. Mr. Chairman.

The CHAIRMAN. Senator.

Senator DOUGLAS. May I ask a question?

The CHAIRMAN. Yes, sir.

Senator DOUGLAS. If I may get behind some of the recent discussion, is it not true that prior to the Taft-Hartley law you had satisfactory collective agreements with the Chicago newspaper publishers?

Mr. RANDOLPH. We did.

Senator DOUGLAS. And is it not true that prior to the Taft-Hartley law there was no objection on the part of the publishers to the so-called closed shop?

Mr. RANDOLPH. There was never any objection to that.

Senator DOUGLAS. Is it not also true that upon the passage of the Taft-Hartley law which forbade employers and employees from agreeing to the closed shop, that the publishers felt that that law tied their hands and that they were unable to continue such an agreement?

Mr. RANDOLPH. Many employers felt——

Senator DOUGLAS. That is, the newspaper publishers.

Mr. RANDOLPH. Yes, and the commercial employers also, and, Senator, we have never, since the Taft-Hartley law was in effect, asked an employer to sign a closed-shop agreement, never.

Senator DOUGLAS. Well, what I am trying to get at is this: Is it not true that the publishers, with the best will in the world on their side, felt that the Taft-Hartley law prevented them from making the contractual arrangement which had prevailed in the past?

Mr. RANDOLPH. That is true, Senator.

Senator DOUGLAS. And if it had not been for the passage of the Taft-Hartley law, in all probability you would have been able to renew the contract and to have had peaceful relations.

Mr. RANDOLPH. That is undoubtedly so.

Senator DOUGLAS. So that in your case this clause and certain other clauses in the Taft-Hartley law, instead of leading to industrial peace, helped to precipitate this very costly and vexatious strike?

Mr. RANDOLPH. That is true.

Senator DOUGLAS. Thank you.

Mr. RANDOLPH. With regard to the closed-shop question, the Chicago publishers themselves are on record at a hearing held in Chicago by a subcommittee of the watch-dog committee, as it is called, for the very purpose of finding out about the Chicago strike.

Now as Senators I call that to your attention. Here was Chairman Hartley appointing a subcommittee to come to Chicago and investigate the Chicago newspaper strike. Well, maybe it was the House committee. I stand corrected.

Senator TAFT. It was the House committee, not the joint committee.

Mr. RANDOLPH. I am sorry.

Senator TAFT. I personally would not have approved of it. I fully agree with you.

Mr. RANDOLPH. Well, if possible Mr. Hartley is a little bit more convinced against the Typographical Union than Senator Taft, so that when he appointed a subcommittee to visit Chicago, calling witnesses, one of which was myself, and examine into the causes and the operation of the Chicago strike, when he did that, and after that committee meeting, nothing happened, you ought to be pretty sure that there was nothing illegal about the Chicago strike.

Senator NEELY. What were the circumstances of that case now? Had there ever been any final determination of the Supreme Court of the United States?

Mr. RANDOLPH. There has not even been a decision by the National Labor Relations Board upon these facts. As regards the closed shop, the secretary of the Chicago Publishers' Association testified in that subcommittee hearing, and it is set out on page 4 of the pamphlet attached to our statement, where he is questioned by Congressman Kersten, a half dozen lines. I would like to read it.

"Congressman KERSTEN. Up until now and for a great many years past you had a closed-shop agreement, didn't you?

"Mr. O'KEEFE. Yes, we did.

"Mr. KERSTEN. How did that feature work out in your previous contracts so far as your closed-shop provision of the contract was concerned?

"Mr. O'KEEFE. We never even discussed it. It had been there for years and it has remained there.

"Mr. KERSTEN. Did you have any real difficulty with it so far as your union, ITU, is concerned?

"Mr. O'KEEFE. We did not. As a matter of fact most of the Chicago publishers, or all of the Chicago publishers I would say, would prefer to continue a closed shop if it were legal.

"Mr. KERSTEN. The reason for that is that this particular union has been a long-term institution that has a certain amount of tradition behind it, a considerable amount, and it is a responsible union, and under those conditions a closed shop has worked out so far as the Chicago publishers are concerned. Is that right?

"Mr. O'KEEFE. Yes, it has."

Senator NEELY. Mr. Randolph, in your direct statement I understood you to say that in effect your union had established a floor under the relationship between the employers and the employees and maintenance of that floor. Did the employers cooperate with your union prior to the enactment of the Taft-Hartley law?

Mr. RANDOLPH. Oh, yes, they not only cooperated but they insisted that the union floor be enforced by the union in shops that are not members of the association, both newspaper and commercial, and that is the policy all over the country.

Senator NEELY. As I understand it, that cooperation so far as the persons to whom you have referred has been withdrawn, since the Taft-Hartley Act was passed, has been withdrawn that is, those who are involved in this litigation. I say the continuation so far as the employers are concerned has ceased since the Taft-Hartley law was passed.

Mr. RANDOLPH. Well, no, in the commercial field——

Senator NEELY. No. I say as between your union and those who are prosecuting this case, does that cooperation still exist?

Mr. RANDOLPH. No, we are on strike in Chicago.

Senator NEELY. That is what I thought.

Mr. RANDOLPH. That is right.

Senator NEELY. Then the cooperation has not continued so far as the litigants are concerned since the Taft-Hartley law was passed?

Mr. RANDOLPH. In the newspaper field, no.

Senator NEELY. That is all.

Senator PEPPER. Mr. Chairman.

The CHAIRMAN. Senator Pepper.

Senator TAFT. Is this on Senator Neely's time?

Senator NEELY. I have finished.

Senator PEPPER. Has any time been fixed?

Senator TAFT. No, but I thought——

Senator PEPPER. He had concluded, and I was going to——

Senator TAFT. I am not the next?

The CHAIRMAN. Senator Neely took Senator Murray's place. Senator Neely was the first one called. It ought to come over to this side.

Senator Taft.

Senator PEPPER. Very well.

Senator TAFT. Mr. Randolph, first with regard to the question of all this litigation, I do not want to go into litigation, but is it not a correct statement to say that if the union had been willing to sign a contract eliminating the closed shop, all other controversies would have been settled?

I mean was not this strike really brought about by the union's position that they would not sign a contract containing the closed-shop provision, I mean unless it contained the closed-shop provision.

Mr. RANDOLPH. That is not true at all. That is just not so.

Senator TAFT. Is not that the substance of it?

Mr. RANDOLPH. No, it is not.

Senator TAFT. I do not want to press it, but it seems to me so clear that if you had accepted the terms of the union shop, come to Congress for an amendment of it, there would have been no such strike as you had.

Mr. RANDOLPH. That is not so, Senator, because we have on record many contracts without the closed shop in it, and within the law as has been determined by employers' lawyers. Your assumption is entirely wrong. The contracts have proven it.

The contract in New York in the commercial field contained provisions that the lawyers for the Commercial Employers Association drew up. We did not draw them up.

They stated to us that if we were willing to sign a contract within the law, that they would give us all the protection that the law permitted them to give. We asked them to put it down in writing and they did, and what they drew up by way of union protection was accepted by us as the maximum we could get under the Taft-Hartley law, and the local unions signed that contract with our approval. The same was done in the newspaper field in New York City.

After a period of time the same kind of an agreement was worked out with the newspaper publishers in New York City, and neither of those nor any other of the contracts, perhaps numbering 75 to 100 that we have approved, have any reference whatever to the closed shop.

Senator TAFT. But you take the other printing unions, the International Printing Pressmen, the Brotherhood of Bookbinders Union, and three or four others have not had the difficulty you have had. Did not they accept the union shop? Did not they agree to operate under the union-shop agreements of Taft-Hartley law?

Mr. RANDOLPH. I cannot testify on what they have done.

Senator TAFT. Well, is it not the only reason that you have had this peculiar difficulty the fact that you have in fact struck against this provision of the law on closed shop, regardless of its merits? I mean I am not saying you did not have a right to, but I am only trying to bring out the fact, the extent you have had difficulty has been your determination that you would not agree to a contract unless it practically included the closed-shop provision.

Mr. RANDOLPH. That is not true at all, and I think if you would read either the contract of the New York commercial printers or the New York publishers or the contract of the Detroit, Chicago, or Philadelphia commercial employers, you would find that that was not so.

Senator TAFT. What did you mean when you said "It will be our policy to refrain from signing contracts in order that we avoid agreeing or seeming to agree or voluntarily accepting conditions created by such relationship under the Labor Management Relations Act"? Did that mean you would not sign a contract?

Mr. RANDOLPH. Senator, there are, as I stated before, opportunities of the employer, if he sees fit to use them, that would destroy the organization if we signed a contract for economic purposes only or with some loose clause whereby they stated "These are the conditions of work, except as may be provided in the Taft-Hartley law." That is a wide-open door to kill us off at their desire.

Senator TAFT. Did you not over and over again refuse to sign contracts and state that you would post conditions of employment, and if the employer wanted you to work, he would agree with those conditions of employment? Was that not done in many shops and newspapers throughout the country?

Mr. RANDOLPH. No, that was not so, Senator. You have been listening to propaganda. The fact of the matter is that after our convention and after this exhibition of hostility by the Government to a practice we had followed all of our lives, I say we hired a couple more lawyers and listened to their advice on the matter.

They agreed with our position, but they pointed out some of the various interpretations put on the Wagner Act through the years about the matter of bargaining in good faith and what that all meant. They advised us that we could offer a contract which would givee us the maximum protection of the law, and our procedure in litigation would be less hazardous, so we devised a contract, with their help, that we offered to the employers and which was offered to the commercial employers in Baltimore, the first case against us, the first charges brought against us, the first complaint issued and the first hearing held.

We had offered, the local union, the bargaining agent had offered to the Baltimore employers a contract drawn up under advice of the ITU and its attorneys as being a contract which would afford them protection even under the Taft-Hartley law, that is as much protection as could be had, and preserve the union. Therefore from October 1, 1947, the International Typographical Union would have approved and did approve any contract that carried with it all that we considered to be the maximum of protection that we could get under the Taft-Hartley law. The delay in the acceptance of contracts by employers was caused by the knowledge that the Government was helping the employers to hold out against giving us that maximum protection under that law.

Senator TAFT. Mr. Randolph, the court found, I do not know whether you agree with these facts:

"Since August 22, 1947, the executive council has construed, interpreted it and forced this policy"—the general policy declared before it—"by ordering, instructing, directing, and requiring the approximately 850 subordinate local unions of the ITU alternately to refrain from entering into any contract or to refuse to enter into any contract not terminable upon 60 days' notice contrary to the custom and practice theretofore prevailing in the industry which did not contain substantially the provisions of the form P-6-A"—what is P-6-A that is referred to here?

Mr. RANDOLPH. Well, P-6-A is simply the form number of a form contract that was set out by the officers of the international union as advice to local unions as to what was legal under the Taft-Hartley law, and what they could collectively bargain for.

Senator TAFT. Do you agree that the facts that I read were correct, roughly speaking?

Mr. RANDOLPH. They are not facts and seldom are the full facts obtained from the bulletin of the American Newspaper Publishers' Association from which you are reading.

Senator TAFT. I am reading from the opinion of Judge Swygert, the United States District Court for the Southern District of Indiana.

Mr. RANDOLPH. Whatever Judge Swygert wrote in his opinion, is in his opinion.

Senator TAFT. Well, I know. I asked you whether those facts were agreed to, that far. I am going to come to one I know you will agree to, but I wondered if that far was correct.

Mr. RANDOLPH. Again I do not want to litigate the cases, nor do I want to refer to anything that the worthy judge has found to be a fact.

We have our own opinions about it and if we had had the opportunity, and could have made a practical and effective appeal from his decision, we, of course, would have done so.

Now his interpretation as to whether or not our acts were in violation of the sweeping decision that he rendered in his injunction case, caused him to write up what he considered to be the facts.

Senator TAFT. I read further from this:

"The provisions of this form"—P-6-A—"including the 60-day termination clause and the statements and the conducts of respondents indicates that its purpose was to give a semblance of good faith to collective bargaining on behalf of subordinate bargaining unions proposing this form to employers while at the same time imposing closed-shop conditions upon those employers who signed such forms or alternately requiring employers to submit to conditions of employment unilaterally imposed by the subordinate local unions in line with the no-contract of the ITU, which conditions of employment unequivocably required the employer to maintain a closed shop."

Would you agree with that statement?

Mr. RANDOLPH. Not in the least, Senator, not in the least. Just let me call your attention to the fact that the collective-bargaining policy itself provides as follows. Bear in mind, Senator, that the unilateral action referred to came after a period of 60 days of bargaining without results, and the local unions had a right, and I still say they have a right, to provide their own wages and conditions if they cannot arrange them through collective bargaining in 60 days. The employers undoubtedly have that right and have been exercising it.

If they cannot agree in 60 days, they put up their own conditions, "You can work or get out," but the collective-bargaining policy stated: "We realize this policy may bring some disappointment to our employers because it provides for unilateral action. It may be possible for those employers—"

Senator TAFT. You mean the collective-bargaining policy?

Mr. RANDOLPH. Let me finish the quotation, Senator. Do not interrupt to destroy it, because it is an important point.

Senator TAFT. Where are you reading from?

Mr. RANDOLPH. Page 102, section 1, the next to the last paragraph of the collective-bargaining policy.

"We realize this policy may bring some disappointment to our employers because it provides for unilateral action. It may be possible for those employers who do not approve the policy to prepare unilaterally a set of conditions of employment that would be satisfactory."

It was not anything but the conclusion of what must be done after 60 days of compulsory collective bargaining under the Taft-Hartley law, and if the employer has the right after complying with the provisions of the law and bargaining for 60 days, to fix the wages and working conditions as he sees fit, I say the union has likewise that authority, and I say we have it without recourse to any law.

We have exercised it for a hundred years, and I say that nothing in the law can take away from a union the right to prescribe the conditions under which its members will work.

Senator TAFT. Well, my only point—I am not questioning that, Mr. Randolph. I am only trying to make the point that except for your refusal to comply with the law, there would have been no strikes as there were no strikes in the other printing industries, the other industries dealing with the same employers.

Mr. RANDOLPH. We have never refused to comply with the law. We have refused to accept your interpretation of the law. We have refused to accept Mr. Denham's interpretation of the law, and we have a perfect right under the procedure of law to go forward under the various steps that lead to a decision.

Senator TAFT. Surely, that is right. You have refused to accept the decision of the United States district court.

Mr. RANDOLPH. We have accepted and complied with it implicitly.

Senator TAFT. Well, but you do not agree with the findings of the court as to what you have done.

Mr. RANDOLPH. Why of course we do not agree with the findings of the court, and you as a lawyer, if you did not agree with the findings of a court, would advise your clients to appeal to the highest court in the land to have that act properly interpreted, whatever it might be.

Senator TAFT. That is right.

Mr. RANDOLPH. This case or any other.

Senator TAFT. You are a lawyer yourself, are you not, Mr. Randolph?

Mr. RANDOLPH. Well, that is debatable, Senator.

Senator TAFT. The general evidence put in here by the Secretary of Labor as to the number of strikes shows that the number of strikes in 16 months, the number of workers engaged or affected, the number of man-days lost in 16 months before the Taft-Hartley law was 7½ million man-days. In the 18 months after, 2½ million man-days; in other words, a reduction of about one-third the previous condition. That is just the opposite, I take it, from the experience of the International Typographical Union, is it not?

Mr. RANDOLPH. Well, I am always at a loss when you start to read figures, Senator.

Senator TAFT. Well, I mean that in general the number of people involved is about one-third in the 18 months' period after as in the 16 months' period before, and I am asking you whether the opposite was not the fact in the case of the International Typographical Union.

Mr. RANDOLPH. That is hard for me to follow, but I will say this: That we have had more people on the street because of strikes under the Taft-Hartley law than we had for many a year before, running back clear to 1921.

Senator TAFT. And is not that because you were striking against the law and other unions throughout the country did not strike against the law?

Mr. RANDOLPH. No, Senator, that is not a fact, and I will give you a fact that will disprove your idea on that if you are open to a fact. I will point out to you our experience with the New York employing printers in the commercial field.

The local union had bargained for months on trying to arrive at a settlement and was unable to, and under our laws when a local union requests authority to strike they have to request that authority from the international executive council, and the president has to in person or by proxy investigate the cause of the dispute and report to the executive council before any strike sanction is given. In that capacity I went to New York and discussed with the New York commercial employing printers the basis of a contract.

I spent 1 week at that, at the conclusion of which we had arrived at a point where the international union would approve a contract for the operation of this commercial printing industry in that city.

Everything was settled except the matter of hours and wages. Mind you, all of these so-called Taft-Hartley difficulties were resolved at the conclusion of a week's negotiation, except wages and hours.

The union adopted that group of contract provisions with the exception of wages and hours as their proposal in collective bargaining. On the same day the employers association adopted the same as their proposal for a contract except for wages and hours, and during that week the employers in that city had unilaterally posted notices that the workweek would be increased 3¾ hours, and our men were being paid on that unilaterally determined amount of hours per week, so that when the union adopted the proposal approved by the international union except wages and hours it was doing it under the handicap of having maintained themselves at work under a unilateral increase in hours by the employers.

The result was that the international union approved strike sanction in the city of New York on that very same day and a strike for hour and wages ensued for a period of 2 weeks and 2 days, when the employers agreed that they would revert to the proper workweek and they would continue to negotiate on the matter of wages and hours, which in a few weeks was settled to the satisfaction of both sides.

That is a complete disproval of the idea that there was any strike for the simple matter of striking against the act. That is a comple disproval of it as all the other strikes we have engaged in are similar proof of that particular fact.

Senator TAFT. Well, it seems to me your own testimony, your own statements, the findings of the court all support the general statement that this was a strike against the law and brought on by yourself, but you have a perfect right to do it. I am only trying to answer this charge that the officials of the Government who try to enforce the law are subject to some criticism for trying to do so. That is my principal interest in that.

Mr. Randolph. Well, I am afraid, Senator, you are looking at it through a jaundiced eye.

Senator Taft. Mr. Randolph, coming to the question of whether the closed shop provision should be in the contracts——

Mr. Randolph. Sir?

Senator Taft. Coming to the question whether the closed-shop provision should be in the law, that is really the question which this committee is primarily concerned with, and your testimony in general is in favor of that closed-shop provision. Do you think it should be permitted?

Mr. Randolph. By all means, Senator.

Senator Taft. And you are not satisfied with the union-shop provision?

Mr. Randolph. No; I am not at all satisfied with the so-called union-shop provision.

Senator Taft. You heard the testimony last night that 17 States have adopted a similar law outlawing closed shops. You think they are wrong. You think that is the wrong policy.

Mr. Randolph. There is not any question about it.

Senator Taft. Have you had a contest in any of those States on those clauses?

Mr. Randolph. I do not recall that we have engaged in any litigation in the States; no. There may have been some. Some local unions may have done it, but if it has come to my attention I do not remember it.

Senator Taft. The printers' trade, Mr. Dunnagan testified here—Mr. Henry, I guess, is the testimony that I was referring to:

Some of the unions still reserve the right to impose working conditions unilaterally.

"For example, the general laws of the International Typographical Union fix the ratio of apprentices to journeymen, set overtime rates, lay downl rigid rules for hiring, discharging, provide for a closed shop, define standards with respect to seniority, and establish rules of conduct. The foremen must be members of the union. Although all of these matters are of vital importance to us—that is, the employers—none of them are bargainable or even subject to arbitration. In other words, such union laws have been constantly narrowing the area of bargaining by preventing employers and locals in their negotiations from arriving at any agreement unless the employer is willing to agree to all the miscellaneous rules of the international."

Is that a fair charge against the international or the ITU?

Mr. Randolph. I doubt that it is a fair charge, as you say, in view of my earlier testimony as to the content of our book of laws, and the fact that we have established the general laws of the ITU affecting economic conditions as a floor for collective bargaining.

It is true that they are not subject to arbitration nor will we concede any one of the provisions mentioned in that book of laws, in the general laws affecting the Nation-wide conduct of our members.

Mr. Henry has not been operating a union shop long enough to absorb much of that tradition.

Senator Taft. I am trying to get this question of what we should do. I mean, I am quite prepared to consider a modification of the rule about the union shop if we can get the same protection that I think is necessary for poeple who want to go to work, but it is true that these laws provide, section 2, article III:

"No local union shall sign a contract guaranteeing its members to work for any proprietor, firm, or corporation unless such contract is in accordance with international law and policy and approved as such by the international president."

Is that correct?

Mr. Randolph. That is right, that means approved as in compliance with the international law.

Senator Taft. Yes. I mean you have the job of interpreting the international law.

Mr. Randolph. That is right.

Senator Taft. You do not assume further power to just arbitrarily disapprove a contract?

Mr. Randolph. Not at all. The international executive council interprets the law of the union. I suppose in examining the contracts that come in, that duty is performed by myself or someone to whom I delegate the work, and if the contract or the proposal for a contract is in accord with the law, we can only approve it as being in compliance with the law, not as to the sufficiency.

Senator TAFT. What happens to the local union if it signs a contract anyway and it is not in accord with the international law?

Mr. RANDOLPH. Well, nothing so far has happened to any union. The book of laws has always provided that the executive council might take up the charter for any violation of the law on the part of the local union, but so far as I know the matter of discipline has not yet been exercised. We do have authority to exercise it if we find it necessary.

Senator TAFT. Now if the employer just will not agree to one of these laws incorporated by reference in the contract, then what happens?

Mr. RANDOLPH. Well, he does not get a contract.

Senator TAFT. Does that mean a strike then?

Mr. RANDOLPH. It might or might not. The condition may be satisfactory as to operation, but he may not want to agree to it in the contract.

Senaor TAFT. Supposing he will not agree to it in substance at all, supposing he will not agree to it informally, formally, or any other way?

Mr. RANDOLPH. If it is operative in the composing room and there is no violation of that, we do not strike.

Senator TAFT. Well, I know, but suppose there is a violation, suppose he says, "Here is one of those rules I think is unreasonable. I will not agree to it. I will not carry it out." Then what happens?

Mr. RANDOLPH. Well, the question of what the local union wants to do about it is discussed by the local union. If they want to strike about it, they have got to get a three-fourths vote and they have to get sanction of the executive council of the ITU on whether or not they can strike.

Senator TAFT. Well, if they do not strike or if they submit to the employer's refusal to do this, then they are subject to ejection from the international, I suppose?

Mr. RANDOLPH. Well, if they are too far offside, but printers do not get too far offside. They will test things a little bit, you know, strain your patience, but they do not get too far offside.

Senator TAFT. How many union printers are there altogether, how many members in your union?

Mr. RANDOLPH. About 89,000.

Senator TAFT. And how many nonunion printers would you say there were?

Mr. RANDOLPH. I do not know, Senator.

Senator TAFT. Can you guess? I just want to get a general idea.

Mr. RANDOLPH. No; I really do not know.

Senator TAFT. I mean, what proportion of printers are organized?

Mr. RANDOLPH. That I do not know.

Senator TAFT. You have no means of telling?

Mr. RANDOLPH. No, sir.

Senator TAFT. In some cities it is practicalyy complete? Practically all of the printers belong to the union?

Mr. RANDOLPH. A few.

Senator TAFT. That was the testimony here that in some cities they were highly organized and in others they were not.

Mr. RANDOLPH. There may not be over a dozen in a city or in a town and they may be all organized, but in the larger centers there are quite a few nonunion shops.

Senator TAFT. Are you trying to extend the union shop?

Mr. RANDOLPH. Oh, certainly; we are always trying to organize the printers, any employees in our field, but not the union shop as you refer to it; the "union shop" of the Taft-Hartley law.

Senator TAFT. That is, the essence of your interest results in your control over the admission to the union and to the printing trades where you operate over everybody under the rules of the union; is that right?

Mr. RANDOLPH. Well, we admit freely those whom we regard competent enough and of good character. We admit them if they meet those qualifications.

Senator TAFT. Now let me read you some of these laws, because I think it is important to this whole question of the closed shop to know what the practice is. Section 1, article I:

"Apprentices shall not be less than 16 years of age at the time of beginning their apprenticeship. They will be listed by the secretary of the subordinate union and they shall serve an apprenticeship period of 6 years before being admitted to journeyman membership in the union."

That rule, I think, there is some provision for some advancement, perhaps.

"An apprentice may be upgraded when he has shown he has applied himself sufficiently to his studies to warrant advancement."

That requires, ordinarily, however, 6 years' apprenticeship, is that it, before any man can ever become a member of the union?

Mr. RANDOLPH. Yes; for membership in the union, except for apprentices who are proficient enough in their work and in their grades, in their course of lessons in printing, to be upgraded, and they may be so upgraded and obtain journeyman status earlier.

Senator TAFT. I notice under section 9:

"Apprentice members shall not have the privilege of voting."

So for 6 years these men are in the printing trade controlled by the union without any privilege of voting. Is that right?

Mr. RANDOLPH. Well, for the first year after they are hired by the employer they have no union status at all.

The beginning of the second year they may be accepted into apprentice membership. If it were not for the Taft-Hartley law, they would have to be accepted into apprenticeship membership, and then they only——

Senator TAFT. Apprentice members shall not have the privilege of voting. That is the privilege of the——

Mr. RANDOLPH. Yes; but neither do they pay all dues. They only pay a per capita tax. It takes care of the record-keeping, Union Printers' Home dues, and so on.

Senator TAFT. So in this democratic set-up still there are thousands of men who are not entitled to vote.

Mr. RANDOLPH. Oh, it is not a matter of depriving people of the right to vote who are entitled to it. Apprentices never have been accorded the rights of journeymen. They are learning the trade, and it is the same thing as people under 21 who do not vote in this country.

You are depriving millions of young fellows of the same age as our apprentices from voting in civil elections.

Senator TAFT. Your apprentices may be a good deal over 21.

Mr. RANDOLPH. They may be.

Senator TAFT. Practically all the veterans are over 21, I assume.

Mr. RANDOLPH. It is a regulation that has stood the test of many, many years.

Senator TAFT. You limit by section 21:

"Local unions are required to fix the ratio of apprentices to the number of journeymen regularly employed in any and all offices, but it must be provided that at least two members of the subordinate union, aside from the proprietor, shall be regularly employed before an office is entitled to an apprentice.

"For each additional 5 journeymen regularly employed, an additional apprentice may be permitted: *Provided*, when four apprentices are employed, an additional apprentice for each 10 additional journeymen may be employed: *Provided, further*, nothing in this section shall be construed as prohibiting any subordinate union from inserting in the contract a provision that the total number of apprentices of any office shall be less than 4."

They cannot make it more than four, can they? They cannot change the limitations that you have imposed on the number of apprentices?

Mr. RANDOLPH. Well, as I stated before, the provisions here are the floor of bargaining, and the limitations on the number of apprentices as compared with journeymen up until the war were ample so as to provide a sufficient number of journeymen for the trade. Our records indicate there was something like 8 percent of our members constantly working at less than full time, so that these regulations as to a floor for bargaining on apprentices have been proven over the years to be more than fair. It is simply for the purpose of not flooding the industry with more people than the industry can absorb.

Senator TAFT. Well, other industries are not limited that way. If every industry did that, we would have millions of people unemployed, would we not, Mr. Randolph?

Mr. RANDOLPH. You have them anyway. If the industry does not supply jobs, you have them anyway.

Senator TAFT. I am suggesting that this same thing, however it may have worked in the printing industry, if applied to every industry in the United States, would hold down the number of people and limit the right of people to go into the particular occupation they want to go into, to such an extent that it might seriously, it might force a large amount of unemployment, might it not?

Mr. RANDOLPH. No; I cannot see that effect, because the unemployment will create a lack of jobs anyway or a lack of jobs creates unemployment anyway, no matter whether they are union, open shop, closed shop, or any other shop. If there are no jobs, the men are unemployed.

Senator TAFT. Let me read you this. I daresay it comes from a prejudiced side. I think it is from Editor and Publisher.

"PRINTER SHORTAGE

"A survey by the Pennsylvania Newspaper Publishers' Association reveals an appalling shortage of manpower in the composing rooms of that State. It is probably duplicated in other States.

"One hundred and twenty-nine dailies reported a need of 180 additional journeymen printers to man their composing rooms adequately and without overtime payments. The weekly newspapers reported a need for another 100 printers.

"This shortage of printers would be bad enough if publishers could see an end to it sometime in the future. But according to the PNPA survey, there will never be sufficient manpower under the present apprenticeship program.

"There are about 250 aprentices in the daily shops. Under the 6-year training program about 40 become journeymen every year. The survey reveals an average age of 47 among journeymen and actuarial death rates show more than 40 leaving employment every year. In other words, the supply of printers is not keeping up to the demand."

Is that a fact or do you dispute that?

Mr. RANDOLPH. Well, without agreeing that it is a fact, I would say that the figures themselves defeat the accusation that is made. Here they describe 129 shops and they need 180 men. That is less than a man and half per shop, and the requirement sought is enough men to work without overtime, and that is something that is entirely unreasonable when business is brisk and overtime is worked throughout the country generally. We have never undertaken to supply sufficient men so that there would be a journeyman available at any time the employer wanted him for a day's work. That would be wholly unreasonable and supply a surplus of printers that would be a drag on the market.

Senator TAFT. So the union assumes to say how many printers are needed and how many printers are not needed under this policy, do they not?

Mr. RANDOLPH. No; it does no such thing.

Senator TAFT. You are not saying for various reasons you think there should not be any more printers?

Mr. RANDOLPH. No; not at all.

Senator TAFT. Is not that right?

Mr. RANDOLPH. Not at all, Senator. This deals only with the matter of apprentices and has nothing to do with the number of men admitted to the union every year who have not been apprentices in the Typographical Union, men who have learned the trade in nonunion offices. There are many of those added to our rolls, but the information published in Editor and Publisher is always warped and if it is not warped when they get it, they will warp it before they publish it.

Senator TAFT. Mr. Randolph, you said that your time now on the average through the country as a whole was 37½ hours. That is straight time, is it not?

Mr. RANDOLPH. Yes, sir.

Senator TAFT. Would you tell us how many hours have actually been worked on an average by printers in the United States in 1948?

Mr. RANDOLPH. I cannot tell you the details of that kind, but I can point out that we collect a percentage of wages that goes to our pension and mortuary funds and that total amount of money that we collect, figured on a percentage basis as compared with how much the money would be if everybody was working full time at the scales of the various unions, indicates that they have been in the past few years working as much as 5 percent over full-time wage rates.

This is not too excessive. Now some places obviously with an excess of work will work more overtime than that.

Senator TAFT. While you exclude people who want to be apprentices from entering the industry, the man in the industry on the average works, we will say, 2½, something like 2 hours overtime on an average throughout the United States. Is that right?

Mr. RANDOLPH. Well, I would not say how many hours. I am giving you the only source of information we have, and it is on a dollars-and-cents basis. We do not presume to keep track of all of the internal affairs of the shops. We cannot do that, you know.

Senator TAFT. Are not these restrictions really imposed in order to keep people out of the trade so that those who are in get better pay? Is not that correct?

Mr. RANDOLPH. No; that is a very unfair way of looking at it. We have always supplied a sufficient number of journeymen to man the industry through our apprentice training and through our organizational efforts, but we have not assumed to supply enough to give a man adequate supply of printers that would prevent the working of overtime.

That would be wholly unreasonable. Now it is our hope that the industry can operate profitably and on a balanced basis without too much unemployment, and that is the purpose of the ratio of apprentices to journeymen.

Over a great many years we have found out what that ratio is. We have provided for it as a floor to bargaining in our laws, and if we make a contract with any employer, it must be on that basis, and I say again that we have a perfect legal right to do so.

Senator TAFT. The effect of the closed shop is to give you the power—you may have the right, but the effect of the closed shop is to give you the power—to keep people out of the printing trades if you think, in your opinion, without review by anybody, that there are enough people in the trade.

Mr. RANDOLPH. I do not think that is a fair——

Senator TAFT. Is not that a necessary conclusion?

Mr. RANDOLPH. I do not think so, Senator.

Senator TAFT. Section 4:

"All persons before entering the trade as apprentices shall first be approved by the local union."

Now a young fellow thinks printing is a good thing. He wants to go into printing and he goes around and applies to the local union. How long a waiting list is there? What is the basis of deciding if A can be taken as an apprentice and B cannot be taken as an apprentice?

Mr. RANDOLPH. He does not apply to the local union, Senator.

Senator TAFT. "Shall first be approved." To whom does he apply?

Mr. RANDOLPH. He applies to the foreman of the composing room for a job the same as he would if there were no unions at all. The employer hires the apprentice in the first place, but he is subject to this point regulation, that is, it is almost a joint effort and not by the union, because if you read those laws you will find that the laws provide for a joint committee of employers and members of the local union to operate the apprentice regulations. Wherever the employers will do that, that is done. Where they will not, the union committee does it.

Senator TAFT. The international law which you say is binding and must be incorporated by reference says:

"All persons before entering the trade as apprentices shall first be approved by the local union. They must pass a technical examination given by the union's apprentice committee. A physical examination must also be made by a qualified medical examiner, approved by the local union. The medical and other examinations must show fitness and adaptability to the trade. The physical examination shall be entered on the medical certificate, printed on the reverse side of the application for apprentice membership which shall be filed and used as such at the beginning of the second year of apprenticeship as provided in section 7."

Mr. RANDOLPH. That is after the apprentice has worked for a year, and he has been hired by the employer. That regulates whether or no after a year's probation he is mentally and physically fit to continue in the printing business and learn the trade, bearing in mind, Senator, that it is the union that takes care of the people when they become incapacitated from age or disability and not the employers, who do nothing whatsoever to take care of the wreckage of the industry.

Senator TAFT. I am only trying to show that the actual conditions as are evidenced here, I notice that: "Every person admitted as an apprentice member of the local union at the beginning of the second year of apprenticeship shall subscribe to the following obligation: 'That I will at all times support the laws, regulations, and decisions of the International Typographical Union.' "

He cannot, apparently, question the decision of the International Typographical Union as you question the decisions of the United States district court. He has got to accept those provisions.

Mr. RANDOLPH. He certainly can. He can appeal to the duly constituted authorities in the union with regard to any decision that may be made affecting his interests.

Senator TAFT. The foremen in your industry are members of the union, are they not?

Mr. RANDOLPH. That is right, and have been since time immemorial.

Senator, it may be interesting to you to know that we had the closed shop long before anybody ever talked about a closed shop, or a union shop, simply by the fact that the foreman employed union people and union people worked only for union foremen and you had a closed shop. Now that is the human right they have regardless of all the legislation you can imagine.

Senator PEPPER. Will the Senator yield?

Are the foremen members of the union or not?

Mr. RANDOLPH. They are and they always have been.

The CHAIRMAN. Well, has there been any change since the Taft-Hartley law on that?

Mr. RANDOLPH. Well, I do not know of any, sir.

The CHAIRMAN. In your union organization?

Mr. RANDOLPH. Of course under the Taft-Hartley law the employer can employ a nonunion man for any purpose. The requirement that he be a member of the union is the only requirement as regards the foreman. The employer can hire any member to be his foreman and he can fire him at any time he wants to without any contest on our part.

The CHAIRMAN. Has that become general or has anything like that been done very much?

Mr. RANDOLPH. I do not know of a single instance where an employer attempted to put in a nonunion foreman except shortly after Taft-Hartley was adopted a small plant out in Michigan somewhere, I believe, or Wisconsin, the employer hired a nonunion foreman. I think there were some eight or nine men involved in the shop, and the minute he did that eight or nine men left not only the shop but the city and went to work elsewhere, with no argument at all. They just packed up and left.

Now that is the only incident I recall where any nonunion foreman was employed.

Senator TAFT. Have you any idea about the waiting list? You say that the foreman decides whether Mr. A is taken as an apprentice or Mr. B who applies for the job.

Mr. RANDOLPH. The foreman makes that decision in the first instance.

Senator TAFT. And he is a member of the union?

Mr. RANDOLPH. And he is a member of the union.

Senator TAFT. Have you any idea how long this waiting list is?

Mr. RANDOLPH. I never heard of a waiting list.

Senator TAFT. You think if more people could get jobs, there would not be any?

Mr. RANDOLPH. Well, Senator——

Senator TAFT. There would not be any applications?

Mr. RANDOLPH. Well, Senator, here is a well-established union that has a good reputation, that has established better wages and conditions than most. Why would not a favorable position like that attract the attention of those who are trying to make a living?

Senator TAFT. I am assuming it would.

Mr. RANDOLPH. You are assuming it would. Well, now, how would that same question apply to some big institution that was not running under any union conditions at all? Is there a waiting list in those places? Are you concerned about whether those people get jobs or whether they do not in nonunion places, and when they do not, what do you do about it?

Senator TAFT. They take just as many people as they can employ. The publishers are prohibited from taking as many people as they want to employ and can employ. They are limited in their number very clearly.

I mean I am only trying to show the fact. They are limited in the number of apprentices they can take, wether they want more or do not want more, and they say they want more—the people who have testified here. That is all I know about it.

Mr. RANDOLPH. Well, Senator, the fact of the matter is that the employers generally, in the contracts that they make with local unions, do not take advantage of training as many apprentices as our minimum conditions, or maximum conditions, in the law prescribe. They do not care to have that many apprentices around because it means the training of them, and it means that journeymen have to spend some of their time training apprentices and a lot of employers do not care to do that, and when you asked Mr. Dunnagan what the situation in Chicago was as regards apprentices, he was silent, and the emphasis on the employers in St. Louis agreeing to only two apprentices as a maximum in any shop indicates that they did not want any more than two in each shop rather than that the union was trying to restrict them unfairly to a small number of apprentices, and let me say to you that the situation in Chicago where Mr. Dunnagan operates a shop and where he should know how many apprentices he employs or can employ is simply that by contract they have agreed for a maximum of six in a shop except for two more that they can have by way of one as a machinist apprentice and one as a monotype apprentice, so he can have eight in his shop in the city of Chicago and have by agreement so arranged, while in St. Louis they have arranged for two. But why did Mr. Dunnagan or Mr. Henry mention a couple of instances where there was a very small number? Obviously to prejudice the situation.

Senator TAFT. Well, this Editor and Publisher, I agree, may be prejudiced, but I do suppose that they represent the position of the employing printers in Pennsylvania. That is a reasonable conclusion; even if it is wrong, even if they are wrong, still they must not have just made that on their own.

Mr. RANDOLPH. Well, when I have accused publishers of having their positions represented by Editor and Publisher—and I have done it a number of times—I have had the specific denial, especially in New York and Chicago, that Editor and Publisher represents their position; that they have no connection with it and they do not authorize it to print anything on their part, so they just volunteer to do this, perhaps for their own purposes.

Senator TAFT. I would like to have inserted here all of the general laws of the ITU as they appear in your 1949 laws. Just as an example of other laws which are, as I understand it, frozen, which nobody can get a contract with unless they agree to—section 11 of article III says, and these are only examples. I have just gone through them:

"Local unions must incorporate in contracts a provision that all composing room work appertaining to printing and the preparations therefor, shall be done by journeymen or apprentices, and must further provide for the elimination of all so-called miscellaneous or composing room helpers by agreement that as vacancies occur they shall be filled (if needed) by journeymen or apprentices."

That is section 11.

Mr. RANDOLPH. Yes.

Senator TAFT. Section 12 says:

"It is the unalterable policy of the International Typographical Union that all composing room work or any machinery or process appertaining to printing and the preparations therefor belongs to, and is under the jurisdiction of the International Typographical Union. Subordinate unions are hereby directed to reclaim jurisdiction over and control of all composing room work or any machinery or process appertaining to printing and the preparations thereof now being performed by nonmembers."

The employer must agree to that rule if he signs a contract at all; is that right?

Mr. RANDOLPH. That is right.

Senator TAFT. Has that produced any jurisdictional strikes with other unions?

Mr. RANDOLPH. Almost none. The fact of the matter is laws of that kind are adopted as presented to a convention after some local union has not been holding up its end in maintaining the trade or the craft, and has allowed some of our work to slip off to other so-called miscellaneous or partially trained people not members of the union, and that was simply to have a law on the books whereby if they do not do what they ought to do the ordinary disciplinary measures might be applied.

I know of none that has been applied to any such union, but there is no other way for any union to preserve itself than to prescribe the area over which its members will seek employment and maintain employment.

There is no other way of satisfactorily determining how a union will live unless it itself determines that area.

Senator TAFT. I do not object to the "unalterable policy." What I suggest is that to make every employer sign a contract that he agrees to every International law and, therefore agrees to this, necessarily may get him into serious trouble before he gets through with somebody else.

Mr. RANDOLPH. Well, it has not, Senator, and in the printing trades these lines of jurisdictions have been thoroughly well understood and, as a matter of fact, up until 1892, all of the printing trades workers were in the International Typographical Union.

At that time, the pressmen desired to have an international union of their own. They thought they had grown up to the point where they could function better as a union, and the International Typographical Union permitted them to withdraw and form an international organization. The relations have been friendly.

In 1894 the bookbinders did likewise. In 1903 the stereotypers did the same, and in 1906 the photoengravers did that so that the five internationals printing trade unions were once a part of the International Typographical Union, and there has not been over all of these years any cause for worry about the jurisdiction of the several unions in the printing trades.

Senator TAFT. Section 13 says:

"Subordinate unions shall incorporate in proposed contracts a clause providing for holiday with pay; annual vacations with pay; severance pay of not less than 2 weeks' pay for each year of priority in the office for all members affected by suspension or mergers; hospitalization and pay allowances for sickness or accident; and severance pay of 2 weeks' pay for each year of continuous priority for situation holders laid off to reduce the force."

Those features are practically removed from collective bargaining. They must be in every contract or the employer cannot get a contract: is that right?

Mr. RANDOLPH. That is absolutely not so, as the wording of the section you have just read indicates. It has been considered a matter of international policy that those are good things to bargain for, and the section refers to the inclusion in "proposed contracts" and local unions are directed to bargain for those things.

Senator TAFT. Those things are still open to bargaining?

Mr. RANDOLPH. Absolutely, and it so states in the law, to be in proposed contracts.

Senator TAFT. Section 14 states:

"Subordinate unions shall provide in proposed contracts that night work shall be paid for at not less than 10 percent over the day scale."

That is a different statute.

Mr. RANDOLPH. That is another proposed contract provision that they should propose, propose these things, and try to accomplish them by collective bargaining.

Senator TAFT. But they can waive them? You think they have power?

Mr. RANDOLPH. All that means is that they must try to get them.

Senator TAFT. "Subordinate unions must include in contracts or commitments a provision that members may absent themselves from the shop during voting hours on primary and general election days without being subject to discipline."

Is that a general all-day holiday, or what is that?

Mr. RANDOLPH. What section is that?

Senator TAFT. Section 23. It is not very important. Section 23 provides that they may absent themselves from a shop during voting hours on primary and general election days.

Mr. RANDOLPH. Well, in some States it is compulsory.

Senator TAFT. That must be included in the contract.

Mr. RANDOLPH. Yes; in some States it is compulsory by law to have it.

Senator TAFT. I move, Mr. Chairman, that we recess until 2:30.

Senator PEPPER (presiding). So ordered.

(Whereupon, at 12:05 p. m., the committee adjourned, to reconvene at 2:30 p. m., of the same day.)

AFTERNOON SESSION—2:35 P. M.

The CHAIRMAN. Senator Taft will ask questions.

Senator TAFT. I have only a few more questions. Mr. Randloph, I just wanted to follow the examples of these rules and have your comments on them.

STATEMENT OF WOODRUFF RANDOLPH—Resumed

Mr. RANDOLPH. May I just, before you start, Chairman Thomas, say that during the noon recess I checked with my office to see if the newspaper accounts were available in my files with regard to Mr. Denham's speech and Mr. Shroyer's speech.

I find they are not there, but I do find that the bulletin of the American Newspaper Publishers' Association of September 23 or 26, 1947, page 933, does give Mr. Denham's speech, and editorializes with reference thereto, to the effect that his speech was definitely contrary to the policy of the ITU. That is the only documentary statement I am able to find in my files. But my opinion as to the attitude of both Mr. Shroyer and Mr. Denham was made up because of these two newspaper quotations which, of course, may not have been exact, and the bulletin of the ANPA in reference to Mr. Denham's speech.

I want to make that clear so that it cannot be stated that I misrepresented these gentlemen. I accepted an attitude on their part which I regard as hostile, and which I now believe history has proven to be the case.

Senator TAFT. The speeches will be put in the record in full, I take it. They will be furnished——

Chairman THOMAS. Yes.

Senator TAFT. They will be furnished and put into the record?

Chairman THOMAS. Yes.

Senator TAFT. Going back to the general laws, the international laws which are binding on local unions, Mr. Randolph, turning to article V, Foremen, section 1:

"In union shops the foreman is the only recognized authority. Assistants may be designated to direct the work, but only the foreman may employ and discharge. In filling vacancies the foreman shall be governed by the provisions of article X, general laws."

The foreman is a member of the union; is he not?

Mr. RANDOLPH. That is right.

Senator TAFT. Is this not more like the situation and on this subject that the employer has no voice whatever? He must agree that the foreman shall be the only recognized authority for firing and employing: is that correct?

Mr. RANDOLPH. Yes: but as the publisher's representative, of course.

Now, our laws, as is the case with civil laws, most of them were adopted because of some reason for their being adopted, and the idea of people getting their jobs, as we say, "through the pipe," is repugnant to history and the tradition of the International Typographical Union.

In other words, pressure of outside people, advertisers or various others through the office on the hiring of members of the union in a discriminatory manner no doubt brought about the adoption of this law.

Senator TAFT. I do not know about the adoption, but I want to point out that as far as I know there is no such provision in any union that I know of which tells the employer who can fire and who can employ.

Mr. RANDOLPH. Well, Senator Taft, there is no other union just like the International Typographical Union.

Senator TAFT. I agree. That is what I am trying to show.

Mr. RANDOLPH. We have gone through the whole alphabet of collective bargaining, whereas at least 12 out of 15,000,000 organized employees have only gone through the ABC's.

Senator TAFT. As far as you are concerned, you would be almost better off to repeal the Taft-Hartley Act and the Wagner Act and go back to the previous conditions, so far as the welfare of your union is concerned.

Mr. RANDOLPH. Senator Taft, if it came to the question of choosing, I would say that rather than tolerate the Taft-Hartley law we would rather have no labor law whatever.

Senator TAFT. I think that is a possibly reasonable solution, although I do not think it is practical, I am afraid.

The CHAIRMAN. I wonder if I may break in there, Senator Taft. I think in relation to the uniqueness in which your foremen work, the right to hire and fire, the right to fire is with the foreman also?

Mr. RANDOLPH. That is right.

The CHAIRMAN. Now, then, who hires the foreman?

Mr. RANDOLPH. The employer.

The CHAIRMAN. The employer has that authority all by himself; is that right?

Mr. RANDOLPH. That is right.

The CHAIRMAN. Does the union try to influence the employer?

Mr. RANDOLPH. Not in the least.

The CHAIRMAN. The foreman has gained his job, then, both in the union and with his employer because of his ability to be a foreman; is that right?

Mr. RANDOLPH. That is right.

The CHAIRMAN. And there has never been—are there any cases where foremen have been supplanted by unions or where there has been dissatisfaction showing that the dictation is from below, from the employer's standpoint, instead of from above?

Mr. RANDOLPH. In none at all, and the union never takes any part in the matter of selection of the foreman or anything else. The employer hires him and fires him at will. The union never protests a change of foremen.

The CHAIRMAN. How have you brought about that kind of discipline in the management of your labor organization?

Mr. RANDOLPH. The main thing we insist on, of course, is in having the foreman be a member of the union, to avoid the natural discrimination that will come from one who does not believe in your union or your objectives or your purposes, and the fact that we do require a member to know what he is doing in regard to the hiring or firing or judging of competency.

The CHAIRMAN. Also, you want a man to know what he is doing and the work he is doing as a result of the competence of the foreman.

Mr. RANDOLPH. Exactly so.

The CHAIRMAN. And the employer is the only judge of the competence of the foreman?

Mr. RANDOLPH. Well, it has been results that the employer is looking for, and if the employer is not getting results he can get another foreman, and that is of no concern to the union.

Senator TAFT. The foreman before the Taft-Hartley law had to be a member of the union, did he not?

Mr. RANDOLPH. That is right.

Senator TAFT. A part of the union-shop agreement. If he did have a hand in choosing the foreman he had to choose a union foreman?

Mr. RANDOLPH. Yes.

Senator TAFT. Do you know of any condition where the man who runs a shop is so tied that he himself cannot fire a man if he thinks that man is incompetent no matter what his foreman thinks?

Mr. RANDOLPH. The employer has to act through his agent, the foreman, and the foreman is the judge.

Senator TAFT. Because the international law says that that is so, but that is the only reason, is it not?

Mr. RANDOLPH. Well, if you owned a print shop, and you told your foreman, a member of the union, and who by contract you have agreed shall have this authority to do something, such as firing a man, you would be violating your contract, as well.

Senator TAFT. I understand. I am not questioning the fact. I am only pointing out that it is an extraordinary thing for a union to assign that and an employer deprive himself of the power to fire a man for incompetence, but he must do it through a foreman who is a union member.

Mr. RANDOLPH. And yet for a hundred years it has been found very successful, and if it had not it would not have lasted 10 years, much less a hundred.

Senator TAFT. Of course, whether a thing is successful or not, it may have to be done.

Section 2 states:

"The foreman may discharge (1) for incompetency; (2) for neglect of duty; (3) for violation of office rules which shall be kept conspicuously posted, and which shall in no way abridge the civil rights of employees or their rights under accepted International Typographical Union laws. A discharged member shall have the right to appeal in accordance with the laws of the international union as provided in the contract."

To whom does he appeal under those laws? I have not followed it through.

Mr. RANDOLPH. There are two procedures for the handling of discharge cases: One is where the union, by contract, makes a provision that discharge cases will be handled by a joint arbitration agency, or if the union does not provide in its contract for such a method, then the matter is handled as it has historically been handled; namely, that the chapel will first pass on the justness or legality of his discharge, after which the foreman may appeal to the union and the man——

Senator TAFT. Who may appeal to the union?

Mr. RANDOLPH. The foreman.

Senator TAFT. The foreman.

Mr. RANDOLPH. The foreman who discharged him, and the man remains discharged until the union acts.

If the union orders him reinstated the foreman will have to reinstate him, pending an appeal to the executive council or perhaps to the convention. That is the historical method of handling discharges.

Senator TAFT. So, the union determines whether a man has been discharged or not in the last analysis, whether he can be properly discharged or not?

Mr. RANDOLPH. Except at this time the big majority of the discharge cases are handled through the arbitration procedure set up in the contract.

Senator TAFT. That is a joint proceeding if that is undertaken?

Mr. RANDOLPH. That is right. It is a joint proceeding by arbitrators selected by whatever means they want to select them.

While I am on that point, I want to say that because you say these laws are being put in the record, I want to make it crystal clear that the contracts we have signed and the proposals that we have made since the Taft-Hartley Act has been in existence provide that these laws shall be applicable only to the extent they are not in violation of the Taft-Hartley law.

Senator TAFT. Mr. Randolph, I am not really questioning, at least at the present time, the validity of the laws. I am only trying to show that the closed shop has given the union a complete power over the matters which are ordinarily, even under collective bargaining agreements left to the discretion of the employer, and that this question of collective bargaining has practically disappeared; that there is very little that the employer can bargain about any more.

Mr. RANDOLPH. Oh, yes; there is.

Senator TAFT. Because the international union has imposed these rules upon him, and he must accept them or quit.

Mr. RANDOLPH. There is plenty to bargain about, Senator, and the fact that this is a skilled trade, and the fact that the laws are the result of an evolution of bargaining indicates that it has been successful.

It has not been onerous on the employers, and they have been satisfied to operate under them.

As we go along, and associations have secretaries seeking to make a record, and as the whole success of their enterprise depends on how much they get the union to change or give in, we find a lot more trouble than we had when we dealt with the employers directly, especially those who were practical men.

Now, we do not have unreasonable conditions, and our history shows that they have worked well. The degree of protection to our members that we have attained, and the justness of ouru decisions are matters historical in themselves.

Senator TAFT. Nevertheless, Mr. Randolph, it seems to me that the power, your power, may be exercised to the best and the most benevolent dictatorship, but it seems to me to be very clearly a dictatorship. That is the only point I want to make.

Mr. RANDOLPH. No, Senator Taft; the employer himself is a complete dictator unless he, by agreement, lets us share in the idea of who shall be hired and who shall be fired. Now, otherwise he is a complete dictator.

Senator TAFT. But you will not sign a contract with him unless he agrees to these international laws. If he wants a union shop, he cannot possibly—he cannot, and in some places that means perhaps he cannot run at all; he has to agree to this power of the union.

Mr. RANDOLPH. The fact of the matter is that if he does not want to operate under those laws and operate under union conditions as they have been in the past, history shows he has been able to operate nonunion.

We have never been able to stop anybody from operating, so it is not a question of a dictatorship at all. It is a question of the employer himself realizing the superior advantage of having union people, trained people, stable employment, and competent employees working for him rather than what he can hire on the open market, who do not belong to a union, and have not the social outlook that would convince them that they ought to belong to a union in order to further their interests as craftsmen.

Senator TAFT. This rule 7, section 7, article V, is what you just referred to:

"A member who believes he has been illegally or unjustly discharged shall have the right to appeal to the subordinate union in the manner provided by the laws of such subordinate union. If the subordinate union orders reinstatement the decision must be complied with until reversed. Either party may appeal to the executive council as provided herein."

In all that rule there is no mention of the employer, as far as I can see, having anything to say and you would hardly know, reading these rules, that there was an employer, as I read them.

Mr. RANDOLPH. Well, the employer has his representation through the foreman, and he has complete authority to hire the foreman, and bearing in mind the history of the organization, as I explained it to you this morning, the mere fact of the union's rendering a complete service so that the employer himself has nothing to worry about, as far as his composing room is concerned, is the background of these things.

The union is certainly interested in seeing that the members are not discharged unfairly; that so long as they do their work they are not subject to the whims of the employer through his foreman, who may discriminate on matters of religion, race, creed, politics, or anything else, if he has a free hand.

The union has most distinctly said to that employer, "You do not have a free hand in discharging our members. You shall discharge them for reasonable cause and for no other reason, and if you"——

Senator TAFT. That, Mr. Randolph, I do not object to, but the union reserves then to itself the power of saying whether he is discharged for reasonable cause or not.

The employer has nothing to say about it. As I read the rules, that is what that means.

Mr. RANDOLPH. With all due respect, Senator, the union is in better shape to exercise their judgment than the employer, who knows nothing about the trade.

Senator TAFT. I know that. That is the point I am trying to make. Section 8:

"A foreman shall not designate any particular day, nor how many days a member shall work in any one week: *Provided*, That the member must engage a substitute when absent. Any member covering a situation is entitled to and may employ in his stead whenever so disposed any competent member of the International Typographical Union without consultation or approval of the foreman."

Mr. RANDOLPH. That is right.

Senator TAFT. To say nothing of the employer.

Mr. RANDOLPH. Well, I explained that this morning, and that has been the case ever since the union has been in existence, and in typographical societies before, because, as I explained, the union has accepted a responsibility as regards the situation, and in the production of the daily newspaper this is very important.

If a man is not there or if enough men are not there, the paper cannot come out on time. He is obliged to supply the service that is expected of him, and if he does not and is unable to, he is obligated to put a substitute to carry on in his stead; and since time immemorial he has that right when he wants to lay off, and he hires a substitue to do his work, and it is of no consequence to the employer who does the work, whether it is John or Jim, but it does get done, and in the way it should be done, by a union member trained to know what to do.

Senator TAFT. There are three other things here that I suggested that bear out the charge that you have removed a good many things from collective bargaining. You have removed them by making these law absolute and not open to question.

Section 3 of article VII states:

"Subordinate unions are prohibited from establishing piece or bonus scales."

That is a definite rule that no local union can even bargain with the employer on such a subject.

Mr. RANDOLPH. That is right, and I referred to that this morning as having been adopted after years and years of negotiation and collective bargaining on that point; and in the year 1938 the convention adopted that rule when there were only 13 unions left out of 850 that had piecework provisions in their scales.

Senator TAFT. Another one is section 8, article XI:

"Not less than time and one-half shall be paid for any shift worked in excess of five within a financial week. When a member is required to work on a regular off-day or off-night, not less than the overtime rate shall be paid for such work performed."

I do not question the justice of that rule, but it is one that is definitely removed from the power of a union to bargain collectively; is it not? They could not vary that to any extent.

Mr. RANDOLPH. They can get a better condition than that but no worse, and that is one of the conditions that the members all over the country are governed by in the making of agreements.

In other words, as I explained, the collective bargaining of a century is nailed down, the gains of the century are nailed down in this book of laws, and the unions do not desert that position, and they will not surrender those gains that have been established generally throughout the country, and nailed down in the book of laws.

Senator TAFT. There is one other I just read, and I will ask you about that, because I do not know—it is article XIII, section 1.

"A subordinate union cannot alter or amend the standard of type adopted by the International Typographical Union. The following is to be the alphabetical scale for the measurement of type cast on the point system," and so forth, with a good many technical requirements.

Is that subject also removed from collective bargaining or can you in special cases do something, some special kind of type?

Mr. RANDOLPH. By a matter of evolution that is almost as dead as the dodo. That type standard was put in there while there was piecework and where, by the use of a thin face of type, a compositor was compelled to set more units of type than he would on the standard face.

He had to use his hands many more times to produce a thousand ems that he would on a standard face of type.

If he was using a wide face of type, he had less motion of his hands in picking up pieces of type to set a thousand ems upon which he was paid; so that this standard here was one that described what constituted a standard face of type, which was the basis of measurement of type for hand composition.

It has little effect at this time, except as to the possible application to a standard of competency if the employer undertook to substitute a very thin face of type on his linotype machine rather than a standard one, because it would still mean more movements of the fingers on a thin face than it would on a standard face, but it has never been brought up, to my knowledge, in any controversy in the 36 years I have been a member of the International Typographical Union, and in the some 25 years that I have been an official.

Senator TAFT. Now, I suggest, Mr. Randolph, that these laws bear out the statement made by Mr. Henry that these various things are prescribed by general laws of the International Typographical Union; that although all of these matters are of vital importance to them, as employers, none of them are bargainable or even subject to arbitration.

"In other words, such union laws have been constantly narrowing the area of bargaining by preventing the employers and locals in their negotiations from arriving at any agreement unless the employer is willing to agree to all the 'must' rules of the international."

Do you not think that is a fair statement on Mr. Henry's part?

Mr. RANDOLPH. No, it is not. In the first place, Mr. Henry does not know enough about it, and in the second place, when he says that we are constantly narrowing, that is not true because very few changes are made from year to year in general law provisions, and then only in cases where we have already made gains and try to get the stragglers in the industry to try to come up, bearing in mind that the greater portion, at least, of the numbers of employers in this industry, are not members of associations, and where once an agreement is made with an association or a group of employers, it is up to the union to see that that is enforced in other places, and there has to be a standard, and there has to be a way of approaching a standard.

This international law book, and general laws provided in this book having to do with economic matters, are the minimum of union conditions that we insist upon.

Now, an employer who does not want any provisions restricting him, no matter who happens to the union, that type of a man would say, "These restrictions are tremendous: they are too much for anybody; we do not want them."

We say: "If you do not want them, you go ahead and run an nonunion shop. There are lots of employers who want to run union shops, and run them under these restrictions."

Senator TAFT. Can any newspaper of any size get enough men to run a nonunion shop?

Mr. RANDOLPH. Oh, yes; quite a few.

Senator TAFT. In small towns, but I mean in any large towns?

Mr. RANDOLPH. There are some metropolitan papers operating nonunion.

Senator TAFT. Are there? Which ones?

Mr. RANDOLPH. Well, the Philadelphia Bulletin; there is one in Hartford, and there is a Los Angles paper, the Los Angeles Times, and, oh, there are quite a few of them.

Senator TAFT. It can be done. Let me only ask one more question, Mr. Randolph. Supposing that we repeal the union-shop provision. What do you think of giving the power to the Board or somewhat to regulate the question or at least to pass on the reasonableness of the action relating to the admission of apprentices, admission to unions, and expulsions from unions?

Mr. RANDOLPH. Well, Senator Taft, we are unalterably opposed to the interference by Government in the details of operating, either industry or unions.

We do not think the Government is competent through any bureaucracy you can think of to make even fair regulations along that line.

Senator TAFT. Well, you insist that the only condition then you think it should exist under is that a union should be able to absolutely govern the admission of people into the union by its rules, and the method of expulsion, without appeal to anybody. Government or employer or anybody else.

Mr. RANDOLPH. Why, of course. It is the only fair way; it is the only successful way.

Senator TAFT. That is all, Mr. Chairman.

EVENING SESSION

Senator PEPPER. Mr. Randolph, I believe when I was questioning you today I was about to ask something about the closed shop. You heard the discussion between Mr. McCabe and me about what was the theory of the closed shop, that it indicated a preference or determination of men not to work with others who didn't share their point of view and adhere to the principles to which they adhered about what was in the interest of and for the benefit of the workers.

Is there anything you would like to say on that that would justify what is the theory of those who advocate it?

Mr. RANDOLPH. Yes, Senator, I think I can add something to that, but before I do may I refer to the last question or two that Senator Taft asked me? There was a point left rather up in the air about the matter of discharges.

I pointed out that there were two methods: One by which discharges were handled within the union and one where they are handled according to a contract provision to arbitrate the discharge cases.

He started to read the section of law having to do with that, but did not read that portion having to do with the arbitration of discharge cases, and I wanted that cleared up because the law specifically says:

"When a subordinate union has made specific provision in its contract for reference of controversy over discharge to a joint agency the dispute shall be decided as provided in the contract."

At this time I would say there are practically 95 percent of our members working under circumstances where the discharges are arbitrated instead of going through the union procedure. I am afraid that point was not clear and I am happy to clear it up before going ahead with your question on the closed shop, Senator.

As I testified this morning, the closed shop has been something that has been with us from our very birth, over 100 years ago. It came about through the simple fact that union men would not work in a shop unless all were union, including the foreman, of course. Foremen didn't think about hiring anybody but a union man, and the closed shop was automatic, unquestionable, and never even considered.

It was so when we started to make collective agreements and became a part of the union rules and the union rules have always, from the time of the beginning of labor agreements, been accepted as the floor upon which other matters were collectively bargained.

Now the theory of the closed shop as it was originally conceived and the practical working out of the closed shop provisions of collective agreements, of course, remains the same, but there had been something added to it. The added thought about it is that the employer himself benefits from the closed-shop agreement.

We have a skilled trade. We have always arranged to train additional skilled people in the trade and organized other skilled tradesmen and kept the union intact and a supply of competent people available for hiring by employers.

That service in an industry where the time element is very important has been of considerable value to the employer, and he has been able to maintain what might be regarded as a minimum force, using extra help as needed instead of having to maintain a maximum force to take care of the amount of business that would come in on his largest days.

The closed shop, so far as the union benefit is concerned, rests in having a pool of jobs where our members may be employed; our members being a mobile force, they may then work in one or another of the shops, maybe two or three shops in a week, taking up the extra work that may appear in those shops and working steadily while doing so.

It couldn't be done that way if we didn't have the closed-shop agreement. Those are economic benefits from the closed shop that accrue to both parties, both the employer and the employee.

Aside from that, the union regards it as necessary for its continued existence. If an employer is permitted to dilute the force with nonunion people, with people who do not believe in unionism, he can in a period of time replace a union force with so many nonbelievers that the union has no stability because it has no opportunity to strike and win a strike. The nonunion people can be of such number as to make a strike ineffective, so that after a period of time under the provisions of the Taft-Hartley law, if it remained in effect for any particular period of time and union men remained at work in a shop where nonunion people were employed, they would lose their bargaining power.

In addition to that, there is as much feeling for the union and for the principle of unionism among our people as you will find a feeling for a particular religious sect among people who may choose one. It is a matter of principle. It is a matter of faith, that unionism is something that is necessary if we are going to retain our freedom under our economic system.

Senator MORSE. Will the Senator from Florida allow me to ask a question along the line of the hypothetical which I was discussing with Mr. Denham previously?

Senator PEPPER. Yes.

Senator MORSE. You heard my question to Mr. Denham with regard to whether or not counsel from his office sought to interfere with the application of some 30 rules of your union which you and other officers of the union by union rules are required to enforce on your members under their own democratic votes? You heard those questions?

Mr. RANDOLPH. Yes, sir.

Senator MORSE. Is it true, Mr. Randolph, that Mr. Denham's counsel have, on the allegation that your union rules or those they have attacked constitute a coercion of the employees, brought legal actions against you that tended to be very frustrating and annoying and involve you in unnecessary litigation?

Mr. RANDOLPH. Yes, Senator Morse. The question of the union rules and their probable or possible effect was discussed at great length in the various cases brought against us and in the injunction case in the Federal court.

Senator MORSE. What have been some of these rules?

Mr. RANDOLPH. The general laws of the union having to do with economic conditions and the rules providing for the closed shop right in our book of laws.

Senator MORSE. Have you found in your discussions and negotiations with the general counsel's office that once that office exercises its discretion to proceed against you in respect to these rules, there is no appeal that you can take within the organization to the National Labor Relations Board?

Mr. RANDOLPH. We are fully aware of the fact that we have no appeal from his decision.

Senator MORSE. That is your answer?

Mr. RANDOLPH. No appeal, that is true.

Senator MORSE. Prior to the passage of the Taft-Hartley law did you have relationship with the general counsel of the National Labor Relations Board?

Mr. RANDOLPH. I don't recall any. There were one or two cases that went up through the regular process.

Senator MORSE. In those cases did you have a right under the Wagner Act, if you felt that the general counsel was proceeding unfairly or arbitrarily, to have the matter brought to the attention of the full Board for determination?

Mr. RANDOLPH. Well, we didn't run into any of those circumstances. My conception of the Wagner Act was that the matter of the trial examiner's report was appealable to the Board and if the Board rendered a decision that we didn't see fit to comply with, they could get an enforcement order in court through their general counsel's activity. That is about all I know about it. I had very little use of the Wagner Act.

Senator MORSE. Is it your testimony, Mr. Randolph, that your experiences with the general counsel's office have caused you to conclude that he is empowered to exercise broad, sweeping, and unreviewable discretion as far as the filing of complaints and the seeking of injunctions are concerned?

Mr. RANDOLPH. It is not only brought to our attention that he can, but it has very painfully been brought to our attention that he did, as against the International Typographical Union.

Senator MORSE. Is it your view, Mr. Randolph, that the giving of such discretionary power by law to any governmental official operating in the field of labor relations puts him in a position where he can by the exercise of that discretion do great damage to a union or to an employer?

Mr. RANDOLPH. Most emphatically so, and I believe not only great damage; I think he has the power to destroy unions.

Senator MORSE. Is it your view that any law in the field of labor relations, in respect to provisions covering employers and covering unions, should have within it adequate safeguards whereby review of discretionary action of officials operating under the law will be subject to review?

Mr. RANDOLPH. I think there should be such procedures.

Senator MORSE. And then subject to review before damage from their exercise can be committed?

Mr. RANDOLPH. I think that is sound; yes.

Senator MORSE. One other question and, as far as I know, I will be through with this witness unless something develops later in the examination.

The other day, Mr. Randolph, I had a very able witness representing employers from the San Francisco Bay area who testified in effect that although there has been a literal compliance with the closed-shop provisions of the Taft-Hartley law in the San Francisco Bay area, in practice the hiring policies have continued as they existed prior to the passage of the Taft-Hartley law because we are in a period of full employment where jobs are plentiful and the employers are not in a position where they have a handy labor market available to them.

Has that been your observation generally speaking across the country as to the continuation of the practice of hiring men as they were hired prior to the passage of the Taft-Hartley law with a few exceptions with which you are painfully aware?

Mr. RANDOLPH. I will try to be as exact as possible in my own language in order to avoid the inevitable consequences of a slip on that point, bearing in mind that I am under an injunction and everything I say that is a matter of record finds its way into the general counsel's office and usually before the judge.

Senator MORSE. Answer it your own way.

Senator PEPPER. Mr. Chairman, I never have made any constitutional study of the question, but just as Members of Congress are given an immunity under the Constitution for what they say in Congress, it seems to me the same principle ought to apply to witnesses who appear before the Congress in response to the questions of Senators, so if anybody ever gets after you for anything you say up here, you will have a lot of fellows fighting on your side.

The CHAIRMAN. It probably will not do him any good.

Senator MORSE. I was going to add I think the law goes the other way.

Senator PEPPER. You know Congress has the power of impeachment over Federal judges. I want that in the record.

Mr. RANDOLPH. I didn't intend to either intentionally or otherwise say anything that would be any different from what I have said before in court, but I am trying to say it in the same way and not say yes or no to your language because it isn't on review in front of me.

Senator MORSE. Answer it your own way.

Mr. RANDOLPH. The fact is that with few exceptions the newspaper and commercial employers over the country, if they haven't been willing to make a contract giving our local unions the benefit of all the protections that can be had under the Taft-Hartley law, have simply followed along without making any changes in their hiring practices and have made increases in wages, commensurate with the inflationary trends.

The practice of hiring, as I say, has not been changed to my notice except in two cases that I testified to in court. One I mentioned here this morning, wherein a small plant in Wisconsin a nonunion foreman was hired, and all the rest of the printers disappeared. The other case was in San Antonio, where the president of the union called me, stating that an employer in a commercial office hired a nonunion man and he was seeking advice on what his rights were. I told him under the law he had no right to do anything about that circumstance, but that my advice to him was to look into the man's qualifications and his attitude toward the union; and if he felt that he met with that test, to invite him to join the union. My understanding is that it was done and the man now is a member of the union.

With those two exceptions, I know of no place where the employers have made a deliberate change in their attitude of hiring.

Senator MORSE. May I make a comment—and you check me as to whether or not it is reasonably accurate as an interpretation of the practice that has prevailed in your industry since the passage of the Taft-Hartley law.

One, in many cities and towns contracts with your unions since the passage of the Taft-Hartley law have expired; right?

Mr. RANDOLPH. Right.

Senator MORSE. Two, in most of those cities and towns satisfactory working arrangements have been entered into between your unions and the employers without any stoppage of work; right?

Mr. RANDOLPH. Right.

Senator MORSE. Three, the practice of employing the workers since the passage of the Taft-Hartley law has continued to be the same in most cities and towns covered by my first two points as the practices were prior to the passage of the Taft-Hartley law; right?

Mr. RANDOLPH. That is right.

Senator MORSE. Conclusion: A great many employers, then, have proceeded to continue what amounts in practice to a closed-shop relationship with the employees in their plants.

Mr. RANDOLPH. My conclusion is——

Senator MORSE. I am saying mine.

Mr. RANDOLPH. That they have made no changes in their own practices since before the Taft-Hartley law was passed.

Senator MORSE. No comment on this, Mr. Randolph, but I have been taken to task by some people for talking about the Taft-Hartley law as one of the causes for subterfuge in many employer-employee labor relationships in this country, and therefore conducive not to the building up of sound ethics in labor relations because some employers have seen that in just such a situation as this the type of restrictions that it seeks to impose are not fair, and, tested in light of their many years' experience with unions where they have had amicable relations, which relations have been disturbed, or would have been disturbed had they attempted to carry out the letter of the law—and, understand, I am not passing judgment; I am simply saying now that I think your situation demonstrates very clearly when you deal with an industry that has had the amicable relationships that that industry has had with the closed-shop principle over many, many years, an industry that has had, I think, the best record of voluntary arbitration of any industry in the country over many years, and on the part of most of the employers they appear satisfied with the principle of the closed shop in that industry—the Congress of the United States ought to consider for a long time before it decides to continue a provision of the law which, in my judgment, has been productive of so much subterfuge and bootlegging in the field of labor relations.

I think you know exactly what I mean and I think your testimony has been very helpful if this committee really wants to look on how the law operates in fact, and we have heard a lot of nonsense, in my judgment, over the past few months to the effect that the Taft-Hartley law has done no harm. If the people will take the time to study the effects of its various provisions on labor relations in this country, they will see just the type of harm that your testimony in my judgment points up here tonight and that the testimony of the San Francisco witness pointed up when he said, "Why, yes, in practice we are continuing to hire our employees as we did before the Taft-Hartley law was passed," and then was frank enough, because he is a very frank and honest man, to point out, "We are confronted, however, really with an era of short labor supply," raising for this committee in my judgment the warning, "Look out as to what the effects of the law will be when unemployment starts walking the streets of America." Then you will see the real costly nature of the Taft-Hartley law with all of its legalistic provisions which permit of the type of prolonged litigation which the General Counsel, I think, has amply testified to in his testimony thus far, legalistic procedures which that law will permit of when unemployment walks the streets and thus I say to my critics again tonight: I know of no way of putting on the books a law that has in it more potential danger of labor strife in the country than the Taft-Hartley law.

The CHAIRMAN. The Chair would like to add just to that statement what he has said so many times. Whenever the Congress of the United States passes a law which is in reality an open and continuous invitation for people in the country to break the law, we do something which ultimately ends in bad government. Excuse me, Senator Morse.

Senator MORSE. I completely concur, Mr. Chairman. You said it in one sentence and it took me three paragraphs to say it.

The CHAIRMAN. Senator Pepper?

Mr. RANDOLPH. I didn't quite finish.

The CHAIRMAN. Excuse me.

Senator MORSE. Excuse me.

Mr. RANDOLPH. I just wanted to add one more point on the closed-shop question and that is that we have always had the belief that we had a constitutional right to work or not work collectively as well as individually, and for the Taft-Hartley law continuing a paragraph of the Wagner Act to the effect that organization is absolutely necessary for the purposes of protecting our economy, for the Government to take the position that organization is necessary and then to single out only the individual for constitutional rights is a ridiculous retreat from the obvious necessity of a labor union having the right to do collectively what individuals have the right to do on their own.

Senator PEPPER. Well, Mr. Randolph, reference has been made to some States which have passed constitutional amendments or legislation barring the so-called closed shop. Would you say that any of those States or any large number of them are what we call industrial States, where there is a large percentage of industry and a large number of industrial workers?

Mr. **Randolph.** It is my impression that there are few industrial States that have passed such laws. I am not aware of all of them because we have had so many laws, Senator Pepper, this past year to give attention to and so many lawyers from the general counsel's office to worry with that I just lost sight of the State laws.

Senator **Pepper.** The Taft-Hartley law and the United States Government kept you pretty busy?

Mr. **Randolph.** It has taken up fully half of my time as an executive of the union during these past 16 months to give attention to the Taft-Hartley matters only and obviously other matters have suffered in like proportion.

Senator **Pepper.** I was about to ask you if it were not possible that in the States where such amendments have been passed it has been due to a false way or inaccurate way in which the issue was presented, that the issue was presented in such a way as to appear to raise the issue of individuals' rights to work and the individual freedom for the citizen, with which all are in accord, and it was made to appear that the advocates of the closed shop were opposed to those things, that they were closing the door to a worthy citizen having a right to earn a living, and, of course, everybody is against any such deprivation, and that the larger issue of greater freedoms or as great freedoms, which are involved in the matter, were not fairly presented to the public.

Mr. **Randolph.** That is right.

Senator **Pepper.** When Mr. Henry testified Saturday night, he stated there were no restrictive rules on production but that he had the feeling that there were some declines in production because of the closed shop. What do you think about that?

Mr. **Randolph.** Well, it is obviously wrong just by the statement itself, Senator Pepper. Mr. Henry could have presented figures from many print shops if he had wanted any figures to prove the contention, but the very fact that these shops have always operated as closed shops, mind you, having always so operated, how can he make a comparison even if there was a decrease in production and lay it on to the closed shop?

Obviously, he couldn't. They have always been closed shops. So if there was the drop in production, it was not attributable to the closed shop, but I even say that he had no basis for his charge that in one or more processes he had a feeling that there was a drop in production. You can imagine any print shop employer, and Mr. Henry is one of them, who is interested in production, he has a lot more than just a feeling. He is going to either know whether he has got production or whether he hasn't, and I rather discount a man, a representative of the industry, coming in here with "feelings" about production.

Senator **Pepper.** Is it or is it not a fact that during the current newspaper strike in Chicago members of the same local, local No. 16, were compelled under the force of the Taft-Hartley law and the direction of the commercial shop owners to serve as strikebreakers?

Mr. **Randolph.** They were so required, Senator, and the number of ads that they had to so set ran into the thousands.

Mr. Henry's statement, and I believe Mr. Dunnagan's statement, was that there were a few ads and that it was something that they had always been doing and he mentioned the Marshall Field ad.

Now just by singling out the Marshall Field ad, in my opinion, Mr. Dunnagan disclosed the fact that he knew far more than he was willing to tell because the Marshall Field ad is the only department store ad which over a number of years has been set up in commercial offices and then transferred into the newspaper for publication. He is correct so far as the national advertising is concerned. Much of it is set up in commercial shops, what we call agency shops, where compositors set up this national advertising for all over the country, but he is not correct as regards local department store advertising, which has always been composed in the composing rooms of the employers themselves.

It was that volume of ads numbering into thousands that were set up in commercial shops and used in the newspapers. Whether or not the newspaper said to the advertiser, "You will have to go over to a commercial shop and have your ad set up and then bring it over here and we will print it in the paper," whether that subterfuge was used or not, the fact still remains that our people were compelled to set up advertising which had been set up by our people when they worked on newspapers.

Senator **Pepper.** And the workers who did set up advertising in those commercial shops for the advertisers felt that they were required to do so by the Taft-Hartley law?

Mr. Randolph. They were so advised by our able attorneys and they continued to do that until they absolutely revolted and said, "We will set no more," and they said it individually and they were discharged individually, and the shops emptied within 2 or 3 days by their firing the men one after the other who refused to handle that advertising. The commerical industry was then shut down for 3 or 4 months on that act.

Now I ask again: What value is it to provide in the Taft-Hartley law that an individual may quit his job if he can't quit in concert with others and protect the standards of his trade? Obviously it is a hollow and useless right to quit individually when in this industrial civilization you can do nothing individually.

Senator Pepper. So it is really a meaningless benefit relatively, that is conferred upon him in 506 and 502 unless he may under that same section do the same thing in concert with his fellow workers?

Mr. Randolph. Yes, Senator, and if he has a right individually to refuse to do a thing of that kind, why has the employer the right to discharge him for doing what he has a legal right to do? The act doesn't protect him against discharge by an employer for exercising his legal right.

Senator Pepper. Has it been the intention or decision of the ITU to defy or violate the Taft-Hartley law, as several witnesses here have said or intimated?

Mr. Randolph. No, Senator. In our collective bargaining policy adopted by the convention, we made that very plain and our acts have indicated that at no time have we violated that law, nor have we intended to violate it.

We have been very careful in avoiding that and again I will say that the convention adopted collective-bargaining policies and said that there should not be and will not be any attempt on the part of the international or subordinate unions to violate any valid provisions of this law or of any law, Federal or State.

So when it came to the question of accepting the general counsel's interpretation of that law or our own attorneys' interpretation of it, we were willing to put our money on our own interpretation and go through the legal procedures that would bring about a decision. But we haven't got a decision. We haven't come near to a decision and we have been enjoined under a sweeping injunction that I myself find very difficult to understand. I keep asking the attorneys: Just what does it mean? They tell me what they think the injunction means, and after a while it seems as though Judge Swygert didn't believe it meant what our attorneys thought it meant and the National Labor Relations Board, which has the only legal right to determine it, may find that the judge is wrong and that our attorneys are wrong, and that Denham is wrong and everybody is wrong but the Board. They may come out with a decision some time or other in the distant future, but in the meantime we are subject to the injunction and to have the reputation of having been cited for contempt of court.

That is a humiliating thing for us to be suffering over nothing more than a question of whether or not the procedure of a contract might discriminate against some nonunion applicant sometime in the future and whether or not a provision for the training of apprentices and a committee appointed for that purpose has a tie-breaker or not, as to whether or not the committee of two members of the union and two employers, whether they might not agree on whether this apprentice had reached a stage of competency or not, and unless there was an impartial arbitrator to determine that question we might be violating the Taft-Hartley law.

Now that is the substance of our citation for contempt, and I leave it to members of this committee, even including Senator Taft, if that is an intelligent approach to collective bargaining.

Senator Pepper. Mr. Randolph, isn't that one of the examples of the vice of the law, that it entered like a bull in a china shop into a field where there had been delicate and perfected equilibriums built up over a period of many decades, in your case over a hundred years, and even if eventually it might not be adjudicated to have been worded so as to bring about your detriment, nevertheless, to subject your rights to such jeopardy and litigation and to such attack and assault that it has been the most grievous injury to your employees individually and collectively and has unsettled labor relations in the whole printing field?

Mr. Randolph. It certainly has, Senator.

Senator Pepper. So that isn't it also a fact that regardless of what the court of last resort might finally hold in a lot of these close cases, that the truth of the business is that aside from what it may eventually be held to do, the Taft-Hartley Act and injunctions that have been issued under it have intimidated the whole labor union movement and their leaders and made them hesitant and timid about asserting their rights, which they have always felt they had, at least since the Wagner Act, for the furtherance of the interests of their workers?

Mr. RANDOLPH. That is absolutely true, Senator, and our own local union officials have been constantly consulting their international union as to what they may do and how they may do it to avoid that pressure. They tell me their employers are in the main desirous of getting along with the union and having no fuss about this and doing the thing they have always done and forgetting about all this turmoil that they had no part in.

As a matter of fact, when I asked them, "Well, didn't your newspaper support the Taft-Hartley law," the answer is, "Yes, they did, but they didn't know what was in it." I asked: "Do they know now?" The answer is: "No, they don't know yet, and neither do we."

The CHAIRMAN. Are they still supporting it in spite of all that?

Mr. RANDOLPH. I do not know about that. I have not had a poll, but the fact is that they are getting along with our members rather than trying to use the weapons of the Taft-Hartley law against us, but their association, the American Newspaper Association and the P. I. A. officials, are attempting by this court action and by this pressure to secure the right to use these Taft-Hartley tools against us.

Then of course the various employers will have something that they can use and keep the members of the union quiet and use it to keep the wages down under the idea that if you get too fresh about this thing "I have got a good handy club here I can hit you with." That is the idea of the employers generally.

They are not foolish. If they can get the advantage over the union, any union, they are going to get that advantage, and so while they are not willing to put up a fight now, they are perfectly willing to have somebody fix up a nice shiny club that they can use any time they want to use it.

Senator PEPPER. Yes. Well, on the point I mentioned about the Taft-Hartley law being a psychological barrier to the assertion of their rights, I recall a good many instances in my State where union members came to me after the Taft-Hartley Act was passed and asked my opinion about whether they could individually make a contribution to a campaign fund or pay for any posters or handbills, even whether they would be permitted to take any part in an election when they were members of a union, and they were in a great dilemma to know what opinion they could get that they could rely upon.

They thought about asking our committee, asking for an opinion from the general counsel and so on. Well, when men are threatened with the punishment of prosecution, so that they are intimidated in the exercise of their rights as citizens, you can imagine about how many times they were intimidated in the assertion of their economic rights under the Taft-Hartley law.

Now one other thing, Mr. Randolph. The Norris-LaGuardia Act forbade employers from perpetuating the vicious practice of appealing to lifetime appointed Federal judges, ofttimes ex parte, for labor injunctions, but if you assume that you vest in one man the power on behalf of the Government of the United States to apply for the same kind of an injunction in rather a broad category of cases, and if that man is not controlled in the exercise of his arbitrary decision or judgment, and if by chance that man should become friendly to the employer or biased on their side, you have practically put the weapon of injunction back into the hands of the employer, have you not?

Mr. RANDOLPH. That is absolutely so, Senator, and we have felt and we have plenty of reason for feeling that the newspaper publishers of this country, with the access to the millions of the population in their daily papers, have a powerful influence in this country in a lot of places, and we were more than convinced of that when a group of Chicago employers, Mr. John S. Knight, for instance, of the Chicago Daily News where our members are on strike, and who prints the Detroit Free Press where they are not on strike, and who prints a paper in Miami where our papers are now on strike, Mr. Knight in conjunction with representatives of the Chicago Tribune and the Chicago Sun and the Hearst paper of Chicago, visited the office of Senator Taft.

It is referred to in our booklet attached to our written statement. When these dignitaries visited Senator Taft's office and when Senator Taft made the public statement that he did, concerning that case, and concerning that visit, and when Mr. John S. Knight published in his papers the frank statement of what they were there for, we felt most certainly that the publishers had an access to the enforcing agency of the country that we did not have, and that he was listening to their side of the story. When we found the attorneys for the general counsel's office asking a Federal court to force the international union to stop the payment of strike benefits to the Chicago printers, we were thoroughly convinced of it regardless of what anybody else may say.

We are thoroughly convinced that the Chicago newspaper publishers visited Mr. Taft's office and the subsequent actions of the general counsel's office with reference back to the Chicago case—the most important strike in the country in our trade—have a definite connection step by step.

Fortunately the court did not order us to stop the payment of strike benefits, but here is the position that we find ourselves in with regard to these strikes that we have. There are some things under the Taft-Hartley law that are illegal to strike for——

Senator NEELY. Mr. Chairman, before the witness leaves the point he is discussing, may I interrupt you with a question?

Mr. RANDOLPH. Yes, sir.

Senator NEELY. Did it occur to you at that time that you were actually confronted with a combination or an apparent combination of the legislative, the judicial, and the executive branches of the Government who are all cooperating apparently in an effort to serve one side of this controversy, and that you are the victims of their activities?

(REPORTER'S NOTE.—The question preceding is subject to being struck or revised by Senator Neely.)

Senator SMITH. Mr. Chairman, I must protest the implication of the question, in Senator Taft's absence. I do not know what the facts were. Senator Taft has explained it heretofore, and I regret that that question is brought up in Senator Taft's absence, and I want to ask the chairman's permission, of course, if this goes in the record, for Senator Taft to make his own explanation.

Senator NEELY. You should have that, of course. You remember Senator Taft referred to it himself in the examination of this witness.

Senator SMITH. There was a discussion, there is no doubt about that. I do not think the implication that there was a conspiracy between the legislative, judicial, and whatever else you suggest is quite a fair inference to leave in the record here in Senator Taft's absence, and I must protest against it.

Senator NEELY. Senator Smith, I think I will amend that and say, instead of combination, the cooperation; you were up against the cooperation of the legislative, the executive, and the judicial branches of the Government in this controversy.

Senator SMITH. I regret I have to object again, but I think that has the same implication and it reflects on Senator Taft's integrity.

Senator NEELY. I do not mean to do that.

Senator SMITH. Senator Taft is a man of the highest integrity and I protest reflections on his integrity in any way, shape, or manner.

Senator NEELY. I concur in what you say about his being a man of high integrity. That does not mean that I approve, though, of his conduct in doing what he said he did here the other day.

I am not going to criticize him, but I just do not join in approving it.

Senator SMITH. I do not think you have to approve of anything, but I do think we should not reflect on a Member of the United States Senate in his absence, and I protest against it being done without making a clear protest on my part, and the request that Mr. Taft be given the privilege that he should be given to make any statement he wants to make in connection with this for the record, and I am sure Mr. Randolph would agree with that.

I did not think you, Mr. Randolph, were reflecting on Senator Taft in your statement.

Mr. RANDOLPH. I am not, and I have not been dealing with any personalities whatsoever.

Senator SMITH. I think we should leave personalities out. Let us have the facts.

Mr. RANDOLPH. I think Senator Taft made his own statement here previously in this case. He made it publicly at the time, and some of the publishers made their statements also. They are a matter of record.

What judgment one may form as to what those acts were comes under the head of the right of the American citizen to have his own opinion about what other people's acts indicate.

Senator SMITH. I agree with that.

Mr. RANDOLPH. My testimony here is to the fact——

Senator SMITH. I do not like the idea of a record being made here in the absence of a Senator, the implication being made he did something that was wrong.

Senator HUMPHREY. Will the Senator yield for a moment?

Senator Smith. I think that is a fair position for me to take and I feel we should make the record clear.

Senator Neely. Mr. Chairman, to expedite matters I will withdraw the question and ask the question when Senator Taft gets back. I will never say in anybody's absence what I will not say to his face.

Senator Smith. I thought it was thoughtless on your part to do it in Senator Taft's absence.

Senator Neely. I will ask unanimous consent to withdraw it. I will ask the same question when Senator Taft is here. Let him defend it if he can.

The Chairman. The statement will be withdrawn from the record.

Senator Humphrey. Mr. Chairman.

The Chairman. Senator Humphrey.

Senator Humphrey. I would like to say this. This is not a matter of secrecy, you know, about the so-called legislative interference, whether Senator Taft is here or whether he is not. We talked about this about 3 or 4 days ago, and the distinguished Senator from Ohio made his comment, and I have exactly the same comment here in the press report.

We have listened for quite a little period of time to people that were trying to tell us several other things about the case involving the ITU. We have listened to a good number of comments that there was no talking at all between the general counsel's office, anybody else's office, that everything was just wonderful.

Now, I think that it is perfectly proper to put into the record a leading editorial from the Washington Post on September 16, 1948, entitled "Putting on the Heat." This editorial refers specifically to what we are talking about tonight. This is not what I say. This is what the editor of a newspaper in this city has to say, and I gather that the newspaper in this city is much like others.

I suppose its editorial policy has not exactly supported the opponents of Taft-Hartley. I do not know whether it has taken any editorial position on Taft-Hartley legislation or not, but I recall that it did not support the President of the United States, if my memory serves me right.

Senator Morse. What paper is that?

Senator Humphrey. The Washington Post.

Senator Morse. It has taken a position in the——

Senator Humphrey. For or against?

Senator Morse. In favor of its passage.

Senator Humphrey. All right, here is what it says. Permit me to quote part of it, and I will offer all of it for the record, and it can be reviewed by all Senators.

Mr. Taft himself is living evidence that a Senator is something more than this——

Senator Neely. Mr. Chairman, I must say that we ought not to think of doing this in Senator Taft's absence. It is a great impropriety, and I want to add, so nobody can distort my action here a moment ago, I want it understood that I am not withdrawing this statement in any sort of an apologetic way or with any degree of humility at all, and I intend to reenact the statement at the earliest possible moment in the Senator's presence. I want it known I believe I was fully justified in the question I asked, and that there was no impropriety in it, but I did not want to delay this hearing by debating the question here in the Senator's absence.

Senator Humphrey. I will continue with my quote now. It says:

"Surely he"—meaning Senator Taft—"must recognize that the support of special claimants before a quasi-judicial agency such as the NLRB poses a serious threat to the impartiality and independence which should characterize the agency's judgments. Legislative intervention in issues before executive departments may be, as Senator Taft says, a common practice; but it is a highly dangerous one, threatening to subvert the separation of powers which lies at the heart of the American system of government."

There is exhibit A.

Senator Morse. Mr. Chairman, would the Senator from Minnesota permit me a statement very briefly?

Senator Humphrey. Yes.

Senator Morse. I think I can recollect what Senator Taft said rather accurately. He can correct it later, but I think it ought to go in at this point.

My recollection is that he said a couple of constituents from Ohio came to him and made inquiry as to the status of the case, and he in turn made inquiry to the general counsel's office as to the status of the case.

Now it is true we are constantly, as Senators, making inquiry as to the status of various matters affecting our constituents before administrative tribunals in this Government, but the point that I wish the Senator from Minnesota would make, I would join with him on this, but not on the propriety of Senator Taft's statement or his action but on the propriety of having in the Taft-Hartley law the setting up of the type of joint committee whereby a member of that committee charged with the statutory responsibility, as we have said, although someone said an unfortunate term—but that is what it amounts to—watchdogging a department of this Government does not thereby put himself in a preferred position whereby inquiry by him will not stand on the same footing as inquiry by other Senators.

Now I want to say that I am satisfied that Senator Taft in that instance did what each of us frequently does, makes inquiries for a constituent as to the status, as to what was happening, but I am so opposed to this provision of the Taft-Hartley law because it is subject to the type of interpretation that has been made in this particular instance that I think we ought to see to it that we eliminate from the statutes the creation of such joint committees that make it possible to put what many people will feel to be undue pressure upon a quasi-judicial body because we must keep separate and distinct the judicial functions of our Government from the legislative functions.

Senator HUMPHREY. If the Senator from Oregon would have permitted me to put all three exhibits in the record, that is exactly what I was going to arrive at.

The second exhibit I would like to offer is from an article by Joseph A. Loftus, special article to the New York Times, under date of August 13, put in the New York Times on the 14th, which brings to our attention the case that has been referred to and all of the details.

Also another editorial from the Washington Post on the 25th of August 1948, and finally the section of the minority report, minority views of the Joint Committee on Labor-Management Relations, Congress of the United States. The record is of April 1, 1948, which points out exactly what the Senator from Oregon was stating, the very serious danger that rests in a practice where a legislative body exercises a type of watch-dog function over an executive agency and thereby makes itself available for interference in the law enforcement or the law administration.

That is all I would like to say, as we are on it and I do think we ought to offer the Senator from Ohio plenty of chance to retort. He had a fight with the President of the United States over this. I see no reason why we should not have one in the committee.

The CHAIRMAN. It will all be inserted in the record.

(The documents referred to are as follows:)

[Washington Post, September 16]

PUTTING ON THE HEAT

Despite the pungent aroma of politics emanating from the interchange of accusations between President Truman and Senator Taft, an important issue is entailed. The controversy arose out of a meeting held on July 28 in Senator Taft's office at which officials of the NLRB general counsel's office were called into conference with representatives of Chicago newspaper publishers and were allegedly pressured to bring a charge of contempt of court against the International Typographical Union—a charge actually brought by the agency about a fortnight later. The President termed the Senator's connection with this matter "entirely improper." And the Senator replied yesterday that "the Truman statement is merely an attempt to curry favor with the labor bosses who control the labor publicity to which he is looking for help in the election."

The account of the meeting given to the President by David P. Findling, NLRB associate general counsel, makes it plain, as indeed does Senator Taft's own statement, that the Senator did talk to the Government officials in the presence of the publishers' representatives and did impress upon them that he considered the typographical union case the most important proceeding that had arisen under the Taft-Hartley Act. In the circumstances, this admonition from the principal author of the act and the chairman of the Senate Committee on Labor and Public Welfare seems very much like what Mr. Truman aptly if inelegantly called it—an "attempt to put the heat on one of the executive departments."

Senator Taft says, "It is not only the practice but the duty of every Congressman and Senator when his constituents allege that some executive department is not doing its duty in relationship to matters in which they are interested to take up that matter with the executive department concerned." This is to view the Member of Congress as a mere creature of his constituents, a minion obliged to support their claims regardless of merit. Mr. Taft himself is living evidence that a Senator is simething much more than this. Surely he must recognize that the support of special claimants before a quasi-judicial agency such as the NLRB poses a serious threat to the impartiality ind independence which should characterize the agency's judgments. Legislative interrvention in issues before executive departments may be, as Senator Taft says, a common practice; but it is a highly dangerous one, threatening to subvert the separation of powers which lies at the heart of the American system of government.

[New York Times, August 14]

Taft Would Hold ITU for Contempt

SENATOR CALLS FOR ACTION ON AN INJUNCTION REQUIRING UNION TO CONFORM TO LABOR LAW

(By Joseph A. Loftus, special to the New York Times)

Washington, August 13.—Senator Robert A. Taft, Ohio, at the urging of some newspaper publishers, has called upon Government officials to bring contempt of court action against the International Typographical Union and its officers, it was learned today.

The Senator, it was reliably reported, also expressed himself in favor of a Taft-Hartley law amendment to permit individuals to sue for injunctions in labor disputes if the Government is not successful in getting a contempt citation against the printers.

The ITU and its officers have been under a Federal court injunction since March 27, requiring them to conform to the closed-shop prohibition and other provisions of the Taft-Hartley law.

The general counsel of the National Labor Relations Board obtained the injunction from Judge Luther M. Swygert in the Federal district court at Indianapolis.

PUBLISHERS CHARGE VIOLATIONS

Publishers' representatives have contended the ITU leadership has evaded and violated the injunction. The general counsel assigned investigators to the complaints and a decision whether to prosecute for contempt will be reached soon.

Three weeks ago, it was learned, Senator Taft, who is chairman of the Senate Labor and Public Welfare Committee, summoned the appropriate NLRB officials to his office. They are David P. Findling, associate general counsel, and Winthrop Johns, who is in charge of the injunction section under the general counsel. They obtained the injunction in March from Judge Swygert.

Present in Senator Taft's office, among others, were John S. Knight, publisher of the Chicago Daily News; representatives of the Chicago Tribune and of the Hearst newspapers, and Thomas Shroyer, counsel to the Joint Congressional Committee on Labor-Management Relations.

Senator Taft, it was reported, told the NLRB lawyers he believed the ITU and its officers should be cited for contempt of court. Mr. Findling and Mr. Johns were understood to have explained the status of the case. They said if all the facts, when assembled, warranted a contempt citation they would go before Judge Swygert.

AMENDMENT SUGGESTED

Mr. Shroyer reportedly suggested that the solution might be an amendment to the law so that private individuals or organizations could bring injunctive action. Senator Taft added some supporting comment to that view, it was reported.

Senator Taft and Mr. Shroyer were out of the city today. Mr. Findling and Mr. Johns were unwilling to discuss the incident.

The general counsel nearly 2 months ago acknowledged receiving complaints that the ITU was violating the injunction. In a statement on June 18, he said, "those complaints, which are, in effect, charges of contempt of the injunction, are now under investigation.

"This injunction was not idly sought, and if our investigation develops that they are supported by facts, it is certain that an early petition will be filed to cite Mr. Woodruff Randolph (president of the ITU) and his organization for contempt."

Pressure for the contempt action has come mainly from Chicago, where the newspaper printers have been on strike for nearly 9 months. The newspapers are being printed by a substitute process.

Issuance of the injunction in March failed to make any change in the Chicago ITU-publisher relationship. The dispute, ostensibly, at least, is over wages, but publishers contend the union is demanding closed-shop conditions in violation of the law.

The ITU recently approved contracts with New York City newspapers and the Gannett newspapers, but these are the exceptions in the ITU record of newspaper relationships since the injunction was issued. In most instances the printers received wage increases, but new contracts were not signed.

[Washington Post, August 25]

LEGISLATIVE PRESSURE

The current controversy over Senator Taft's alleged pressure upon the National Labor Relations Board to cite the International Typographical Union for contempt of court brings into focus a serious problem entailed in the relationship of so-called watchdog committees of Congress to executive agencies. Joseph A. Loftus of the New York Times reported in that newspaper recently that the Senator called to his office two members of the NLRB general counsel's staff and told them in the presence of several publishers and publishers' representatives that he believed contempt charges ought to be brought against the ITU. Last week, the ITU convention at Milwaukee adopted a resolution, based on this story, calling upon President Truman to invesigate "unwarranted interference" by Senator Taft with the executive branch of the Government. The President promised immediate investigation of the "shocking charge."

Although no comment on the matter has yet come from Senator Taft, who is absent on vacation, the general counsel of the Joint Congressional Committee on Labor-Management Relations, Thomas E. Shroyer, who was present at the meeting in the Senator's office, has told this newspaper that he himself called the meeting and that the Senator attended for only a few minutes, expressing no direct opinion as to the course which the NLRB should pursue. In addition, the general counsel of the NLRB, Robert N. Denham, has issued a public denial that there is any substance to the ITU charge.

Newspaper publishers are currently engaged in a bitter struggle with the ITU. Since March 27 the union and its officers have been under a Federal court injunction obtained by the NLRB requiring them to conform to the closed-shop prohibition and other provisions of the Taft-Hartley law. Publishers have complained to the NLRB that the union violated this injunction. The general counsel's office of the agency must decide, therefore, whether to prosecute the ITU for contempt. In this context, support of the publishers' complaint by the chairman of the Senate Committee on Labor and Public Welfare would be an obvious impropriety, the more gross if it were committed in the publishers' presence. The very fact that the meeting was held in the Senator's office, which is acknowledged, would appear to be, at the least, an indiscretion. For any intimation of preference on the part of their legislative overseers would make it extremely difficult for the NLRB to function with the independence of judgment requisite to its quasi-judicial status.

The Joint Committee on Labor-Management Relations, like the Joint Committee on Atomic Energy or the Joint Committee on Foreign Economic Cooperation, exercises a general supervisory role over the administration of legislation in its particular jurisdiction. This role might justify a general admonition as to policy, as well as a report to Congress on the administration of the law. But it would certainly not justify pressure of intervention of any kind in an individual case. Legislative shaping of specific executive decisions would violate the constitutional separation of powers. And the effect of such violation would be to obliterate, or at any rate to obscure, the responsibility which is the essence of sound administration.

(Excerpt from minority views of the Joint Committee on Labor-Management Relations, Congress of the United States:)

E. LEGISLATIVE INTERFERENCE WITH EXECUTIVE AND JUDICIAL FUNCTIONS

We have heretofore referred to the duties defined for the joint committee on labor-management relations in sections 401, 402, and 403 of the act. The performance of these duties has involved close relation between the members of the committee and officials of the Government performing executive and judicial functions.

This close relation results from the obligation on the part of the committee to conduct "a thorough study and investigation of the entire field of labor-management relations," and its further obligation to report to the Congress as to the necessity for additional legislation in the field.

We have recognized the necessity for an extended review of labor-management relations. Indeed, during the last session of Congress, we submitted a bill to provide for such a study. However, we feel that the performance of the duties by the joint committee involve the risk that there may be an unwarranted and unconstitutional intrusion in the fields preserved by our Constitution for the executive and judicial power.

Mr. RANDOLPH. May I say a word on that point at this moment?

The CHAIRMAN. Please.

Mr. RANDOLPH. We were discussing our impression of the situation and our convention adopted a rather strong resolution condemning Mr. Taft for his act. That is a matter of record.

I want to say further that upon the protest of the convention of the International Typographical Union to the President of the United States, he stated that he would cause an immediate investigation to be made, and he did so, and received a letter from Mr. Findling which is now a part of the record, giving Mr. Findling's version of the situation, and in which Mr. Findling states, quoting Mr. Findling:

"That he regarded the case as the most important case"—referring to Mr. Taft—in Senator Taft's language as reported by Mr. Findling, "that he regarded the case as the most important case that had come to the Board, and that it stood as a symbol to many Members of the Congress of the effectiveness of the enforcement machinery of the statute and that he was greatly disturbed by reports indicating that there was a serious break-down of the enforcement machinery in the case."

Now this is again a quotation of Senator Taft's statement:

"I did not purport to pass on the facts of the case except to say that the publishers seemed to me to have made out a prima facie case."

That is Senator Taft's language, and if he did not judge the case and find it to be a prima facie case of a break-down of the law-enforcement machinery, what did his language purport? When a man who is not only a Senator but who is the leader of the Republican Party and controlling faction of the Senate, and recognized as the leader of the Republican Party of the Nation, entertains representatives of Chicago publishers against whom our members are on strike, and he issues such a statement to the general counsel's staff, then we must conclude that there is interference between the legislative and the executive branch of the Government, and we must conclude that undue influence has been made.

That was the conclusion of our convention, and after the investigation and after the public statements of the several people involved, we are still of that opinion regardless of whether Mr. Taft engaged in these activities on the assumption that he was not doing anything wrong.

The fact remains that his intentions have nothing to do with his action, so far as we, the injured party, are concerned. We have a habit in our organization of judging people by their acts and not by their intentions, and I rather imagine that if any one of you, especially you lawyers, were conducting a case where a defendant stated after having shot at someone, that he did not intend to kill him, he was just trying to shoot him between the ribs and miss all of the vital organs, I doubt if you would have assumed that he was as innocent in his intentions as Mr. Taft says he is innocent in his intentions in this case.

Regardless of the fact that Mr. Taft is not here, the record is what I am pointing to. We judge people by their acts, not by their intentions, and I say again that we were convinced—and all of this leads from a statement I made before—that there was a logical sequence in the steps that led up to the general counsel making up his mind that the International Typographical Union was at fault, and that through the International Typographical Union defense fund, he could reach in and settle a strike by taking away the strike benefits from the members that were on strike in Chicago.

Senator PEPPER. Mr. Randolph, Senator Taft put in the record today a statement that was referred to as having been made by Mr. Shroyer, general counsel for the Joint Management-Labor Committee of the Senate and House under the Taft-Hartley law.

Before I read a paragraph or two of that statement which appears in the New York Times of Tuesday, September 23, 1947, I would like to ask you what was the date of the injunction application filed against the ITU by the general counsel of the NLRB? Was it before or after September 22, 1947?

Mr. RANDOLPH. After.

Senator PEPPER. It was after that date. This is the article:

"Says ITU will fail in Taft-Hartley fight." That is the headline. The subheadline is "Counsel for Congress group reports labor much more reasonable in bargaining.'"

"FRENCH LICK, IND., September 22 (AP).—A prediction that the International Typographical Union would be 'unsuccessful in its device to escape responsibility' under the Taft-Hartley law was made tonight by Thomas Shroyer, general counsel of the joint congressional committee to study the operation of the new law.

"Mr. Shroyer made the statement without elaboration in a speech prepared for the annual dinner meeting of the industrial relations section of the Printing Industry of America holding its annual convention here."

Now is that segment of the Printing Industry of America in any way associated with the employers against whom the ITU has been striking?

Mr. RANDOLPH. That is a segment of the Printing Industry of America, Inc., who was represented here by its president, Carl Dunnagan.

Senator PEPPER. But does it have the point of view of the interests of the employers in the controversy with the ITU?

Mr. RANDOLPH. They are apparently of them; yes.

Senator PEPPER. They are apparently of the group?

Mr. RANDOLPH. Yes.

Senator PEPPER. So the general counsel of this committee was speaking before the employer group?

Mr. RANDOLPH. That is right.

Senator PEPPER (reading). "The union has announced that it will not enter into formal contract with the employers under the Taft-Hartley law. A special committee of the newspaper association is to discuss a working agreement with ITU officials in Indianapolis Thursday and Friday."

Now I am ending the quote for the time being. That indicates that this statement was just before representatives of the employers were about to meet ITU, to see about working out some kind of a contract, some sort of a working arrangement.

Mr. RANDOLPH. The representatives that met were from other fields, the newspaper field.

Senator PEPPER. Oh, I see. [Reading:]

"Mr. Shroyer said it was too early to report what his study committee had determined except that 'the new law is working.'"

It is working all right. It is just a question upon whom it was working. This is a further quote:

"While labor leaders are condemning the Taft-Hartley law to the skies in the press and on the radio, they are bargaining around the conference table with a much more reasonable approach."

Any fellow who faces a man who has a club in his hand will probably walk more lightly and talk more mildly, so the fact that he would say they were talking with a much more reasonable approach indicated that his study had revealed that they felt that they did not have the strength at the conference table which they formerly had on account of the Taft-Hartley law.

Mr. RANDOLPH. That is right.

Senator PEPPER. Was that the effect the Taft-Hartley law actually had upon employees, to weaken the strength of their unions?

Mr. RANDOLPH. I believe that without question the effect of the Taft-Hartley law has been to discourage the normal amount of what you might call the determination on the part of unions to follow the inflationary spiral.

The longer that the Taft-Hartley law is in effect and the more injunctions and citations for contempt that are issued, the weaker it makes the bargaining position of employees.

Senator PEPPER. Mr. Randolph, we are running short on time, and I want to yield to Senator Humphrey. I have got three questions that I want to ask you. Answer them as directly and as briefly as you can, please.

What is your thought about Mr. Henry's statement that "The Wagner Act imposed the duty to bargain only on one side and placed the employers in our industry at a serious disadvantage."

Was there any question about your union ever bargaining with employers?

Mr. Randolph. There was no question about our union ever bargaining with employers.

Senator Pepper. No complaint was ever made about your failure to bargain prior to the Taft-Hartley law with your employer?

Mr. Randolph. That is right.

Senator Pepper. Mr. Henry discussed the need for prohibition against jurisdictional disputes and contrary to Mr. Dunnagan he claims this happens very frequently.

Do you know of such happenings as he has described on page 7 of his statement?

Mr. Randolph. No, Senator; we have almost no jurisdictional disputes in the printing industry. The lines are very well drawn and were very well drawn a long time ago and they are very well followed.

Now the jurisdictional dispute, that language is used as a cover-all to, we will say, cover other points that cannot be described actually as a jurisdictional dispute.

For instance, he regards it as a jurisdictional dispute if the union refuses to work on a product coming in from a nonunion plant. He assumes that we are trying to force that employer to have his employees join our union, and that is not so.

Senator Pepper. If you have any time, if you should have any time after Senator Humphrey's questions or after other Senators' questions, if you could comment on this question, it would be all right. If not, leave it go.

I would like to get your comment on Mr. Henry's description as to how the secondary boycott works as described on page 8 of his written statement. I would prefer, unless you can answer that very briefly, for me to defer to Senator Humphrey.

Mr. Randolph. Well, Senator, it is a very important question and, as I say, I will come back as often as necessary to give you the full information about this leading case in the enforcement of the Taft-Hartley law in every respect, whether we finish tonight or whether we do not.

Mr. Henry's approach to the matter that you have just mentioned is that we are trying to force through the refusal to handle struck work, trying to force organization of another plant. That is not true.

We are trying to protect the standards in the plant we have already organized and not allow the partial use of a union and the partial use of a nonunion product to break down the standards and cause the employer who has a whole union product to complain to the union that his wages must come down to meet this competing situation.

Senator Pepper. I see.

Mr. Randolph. Now Mr. Henry would destroy his own business if he had that opportunity, and these employers in the commercial field would destroy their own business if they had that opportunity.

Senator Morse. Will the Senator from Minnesota simply permit a courtesy question of the chairman?

Mr. Chairman, I request that this record be kept open so that on Monday immediately following Mr. Randolph's discussion of the Taft statement, which he certainly had a right to discuss and express his views on in answer to the question put to him by the Senator from Minnesota, the record be kept open so that Mr. Taft, if he wishes, can insert his reply at that point in the record as a matter of courtesy to him, because I am sure he will issue a general denial of the interpretation because of his different interpretation of the facts.

The Chairman. It will be done.

Senator Humphrey. I would like to ask Mr. Randolph a question.

Do you think the closed shop has worked to the advantage of labor peace in your relationships with your employers?

Mr. Randolph. I think it is the most important factor in maintaining labor peace in our industry.

Senator Humphrey. Well, would you be interested in hearing what some other people have had to say about this? I have here in my hands a copy of the New York Times—apparently I have been reading this paper lately—dated February 4, 1949. This is right up to date.

Possibly also the general counsel had better be looking into one of these matters because there is something here I will call his attention to. This is date-lined "Washington, February 3."

"The long and happy marriage of the Hickey-Freeman Co. and the Amalgamated Clothing Workers of America marked by collective bargaining and the closed shop"—you know this is after Taft-Hartley, gentlemen. I mean they still have the closed shop, according to this newspaper story—"was cited as worthy of emulation for industrial peace in a case study issued today by the National Planning Association.

"The National Planning Association representing management-labor editors and publishers stated that it was not a pattern that could be expected to fit every collective-bargaining situation. The committee said, however, that it found in this fourth case study significant parallels to some of the findings of the previous studies. The series is entitled 'Causes of Industrial Peace Under Collective Bargaining,' and it is financed by a $63,000 grant from John A. Whitney, of New York."

Now what does this report show? "The report shows," said the committee, "that some of the most troublesome issues clouding labor relations in some other companies and other industries are virtually nonexistent at Hickey-Freeman. Its collective bargaining is not confused by the issues of 'union recognition, union jurisdiction, ideological differences in class warfare and international union politics.'"

I would like to emphasize this, that here is an impartial organization that has quite a reputation in America for its objectivity, for its professional standards, the National Planning Association, which met here, by the way, in Washington, D. C., and I believe was addressed by the President of the United States. It says:

"The collective bargaining in this company is not confused by the issues of union recognition."

The Taft-Hartley Act has quite a little to say about union recognition, does it not?

Mr. RANDOLPH. Yes, sir.

Senator HUMPHREY. All right. "By union jurisdiction." Does Taft-Hartley try to say anything about union jurisdiction?

Mr. RANDOLPH. Oh, it destroys union jurisdiction at the will of the employer.

Senator HUMPHREY. All right. It also says here:

"The Hickey-Freeman Co. and its union are not bothered by ideological differences and class warfare."

Possibly the Communist affidavit might be considered in this manner.

Mr. RANDOLPH. I do not know.

Senator HUMPHREY. Finally: "International union politics," which apparently the court and the trial examiners have been interested in the ITU case. Is that not right?

Mr. RANDOLPH. Well, I do not know, but we have lots of politics in our organization.

Senator HUMPHREY. And policy. Now the next item is, "Then it spoke of two aspects of the bargaining situation worthy of special note," and it went down to talk about industry-wide bargaining and the second situation, the closed shop.

"Hickey-Freeman, in common with most other men's clothing manufacturers, operates today under a closed shop. The initial contracts specifically provided for an open shop, but the parties' experience led them later to agree on a closed shop."

Now it goes on to point out: "The closed shop does not per se prevent constructive labor-management relations. In at least some cases the closed shop may foster the closed-shop management relationships. The successful operation of the closed shop requires responsible union leadership, democracy in unions, the retention of the power by the rank and file is necessary to prevent irresponsible leadership."

Now we can go right on down the line. This article goes on for two columns, but it is quite an endorsement to the closed shop which the Taft-Hartley law saw fit to eliminate and not only eliminate but make illegal, and which has caused you a good deal of difficulty, has it not?

Mr. RANDOLPH. Oh, certainly.

Senator HUMPHREY. The illegality of it?

Mr. RANDOLPH. The banning of the closed shop and the other features of the Taft-Hartley law, especially the other features have been responsible for an attitude on the part of the employers that brought on this strike, and it was not until February of 1948 that the first large group of commercial employers were willing to make a contract legal within the Taft-Hartley law giving us whatever protection it did have.

They held out all of that time, hoping to break down the union through the threats and intimidation we were getting out of the National Labor Relations Board general counsel's office, and his trial examiners.

Senator HUMPHREY. You are familiar with this pamphlet. It is entitled "The Typographical Union, Model for All," reprinted in the Reader's Digest.

Mr. RANDOLPH. Yes; I am familiar with that.

Senator HUMPHREY. June 1943?

Mr. RANDOLPH. Yes.

Senator HUMPHREY. I would like to ask you a question. Is that story a fairly good evaluation of your union?

Mr. RANDOLPH. I think it is fair. One of the collaborators with Mr. Hard, I believe, visited our convention in 1942.

Senator HUMPHREY. It is very laudatory.

Mr. RANDOLPH. He visited my office in Indianapolis. I supplied him with a lot of information, documentary and otherwise, which he in turn took to Mr. Hard and they must have collaborated on the article because it apparently was the outgrowth of the information he secured attending for the whole week our convention in Colorado Springs in 1942.

Senator HUMPHREY. Well, now, you operate under closed-shop conditions, do you not?

Mr. RANDOLPH. We have up until the Taft-Hartley law.

Senator HUMPHREY. You have operated. The Amalgamated Clothing Workers apparently, of the Hickey-Freeman industry, operate under a closed shop, and I notice that two of the unions that get the big write-ups in America for being democratic, for having responsible union leadership, for having developed a fine sense of their responsibility to the management and to the Nation, all the good things of life, happen to be two unions that operate under closed-shop conditions, and yet the Taft-Hartley Act sees fit to ban them.

Now I gather from all that I have heard about you, Mr. Randolph, that you are a very responsible union official. I do not think anyone has in any way challenged your right to stand up and say that you do represent one of the sizable segments of organized labor and a very respectable segment of organized labor. Is that right?

Mr. RANDOLPH. I hope so.

Senator HUMPHREY. All right.

Mr. RANDOLPH. With all due modesty.

Senator HUMPHREY. Well, now, do not be so modest when you answer my questions, because you see, when the other side of the table puts things in the record with witnesses that are somewhat to their way of looking at things, I mean they just come right out of it.

Senator SMITH. I would like to agree with your statement about Mr. Randolph. From all I have ever heard, he is one of the outstanding leaders, and I pay him tribute for it. I appreciate his testimony here.

Senator HUMPHREY. Very good. How many years of experience have you had in union organization?

Mr. RANDOLPH. I have been a member for some 37 years.

Senator HUMPHREY. How long have you been in a position of leadership in organized labor?

Mr. RANDOLPH. Well, since about 1923, I guess.

Senator HUMPHREY. You have been pretty well respected by the members of the employers' group, as I gather from the background that I have on you. Is that not correct?

Mr. RANDOLPH. I have not had any complaint.

Senator HUMPHREY. All right. I want to ask you a question. Do you think you know quite a little bit about unions and their purposes?

Mr. RANDOLPH. Yes I do.

Senator HUMPHREY. Has the Taft-Hartley Act helped in union growth and the democratization of unions in this country?

Mr. RANDOLPH. I cannot see where it has.

Senator HUMPHREY. Well, would you think that you would know as much about unions, let us say, as, oh, somebody that just recently go into the field?

Mr. RANDOLPH. Well, I ought to know a little more than that.

Senator HUMPHREY. You have been living with it, have you not?

Mr. RANDOLPH. Yes.

Senator HUMPHREY. Let us ask you then, do you think that the Taft-Hartley Act has improved employer-employee relationships?

Mr. RANDOLPH. I am sure that it has not.

Senator HUMPHREY. It surely has not in the case of the ITU, has it?

Mr. RANDOLPH. No; it has not.

Senator HUMPHREY. Did you ever have so much trouble under the Wagner Act as you have under the Taft-Hartley Act?

Mr. RANDOLPH. We have never had so much trouble in our whole life.

Senator NEELY. You mean in the whole 133 years of your existence?

Mr. RANDOLPH. There is nothing like this on record.

Senator NEELY. It was organized in 1815; is that correct?

Mr. RANDOLPH. Nothing like this on record, and our records go back to the beginning, I mean the beginning of the union.

Senator HUMPHREY. Do you think that the Taft-Hartley Act brings the Government into labor-management relations quite directly?

Mr. RANDOLPH. Oh, it does, absolutely.

Senator HUMPHREY. Would you be interested in what former Congressman Hartley had to say about this in his book "Our New National Labor Policy?" This book will be old next year. You will have another new labor policy.

Mr. RANDOLPH. You can read it for the record. I do not care about it.

Senator HUMPHREY. I will read it for the record. I think you will agree with this, Mr. Randolph. I quote from page 142:

"One of the most telling criticisms of the Taft-Hartley Act in the halls of Congress was the extent to which it put the Government in the industrial relations business. I have admitted earlier that this criticism is in a large measure true."

I think just prior to that it says: "On June 23, 1947, it was on that date that the Government took a seat at the bargaining table."

In other words, we put in an extra chair. Now we have contended, some of us, that one of the weaknesses of the Taft-Hartley Act was the fact that it did put the Government, involved the Government in labor-management relationships, Government interference, Government restriction, and may I use the words of my opposition, Government regimentation, bureaucracy. Can we think of any others? Those are the words that are always used. It is almost socialism.

Mr. RANDOLPH. Well, I would disagree with Mr. Hartley to this extent. He says it puts another chair at the bargaining table. I would say it shoved us away from the bargaining table.

Senator HUMPHREY. Now may I just conclude with this to show what may be the purposes of this act. I did not realize just what the purposes were of this act until I got down to the very last page of the distinguished former Congressman's book. On pages 192 and 193 it says this:

You would be interested in this because I thought the Taft-Hartley Act was primarily directed toward labor-management relationships, and I find out that the Taft-Hartley Act had a greater purpose and that one of the authors of this act found that it was to be some sort of a big broom that would just sweep clean the social horizon of America. Do not take my word for it. Listen to this:

"Therefore, in addition to the development of a national labor policy which will stand on its own feet without governmental guidance, the people of this country must also strive through their elected representatives in Congress to reduce, to restrict, and to eliminate from the Federal establishment those services which can be discarded practicably. To prevent this from sounding like a composite of the usual political speech"—this is Congressman Hartley talking now—"I shall be specific as to the sort of governmental activity which is costing us much more than we can justify."

I want you to listen to the social philosophy that is here.

"The Fair Labor Standards Act"—got to get rid of that, he says—"is typical of the New Deal legislation enacted to combat the depression. Such legislation failed to affect the depression one way or another and has definitely outlived its usefulness as it was supposed to have had."

That is the 40-hour week, you know, time and a half for overtime, child labor, that has outlived its usefulness.

"The Federal Communications Commission has expanded its activities far beyond its simple original function of dividing up the available wave lengths amongst various radio stations. The Federal Power Comission represents and perpetuates unwarranted encroachment upon individual rights."

This philosophy is not only content with starting a law or putting on the books a statute which in the ultimate could destroy free trade unions, but they would likewise apparently destroy the TVA and all that comes with it.

"The innumerable Federal agencies charged with conflicting responsibilities in the field of housing"—these have got to be eliminated, too—"they have contributed more to the shortages of housing than any single factor except the wartime drain on materials. Not one has come to grips with the heart of the housing problem. All of the top executive departments are overstaffed and attempting to do more than Congress ever authorized.

"This is a great Nation, but the greatest of nations cannot last forever carrying a load of nonproductive Government officials and employees."

That, of course, includes officials under the Taft-Hartley Act and the rest.

"We must develop a method to shrink our Federal establishments."

That is exactly what we intend to do, is it not, gentlemen, here, I mean in part—"and quickly,"—and that we intend to do, by the way.

"It is my sincere hope that the Taft-Hartley Act"—now listen to this—"will point the way for the Republican Party to approach its over-all problem of reducing the size and the cost of Government. Once we accept the concept of the Taft-Hartley Act as a model to begin an interim period leading to the complete elimination of Government labor-relations agencies, we can apply that same concept to the other areas of Government activity. I am well aware of the political difficulties of eliminating the New Deal social legislation. It cannot be repealed at a single stroke. All of this legislation of this type requires interim treatment."

Senator MORSE. The Senator from Minnesota is aware, is he not, that Mr. Hartley was not a member of the Republican platform committee at Philadelphia?

Senator HUMPHREY. I am aware of the fact that Congressman Hartley did not run for reelection, but I am more aware of the fact that he was the coauthor of this bill. Let us just complete this and we will be all through.

Senator NEELY. Could I interrupt there?

Senator HUMPHREY. Indeed you can.

Senator NEELY. Mr. Chairman, although Mr. Hartley is evidently not a candidate for the nomination for President the next time, it is proper, as he is a former Congressman, to talk about him this way in his absence? [Laughter.]

If anybody objects to it, I vote to sustain the objection.

Senator HUMPHREY. I will continue on after those words of wisdom. I continue the quote:

"But as soon as all segments of the populace become aware of the tremendous cost of particular benefits of governmental labor-relations agencies as compared to reduced tax bills, we provide interim legislation which does not benefit any particular group, then and only then can we make appreciable headway in reducing the size of Government."

Now listen to the prophet. This is one of the great prophetic dreams of our times. Should we say Jeremiah?

"Before the 1948 elections are finished the Taft-Hartley Act"——

Senator NEELY. Jeremiah's prophecies came true.

Senator HUMPHREY. "Will be hailed as the greatest single contribution the Republican Party has made to the Nation. To my mind the Taft-Hartley Act represents the greatest single contribution made by any political party for the past 2 decades. It corrects in a single piece of legislation the outstanding mistakes of the New Deal. At the same time it points a way toward the method to be utilized in correcting the other errors of Government initiated in the 1930's. Our final goal is, and it must be, that the Taft-Hartley Act is but a step toward that goal, but it is a certainty that it is he first definite step this Nation has taken since the merry-go-round began in 1933."

Now, I would gather from that that what the purpose of this legislation is by one of the authors, is to take this country back to the days prior to 1933. That is what he says. Read it as you want to.

"The Taft-Hartley Act is but a step toward that goal, but it is certainly the first definite step this Nation has taken since the merry-go-round began in 1933," and he points out, "It points a way toward a method to be utilized in correcting other errors of Government initiated during the 1930's."

Well, here is only one analogy to be drawn, and it seems to me quite clear, to get back into law of the jungle and to get back to the time when the strong shall exploit the weak; as I said this afternoon, this business of balance that I have heard repeatedly of equalizing the privileges of labor and management.

If there was ever one single piece of legislation in all of the history of this Congress that did anything to destroy the equilibrium of this country and to put the balance of power in the hands of the mighty and the powerful and at times, may I even say the greedy, it was this one piece of legislation.

I think the evidence is conclusive. I think it is perfectly clear. Now that does not mean that we are the kind of people that will go back some place where there is no improvement. We offered to the people out of this committee the Thomas bill, the Thomas bill which recognizes the problem of jurisdictional disputes, which recognizes the problem of national emergencies, which recognizes the problem of some secondary boycotts, but which permits a free latitude of expression on the part of labor and management.

Now, I will ask the final question, Mr. Randolph: Do you approve or disapprove of the main provisions of the Thomas bill, S. 249?

Mr. RANDOLPH. My written statement indicated that we were, in spite of some objections we might otherwise made, for it as it is submitted by the chairman of this committee, completely, for speedy action by the Congress to get rid of the Taft-Hartley law, and for its trial to see if there is any justification in the thought that it may have some things that will not work out.

We are willing to take whatever risks there may be in it if we can get it adopted and get it adopted at once so as to be rid of that persecution that comes through the Taft-Hartley law.

Senator HUMPHREY. That is all I have to say.

Senator NEELY. May I ask one more question?

The CHAIRMAN. Senator Neely.

Senator NEELY. Mr. Randolph, in view of all that has been said and read and heard from the counsel table here, and in view of your experience under the Taft-Hartley law, under the operation of which your union has had to spend more than $11,000,000 in 16 or 17 months to defend itself, would it be an exaggeration to say in Shakespearian language what was said in the first scene of Macbeth: "It has been a visitation to your union of double, double toil and trouble, fire burn, and caldron bubble." Would that be an exaggeration or would that be accurate?

Mr. RANDOLPH. I believe that would be a very great understatement, Senator.

Senator NEELY. This is the way I characterized it in my campaign, and I still believe that is probably a better characterization than that, that is, that so far as union labor is concerned, it has proved to be the abomination of desolation spoken of by the prophet Daniel. Would you agree with that?

Mr. RANDOLPH. As the printer says, you can put my slug over that.

The CHAIRMAN. Thank you, Mr. Randolph, for coming. We stand in recess.

Mr. RANDOLPH. Mr. Chairman, may I ask that I be permitted to read the record and correct any obvious mistakes that I have made?

The CHAIRMAN. That is always allowed, Mr. Randolph.

Mr. RANDOLPH. And may I also submit for the record a list of other statements in the American Newspaper Publishers bulletin concerning how the publishers themselves accept the attitude of Mr. Taft and Mr. Shroyer regarding our union?

The CHAIRMAN. That is all right, if you will expedite it as fast as you can so we can complete the record. We will appreciate that.

(Whereupon, at 10:10 p. m., the hearing was recessed, to reconvene at 9:30 a. m., Monday, February 14, 1949.)

TAFT-HARTLEY AND THE ITU

THE PUBLIC INTEREST DEMANDS REPEAL OF THE TAFT-HARTLEY LAW AND REENACTMENT OF THE WAGNER ACT AS THE FIRST DUTY OF THE EIGHTY-FIRST CONGRESS

(Issued January 28, 1949, by the International Typographical Union)

Ever since the Taft-Hartley Act finally became law on August 22, 1947, the International Typographical Union and its 90,000 members have been continuously bedeviled by a course of litigation without parallel or precedent in the history of labor relations in the United States. Why was this old (organized in 1852), democratically operated, honest, and experienced union singled out for attack? What were the issues. What are the lessons to be drawn from this experience? The apparently imminent repeal of the Taft-Hartley Act may make such questions seem academic—yet the issues involved are vital and it would be a mistake to dismiss these cases as merely last year's litigation.

THE TAFT-HARTLEY ACT

On June 22, 1947, Congress passed, over the President's veto, the Taft-Hartley Act. The impact of that statute on the principal ambitions of the International Typographical Union and all other labor unions was catastrophic. It clearly outlawed the closed shop and put into question the right of union men to refuse to work with competing nonunion men. It jeopardized the practice in the printing industry of hiring in order of seniority (called "priority" in the trade.) The asserted power of the employer to hire whomever he wished opened up the prospect that employers would freely displace union members with nonunion men, thereby threatening the job of every union member and the existence of the ITU itself. In section 8 (b) (4) (D) the act appeared to say that a union might not strike to protect its jurisdiction; if the employer chose to assign work to nonunion men in a particular "trade, craft, or class," the ITU would then be helpless to protect its existence and the jobs of its members. It made illegal any strike or "concerted refusal * * * to handle or work on any goods * * * where an object thereof is * * * forcing or requiring any employer * * * to cease using * * * or otherwise dealing in the products of any other producer, processor or manufacturer * * *." That meant that union men could be compelled, by force of law and the courts, to act as strikebreakers against their fellow unionists, and could be compelled to cut their own throats by working on products manufactured under substandard conditions. By requiring the ITU to "bargain collectively" (as later interpreted) it threw in doubt the operation of all union rules (called "laws" of the ITU).

The penalties were Draconian. For certain strikes the ITU might face (1) a mandatory injunction at the behest of the general counsel of the NLRB; (2) suits for violation of contract; (3) damage suits by any person injured, no matter how remotely; (4) loss of employe status for those participating in the strike, and (5) unfair-labor-practice proceedings before the NLRB. Any violation of any kind entitled employers to one or more of these remedies.

In considering the problems raised by Taft-Hartley, President Randolph and the other members of the executive council of the ITU retained certain convictions. One was that the right of workers to form and join trade unions was, as Chief Justice Hughes had said in *NLRB* v. *Jones and Laughlin Steel Co.* (301 U. S. 1 (1937)) a "fundamental right" which did not depend on the benevolence or charity of the Government but arose out of the right of free men to band together for lawful purposes. They therefore rejected, out of hand, the concept of the Taft-Hartley Act that trade-unionism was a Government grant, which could be conferred or withheld at the pleasure of Congress. A second was, as the August 1947 convention of the ITU subsequently expressed it, that "there should not be, and will not be, any attempt on the part of the international or subordinate unions to violate any valid provisions of this law, or of any law, Federal or State." And a third was that a meek submission to this monstrous assault on settled liberties and traditional practices could mean only death for the union. Obedience to the law did not require that every worst interpretation of its provisions by the employers in the industry or the general counsel of the NLRB had to be accepted, or that methods might not legitimately be sought to avoid its worst consequences.

This was also the mood of the delegates to the ITU convention, held at Cleveland in August, 1947. The ITU has traditionally had two political parties among its members, and unanimous action of the delegates to its conventions is rare. But, unanimously, that convention adopted a collective bargaining policy which was the united answer of the ITU to Taft-Hartley.

THE COLLECTIVE-BARGAINING POLICY

From early in the nineteenth century, until about 1886, the collective-bargaining agreement was an almost unknown phenomenon in the United States. The employer, in "recognizing" a union, accepted the union rules covering wages, hours, and working conditions, without a written memorial of those terms—which were to be found in the union's rules and laws. Even in 1947, almost a quarter of the ITU's 850 local unions had no written agreements; the same remains true of many other craft unions. After careful study of the Taft-Hartley Act and full debate, the ITU convention concluded that the written collective-bargaining agreements was, under that act, loaded with excessive and legalistic baggage. If a union, holding a contract, took steps to protect its existence against employer efforts to destroy it, it could be sued for breach of contract with consequent heavy financial liability. The freedom of action of union members was, under such conditions, nullified, while the employer was left free to operate as he might against the union's interests. Having in mind a half century of its history, and the experience of a fourth of its locals, the convention resolved to manage without collective agreements to the extent possible. While not a complete protection against Taft-Hartley, this policy at least removed one major impediment to the exercise of the right of self-defense.

And so, ironically, the union which had been in the van of the movement for the collective-bargaining agreement found that under Taft-Hartley it was preferable to return to older methods of doing business under "scales of prices," now called conditions of employment. The ITU did not contemplate the abandonment of collective bargaining, as was widely misrepresented; discussions and understandings with employers were expressly anticipated. But both employers and local unions were to be free to reopen matters at any time; the policy thereby approached collective bargaining realistically, as a continuing process, rather than as a sporadic affair to be engaged in at stated intervals of 1 to 2 years.

But, in the intervening years since 1886, some observers had made a fetish of the collective agreement. Instead of looking to the realities of labor-management relations—the peaceful accommodation of industrial problems through discussion and compromise—they looked to one outward form: the written agreement. For such observers the question was never: Ahe relations between the parties good? but: Is the agreement between the parties properly written, sealed, and signed by duly authorized agents? and the like. These prejudices were rudely shaken by a union policy that looked to the realities of collective bargaining rather than to its forms.

And more sinister forces were at work. Since the early 1900's, the American Newspaper Publishers' Association, through its special standing committee on labor relations, had been fighting the laws of the ITU, and thereby sought to break down the principle of democratic trade-union action. It had been their uninterrupted ambition that the "laws" of the union should be treated, not as a compact among the members as to the conditions under which they would sell their labor, but as a mere starting point, to be diluted through chaffering, haggling, and arbitration. Taft-Hartley was the golden opportunity to gain a vital point—to make certain that decisions would not be made by the members of the union, but by the employers, or third parties, or a combination of both. If the union laws could be sufficiently compromised at enough points, a gradual but inevitable reduction in union standards would be assured, to the clear benefit of the employers in the industry. To these ambitions the National Association of Manufacturers and the Chamber of Commerce gave a sympathetic attention for it was clear that if the ITU policy were successful and spread to other unions it threatened the hard-won gains which large corporations thought they had achieved through the Taft-Hartley Act.

Against this policy of the ITU the proponents of Taft-Hartley swung into prompt action. The delegates to the ITU convention had scarcely left their seats before Thomas Schroyer general counsel for Senator Taft's Labor Committee, speaking to the Printing Industry of America convention, denounced the policy as "illegal"—long before any NLRB hearings had been held or decisions reached. Elisha Hanson, counsel for the ANPA, distributed opinions to all newspaper publishers, advising them that they should refuse to discuss wages, hours, or working conditions with the ITU until the ITU first agreed to a "legal" contract—meaning thereby his definition of "legal."

DENHAM MOVES IN

The first NLRB case arose in Baltimore. There the commercial printing employers filed charges, alleging that the ITU and Baltimore local No. 12 were "refusing to bargain collectively," despite the fact that numerous meetings had been held and that the employers, following the ANPA line, had themselves refused to discuss wages, hours, and other conditions of work. A complaint was issued on September 26, 1947, setting a hearing for October 6.

October 6 was also, interestingly enough, the opening date of the American Federation of Labor Convention at San Francisco, which the principal officers of the ITU were, of course, required to attend. That convention was to run until October 20, and in view of the importance of the case, the ITU asked a postponement until after October 20 in order that the officers of the union might attend the hearing. General Counsel Denham (the prosecuting officer, who, under Taft-Hartley, decides such matters) granted the postponement to October 13; an obviously deliberate and malicious effort to force the officers of the ITU to choose between the A. F. of L. convention and the Baltimore hearing.

In the meantime, in view of the widespread employer attacks on the collective-bargaining policy of the ITU, and the complaints of illegality by Denham, the executive council of the ITU determined to propose a form of contract to employers. The form which was used (later known as form P6A) was unashamedly and deliberately devised to protect the ITU and its locals against efforts of employers to destroy it, and to take advantage of the few recourses left by Taft-

Hartley. For that very reason, it met with immediate and stubborn opposition by employers. Their attorneys advised it was "illegal" (though every clause in it, with a single exception, was subsequently held lawful by some trial examiner of the NLRB). The new willingness of the ITU to enter into collective agreements did not deter the NLRB general counsel. The Baltimore hearing went forward as scheduled.

In late October, after 10 days of hearing, that case concluded. In November, the general counsel moved to reopen the hearing to add a complaint that the ITU had caused the employers to "discriminate" against nonunion men, though there was no individual brought forward, then or at any time during the course of this entire litigation, who could testify that he had been discriminated against as the result of any action by the ITU. The motion was granted, a 1 day hearing was held in early December, and the record was closed. Yet it was April 20, 1948, before the trial examiner issued an intermediate report, a period of about 6 months from the real close of the hearing in late October. There the case has rested; to this time the NLRB has not even heard oral argument on the exceptions to the report which were filed by the ITU, much less reached a decision. This is the speed with which administrative procedures move under the Taft-Hartley Act.

In the meantime, events moved forward in other quarters. A strike had been in progress between the Nassau County, N. Y., local of the ITU and the Daily Review Corp., a newspaper publisher. With the direct participation of the ANPA, charges were filed and a complaint issued in early November 1947 by General Counsel Denham against the ITU and its local. The hearing began in December 1947; the complaint covered substantially the identical matters which had already been heard in the Baltimore case and relied on substantially identical testimony. Charges had been filed by a member of the union against the employer, charging that he had refused to bargain. In his report, issued on June 7, 1948, the trial examiner found that the employer had refused to bargain collectively. Nevertheless, Denham dismissed the charges which had been filed against the company, and refused to proceed with them. In this case, too, there has been no argument before the Board, and no decision by it, though half a year has elapsed since the case was transferred to the Board for decision.

On November 10, 1947, Denham had issued yet another complaint against the Los Angeles local and the ITU; a subsequent agreement between the employers and the local union resulted in dropping of the case. But it was clear that Denham did not intend to leave decision of these matters to the processes of the act. The issuance of three complaints, containing substantially identical allegations and relying on the same evidence, could spring only from a desire to so to harass the ITU by litigation that it could cry quits before any decisions could be obtained. The attorneys for the ITU therefore approached Denham; they pointed to the expense to the union of litigating the cases already in process, the waste of Government funds involved in continually relitigating the same matters on the same evidence, and asked a halt in the issuance of complaints until the cases already heard were decided by the Board.

The answer was prompt. On November 21, 1947, Denham issued yet another complaint—this time on charges filed directly by the ANPA. The complaints previously issued had been limited to a single local union and the ITU; this complaint covered all newspapers wherever located throughout the United States. Its scope was unlimited and was sufficiently broad to cover all negotiations of the ITU with any newspaper anywhere in the United States after August 22, 1947. Again, the allegations were identical with those already tried, and it was evident that Denham was relying on the same evidence which had been used in previous cases.

On December 7, 1947, that hearing opened. Fourteen attorneys were present representing the newspaper interests and the general counsel. At the outset of the hearing one outstandingly important legal issue presented itself. The ITU is not a bargaining agent; local unions conduct collective-bargaining negotiations. The complaint in the ANPA case did not charge that the ITU had refused to bargain collectively, but claimed that the ITU had "restrained and coerced" its locals into refusing to bargain. If this claim constituted a violation of the act, then hearings would be required in each local situation to determine whether the ITU had in fact "restrained or coerced" its locals; if not, the hearings could be speedy and inexpensive, since hearings on local negotiations in many cities of the United States could be avoided. The ITU, therefore, moved to dismiss that allegation on the ground that it did not charge a violation of the statute. The trial examiner agreed with the ITU and struck the allegation, though denying the motion of counsel for the ITU to strike other allegations.

The general counsel thereupon announced that he would appeal the trial examiner's ruling to the NLRB, and attorneys for the ITU announced that they would cross-appeal. Telegrams to that effect were sent. Five days later, without hearing argument or allowing briefs to be submitted, the NLRB summarily reversed the trial examiner's ruling, denied the ITU's motion to appeal, granted the general counsel's motion to appeal, and reinstated the disputed allegation in the complaint. It thereby, without hearing, doomed the ITU to hearings which were not concluded until May 1948, and, ironically, when the question later arose, in another case, the NLRB adopted the position of the trial examiner and the ITU (*Matter of National Maritime Union*, 22 LRRM 1289). In reversing the trial examiner, the NLRB served notice on all unions that they could be forced to hearing on any allegation put forward by Denham, no matter how ill-founded as a matter of law, and that not even a right to be heard on the matter would be granted, even though the trial examiner agreed with the union's position.

Under this shotgun complaint, the general counsel began, on January 8, 1948, to hold hearings in Chicago, where the members of the ITU local had been on strike against the Chicago publishers since November 24, 1947. After there had been 10 days of hearings, at the usual great expense to the ITU, Denham through his Chicago regional office issued yet another complaint—this time against the ITU and its Chicago local. This complaint contained allegations practically identical to those of previous complaints, but covered matters on which the testimony had already been taken in Chicago. At the same time he announced that these cases would not be consolidated for hearing—that is, he proposed to repeat the identical evidence on identical allegations which had already been heard. Only the threat of counsel for the ITU to withdraw from the case entirely, as a clear denial of due process, produced a change in this ruling and allowed consolidation of the cases.

Not until January 26, 1948 (over 2 months from the time the complaint was issued), did the general counsel supply the ITU with a list of the cities where hearings were planned to be held pursuant to the ITU demand for a bill of particulars. Then began a traveling circus: Hearings at Detroit, Buffalo, Albany, and Washington, covering places dispersed throughout the United States. In May 1948, the hearings concluded; in August 1948, the trial examiner issued his intermediate report. That case has not yet been heard or decided by the Board.

THE INJUNCTION

One would suppose that the issuance of five complaints involving the same issues and evidence would satisfy the most litigious maw. Not so. On January 16, 1948, the general counsel applied for an injunction under section 10 (j) of the act in the United States District Court for the Southern District of Indiana, based again, of course, upon the same allegations and the same evidence. But here the general counsel was under no burden of proving a case; under the act it is enough if his agent has "reasonable cause to believe" that the law is being violated. Since the final decision in the case was to be made by the NLRB, and not by the court, the ITU attacked the constitutionality of section 10 (j) on the ground that it did not confer judicial power on a constitutional court; it further argued that section 10 (j) clearly contemplated that such actions were to be brought by the Board and not by Denham and that the Board had not given such power to Denham. At the argument before the court, for the first time and with the obvious consent of the Board, a document called a confidential memorandum was produced, dated August 1947, whereby the Board conferred this power on the general counsel. No explanation was ever given why it was thought that this was confidential or why it had not been brought to the attention of litigants before the Board. The court overruled the contentions of the ITU and the matter proceeded to hearing on the merits.

The obvious purpose of the proceeding was to break the strike of Chicago local No. 16, yet the intervention of that local in the case was denied. It was the arrogant contention of the general counsel that the ITU might not even offer proof refuting his unproved allegations. After hearing, on March 27, 1948, the court issued a sweeping injunction, in almost exactly the form asked by the general counsel, and made findings of fact almost exactly those asked by the general counsel (see 21 L. R. R. M. 2375. 2553). The ITU was enjoined from refusing to bargain collectively, from asking for "conditions of employment," from using Form P6A, from asking that agreements be canceled on 60 days' notice, from seeking to cause employers to discriminate against nonunion men, from attempting to maintain closed-shop conditions, or from supporting strikes for any of those purposes. The only matters not enjoined were those which the general counsel himself had dropped from the case for want of proof.

In view of the injunction, conferences were arranged with attorneys for the general counsel and the court concerning the method of compliance with the decree. A program was agreed upon, by which the ITU agreed to drop the demands found by the court to be illegal and not to support strikes for such demands. The ITU announced the form of agreement which it would seek, and an understanding was reached in the presence of the court that any allegations of contempt of the decree would be informally discussed between counsel before any contempt action was brought. The Chicago local withdrew the demands found to be illegal and presented the type of agreement which had been approved. The publishers, rejected the offer, as they had every other offer made by the union, thereby effectively giving the lie to the publishers' claim that the strike was for an "illegal" contract. The strike continued.

Since the court denied a stay of the injunction pending appeal, the ITU was faced with the problem whether to appeal an order which they strongly felt to be erroneoeus. The injunction was "temporary," valid only until the NLRB decided the case. It seemed probable that the NLRB would decide the case before the circuit court of appeals could act on the appeal, in which event the injunction would dissolve, the appeal would be moot, and the costs of the appeal would be for nothing. Relying on reasonable expedition by the NLRB, therefore, the appeal was dropped. The sequel shows that this reliance was entirely misplaced; even so, it is evident that under section 10 (j) one man can enjoin trade-union if he can assert a "reasonable belief" that the law has been violated, and that for all practical purposes there is no appeal from this injunction once it issues.

THE PIA CASES

Six proceeding, some of them simultaneous, were hardly enough by way of harassment of the ITU. The employers in the newspaper industry had their hearings and their injunction action, but the commercial employers, except at Baltimore, had not yet sufficiently experienced Mr. Denham's solicitude. On January 21, 1948, yet another complaint issued, again containing identical allegations and relying on the same evidence. This time complaints of the commercial employers in New York, Philadelphia, Newark, Chicago, Detroit, and Pittsburgh, were consolidated for hearing, and a junket paralleling that in the ANPA case was proposed, this time on behalf of the Printing Industry of America. In the middle of February the ITU and its local offered to be bound in the PIA case by any one, or any combination that the general counsel might select, of the cases which had been litigated. This he refused. Thereupon, on February 24, 1948, the ITU counsel addressed a letter to the Board and the trial examiner calling attention to the facts and withdrawing from the PIA case. It is notable that at no time did the members of the NLRB take any slightest step (though through their control over the trial examiners they had the clear power to do so) to abate or diminish this compaign of vexatious litigation. The hearings were held, but the ITU and its locals were not there.

Nevertheless, on May 26, the trial examiner issued his intermediate report. One sentence of that report deserves quotation (report, p. 60): "The insistence by ITU * * * that the employers surrender * * * their right to bargain with respect to * * * ITU laws, their right to hire and fire whoever (sic) they please, their right to assign work to any employee they deem competent, and the right to accept business from whomever they please * * * cannot be considered * * * bona fide collective bargaining." In short, his conclusion was that under Taft-Hartley a union may not bargain concerning union security, jurisdiction, or struck or substandard work (three essential points of trade-unionism), but must bargain with respect to the rules formulated by the democratic action of its members. He concluded, therefore, that not only are strikes for these objectives forbidden, but that collective bargaining about them is also illegal under Taft-Hartley (except where the employers desire it, as in the case of union laws). Can it possibly be doubted, in view of such a ruling, that the objective of Taft-Hartley and of at least one trial examiner (Howard Meyers) of the NLRB is the extinction of the trade-union movement?

SUMMARY OF THE REPORTS

An analysis of the complaints issued, and intermediate reports written, shows that there were 22 important issues involved in these cases. Five intermediate reports have been issued, and on 17 issues of these 22 the trial examiners, who heard substantially the same evidence, have disagreed. Most of these issues are basic in understanding the Taft-Hartley Act, and are of enduring importance to the labor movement: the area of disagreement indicates more clearly than a reading of the act itself its basic confusions, uncertainties, and contradictions. The issues on which the examiners disagreed involved such matters as whether the demand for a contract clause may cause employers to discriminate, whether a union can coerce its locals or its members by enforcing the rules of the union, whether a demand that foremen be union members is valid, whether a rule requiring resetting of type is lawful, whether a union may protect its jurisdiction through collective bargaining, whether a demand for a struck work clause in an agreement is valid, whether a union may demand that a certain degree of competence shall be shown before an applicant is hired, whether a union may supervise apprentice training and the like. The practical effect of these confusions and uncertainties has been to bring collective bargaining in this industry (and in others) to a halt. Instead of discussing terms and conditions of work, the parties have been forced to engage in interminable legalistic discussions.

The most recent ridiculous illustration has been the refusal of a large Louisville, Ky., employer to negotiate further until he could have a Washington, D. C., attorney, as well as a local attorney, represent him. Obviously a small union cannot hope to hire attorneys of equal prominence and feels unequal to the occasion.

Ten months have now elapsed since the first of these cases was transferred to the Board. There has been no oral argument of them, and no decision in any case. Indeed, in the PIA case the Board refused to decide whether to reopen the case at the request of the ITU to show that agreements had been reached with employers at Chicago, Newark, and Philadelphia, as a defense to a charge of a refusal to bargain collectively. Instead, on November 8, 1948, it "reserved ruling" and now appears to be uncertain whether the reaching of an agreement is some evidence that there has been bargaining in good faith. Instead of expedition in deciding these vital issues, there has been stalling and an obvious and deliberate delay in coming to grips with the cases. Under the rules of the Board itself, the ANPA case, in which an injunction is outstanding, is entitled to a "priority"—and still there has been no argument of the matter.

THE CONTEMPT CASE

The Chicago publishers had supposed that the original injunction action would be sufficient to break the strike of local No. 16; when that effort failed, they nevertheless continued their efforts to use Denham and his powers to serve their purposes. How they finally achieved that objective is best described in the article of Mr. Henry Kaiser, attorney for the ITU, which appeared in the October issue of the Typographical Journal and the American Federationist. Once the "heat" had been put on by Senator Taft, Denham moved in with contempt action. On August 15, 1948, a petition alleging contempt of the decree was filed, its purpose was not concealed; the prayer for relief asked that the ITU be required to "cancel, discontinue, and withhold the payment of strike benefits or other moneys to local No. 16 (Chicago) or its members in support of said strike."

The complaint was based on the ground that the ITU, by seeking "competency" clauses whereby applicants for jobs were required to demonstrate their competency before being eligible for hire, were "causing employers to discriminate" in violation of Taft-Hartley and the injunction; that by asking that union foremen be employed it was seeking to cause discrimination; and that certain "joint apprentice committee" clauses violated the act because they did not provide for the appointment of a neutral tie-breaker in the event of a disagreement between the parties. The first of these matters had not been in issue in the injunction cases: the second had been expressly withdrawn in the injunction case by the general counsel; and no previous question concerning a "tie-breaker" had been raised.

Admittedly, the general counsel knew that these clauses were being proposed by the ITU in early April 1947; he had expressly agreed to raise any such matters informally with the ITU before a contempt action was instituted. Yet for 6 months he sat idly by while these clauses were agreed to by the parties in collective contracts of great importance, and not until a few days before the complaint was filed was any question raised with the ITU. No investigation of the facts in possession of the ITU was ever made before this compaint was filed. Ten days before the contempt action was instituted, the trial examiner in the ANPA case had issued his intermediate report, and found the identical conduct covered by the contempt action to be lawful. Having lost before the trial examiner, Denham therefore had another go at the same issues through a contempt action.

On October 14, 1948, Judge Swygert issued his findings in the contempt case. He found that certain "competency" clauses were unlawful, but that others used by the ITU were lawful; he approved the union foreman clauses; and he ordered that a tie-breaker clause should be included in the apprentice clauses. He expressly found the Chicago strike to be not unlawful, and refused to cut off strike benefits. The strike continues.

SUMMARY

This record demonstrates that the Taft-Hartley Act has been administered in a partisan and proemployer spirit. It shows that the NLRB has stood supinely by without lifting a finger to check the deliberate campaign of intimidation waged by its general counsel, and that its procedures are so stalled and confused that they becloud issues rather than deciding them. Twice a Federal district judge has decided cases, during a period when the NLRB has decided none.

It would be erroneous to conclude that a mere change of personnel or procedures would remedy these problems, for the issues go much deeper. Basic to an understanding of them is the economic fact, as Justice Stone pointed out in *Apex Hosiery Co.* v. *Leader* (310 U. S. 469 (1940)), that "an elimination of price competition based on differences in labor standards is the objective of any national labor organization." The purpose of any trade union is to raise wages and working standards by agreement among workers that they will cooperate to that end rather than compete with each other to see which will work for the lowest wages. And to make that compact effective, certain goals must be accomplished.

First, workers must agree among themselves upon the conditions under which they will sell their labor. This compact is accomplished in the ITU by the "laws" of the union. In local unions each member has a direct vote on the adoption of a law; the laws of the international are adopted either by freely chosen representatives of the local unions, or by the referendum vote of all members. Apart from specific laws alleged to violate the Taft-Hartley Act, the entire system of union rules or laws has been thrown into doubt by the Taft-Hartley Act requirement that unions "bargain collectively." The employers and General Counsel Denham have consistently maintained that Taft-Hartley requires each of these rules to be renegotiated in each bargaining meeting with employers. Clearly, the compact between union members ceases to exist if it must be bargained away on the demand of any employer.

Second, trade-unions must eliminate the competition from nonunion men working in the same craft, whose unwillingness to accept the rules binding the majority is a constant threat to the union standards. If the employer may, without protest, hire nonunion men, he has the effective power to replace union workers with nonunion men and thus to deprive them of their jobs and their union. There are strong incentives to do just that, since normally nonunion men are willing to work for lower wages and standards than union members. The closed-shop agreement is the employer's declaration that he does not intend to undermine the union or its standards by hiring nonunion men. Since membership in the ITU is entirely voluntary—and is open to all printers who have demonstrated their competence at their craft—the closed-shop agreement does not compel anyone to join the union; there always have been, and are now, many printers who are not ITU members.

Third, every trade-union is faced with the competition of nonunion, or underpaid workers, in the same enterprise. For example, varityping is a new process in the printing trades. It is cumbersome, wasteful, and uneconomic, as is demonstrated by the fact that it has been used solely as a strikebreaking device. But when operated by workers earning wages well below the union scale it may approach economic competition with sounder methods, solely as the result of wage-cutting. To control such competing processes is the problem of union "jurisdiction"; hence, the ITU laws have long provided that "all composing room work or any machinery or process appertaining to printing and the preparations therefore belongs to and is under the jurisdiction of the ITU (General Laws, art. III, sec. 12).

Fourth, it must be recalled that few unions succeed in organizing all of a trade. The ITU, and the fair employers under agreements with it, have always faced the competition of nonunion employers whose lower wage costs give them a competitive advantage. While this form of wage-cutting competition can perhaps never be eliminated, it can be controlled in a measure by a union rule, such as that of the ITU, stating that "subordinate unions at all times have the right to define as struck work composition executed wholly or in part by nonmembers, and composition or other work coming from or destined for printing concerns declared by the unon to be unfair, after which union members may refuse to handle the work classified as struck work (General Laws, art. III, sec. 5).

This union law has two important consequences. First, it assures that union men will not act as strikebreakers against their fellow union members by doing the work normally performed by strikers, and, second, it means that union men will not facilitate the free entry into the market of sweatshop goods by processing materials coming from wage-cutting shops.

We have shown how the Taft-Hartley Act and the interpretations of it by the general counsel of the NLRB have threatened each of these basic trade-union objectives. The closed-shop agreement is abolished, and it is argued that the act means that union men may be compelled to work with competing nonunion men. Doubt is cast on a union's right to strike to protect its jurisdiction or against the employer's assignment of work to a particular trade, craft, or class. The right of union men to refuse to work on struck or substandard goods is clearly made illegal; while, at the same time, the right of employers to assist each other in an economic dispute is left completely untouched. Any one of these Taft-Hartley prohibitions is sufficient to destroy a union; their cumulative impact is utterly disastrous.

Until Taft-Hartley was passed there had been a large measure of peace in the printing industry; the last major strike had been in 1922. Since the act was passed the ITU has expended over $11,000,000 of hard-earned dues in strike benefits and other forms of activity to protect its existence and that of its local unions. Much of its time and attention has had to be focused, not on improving conditions in the trade, but on a defensive battle in aid of trade-unionism itself.

The experience of the ITU demonstrates that the modern, streamlined Taft-Hartley injunction is even more vicious than its predecessors issued before passage of the Norris-LaGuardia Act of 1932. These injunctions are granted employers substantially without cost, since the expense of obtaining them is borne by the NLRB. Indeed, the ITU was ordered to pay back to the NLRB nearly $5,000 to cover the cost of the action against it, including the salaries of Government agents (paid from public funds) who "investigated" the case without once approaching the ITU. The injunction against the ITU was couched in the usual vague and sweeping language; as a consequence, collective bargaining in the industry has not been with employers, but with Government agents speaking for employers, and has not been concerned with wages and hours, but with the meaning of a judicial document. Meantime, the employers have been left scot-free of any restraints; while it is a contempt of court for the ITU to propose the use of "Conditions of employment" without a written contract, employers have been free to, and have, used them with impunity.

The consequence has been a notorious interference by the NLRB and the courts in the internal affairs of the union. The enforcement of union laws, democratically adopted by the union membership, is branded as "restraint of coercion" by the international union against its locals; but any failure to secure the most rigid adherence to the terms of the injunction by local unions is automatically a contempt of court. Some thirty-odd laws of the ITU have been attacked as illegal under Taft-Hartley; in such confusion, no union member can know his rights or duties. Yet the price of not knowing is a possible contempt action.

Nor is this the whole story. On countless occasions the prohibitions of Taft-Hartley have prevented local unions from taking necessary steps to win economic battles. These incidents, since they have not resulted in litigation, have received scant attention. For example, when the printers of the Chicago newspapers struck in November 1947, the newspaper publishers sent their advertisements for setting to commercial printing firms in Chicago whose employees were members of the same local union that was conducting the newspaper strike. Had the union refused to handle such struck goods, all the penalties of the Taft-Hartley Act could immediately have been invoked. The union was, therefore, forced to endure a situation in which some members of a local union worked as strikebreakers against others. Similar instances could be multiplied throughout the country.

The tortuous and contradictory language of the act has all but stymied collective bargaining. Normally, local unions of the ITU have been parties to a total of 1,200 contracts; at present the figure is only slightly more than 100 because almost every proposal made by the ITU since the act was passed has been speciously branded by some employers and their attorneys as "illegal." A complex legal ingenuity has been used to find illegality in proposals which have been a commonplace in collective agreements for half a century. These legalistic disputes have caused delay, bred strife, and caused strikes; they have deprived local unions of improvements in conditions which but for Taft-Hartley they would clearly have obtained.

CONCLUSIONS

From this experience the ITU has drawn certain conclusions:

1. Most emphatically, Taft-Hartley should be repealed and the Wagner Act reenacted until appropriate substitute legislation can be devised. The personnel administering Federal labor policy should be required to have at least an elementary understandig of the labor movement and of the high price of bureaucratic delays.

2. The role of the Federal Government in labor relations should be reduced to a bare minimum, and any rules adopted should be applicable to all industry affecting interstate commerce. No provisions should be retained which impinge on the freedom of either employers or unions in the collective-bargaining process itself.

3. The same free right of competition which is recognized for employers should be recognized for unions. Specifically, the right of unions to seek new members where and when they will, their right to seek allies by peaceable means in an economic dispute, their right to adopt laws governing the conditions under which their members will seek employment, and their right to enter into such agreements as may be desirable to the contracting parties should in no respect be infringed—any more than the corresponding rights of employers should be.

4. Legislation should be brief, thought-through, and clear. Workers cannot expect to govern their conduct, or know their rights, under legislation which is complex and confused.

5. There cannot be free collective bargaining where any restraints on the right to strike exist. The labor injunction, in every form, must go. Such rights or remedies as are available to trade-unions and workers should not be restricted by any limiting conditions on their enjoyment.

The Wagner Act recognized labor unions to be absolutely essential to our economy. It recognized employers were interfering to prevent unions from forming or functioning. It recognized the need for protecting by law the right of employees to organize and function as labor unions.

It declared the policy of the United States to encourage collective bargaining and to protect the right to do so for the purpose of negotiating terms and conditions of employment.

It did not propose to stop strikes because the right to strike is necessary to preserve freedom and to avoid totalitarianism of any kind whether fascism, nazism, or communism. The right to strike is a part and legal necessity of the right to organize and bargain collectively.

There is no constitutional authority in our Government to force employees, individually or collectively to render service to any employer. Our Constitution does provide clearly that there shall be no involuntary servitude except as a punishment for crime. To protect only the individual (as Taft-Hartley does) in the right to quit work under any circumstances is to deny the necessity for organization of workers.

The ITU has paid a heavy price to survive, and to uphold the fundamentals of trade-unionism. That investment will not be lost if sufficient legislators, judges, labor administrators, trade-unionists and members of the public generally absorb the conclusions to be drawn from the harrowing, and, we trust, never-to-be-repeated, experience which has been herein summarized. While the briefs and transcripts of hearings gather dust in Government archives, the damages inflicted will not be forgotten.

WHY WAS THE INTERNATIONAL TYPOGRAPHICAL UNION HELD IN CONTEMPT OF COURT?

A Case for Repeal of the Taft-Hartley Act

A factual report showing the abuses under Taft-Hartley Act as it was applied to the International Typographical Union

(Issued by the International Typographical Union February 3, 1949)

On October 14, 1948, Judge Swygert, sitting in the United States Court for the Southern District of Indiana, found the International Typographical Union and its officers to be in contempt of court for violating an injunction issued under the Taft-Hartley Act. Normally, contempt of court is a serious charge, reserved for conduct which is felt to be seriously detrimental to the public welfare. What crime had the ITU and its officers committed? Just this—and nothing more. They had proposed certain clauses for inclusion in contracts in the course of collective bargaining with employers, which clauses some employers had rejected and others had accepted. No violence, no fraud, no misrepresentation was claimed.

Under the Taft-Hartley Act, a group of honest, law-abiding trade unionists can be, and were, haled before the court and subjected to the possibility of heavy fines or even imprisonment for merely making certain proposals in the course of collective bargaining. The proceeding was instituted, not by employers, but by the General Counsel of the National Labor Relations Board—who thereby again exercised the dangerous powers given him under the Taft-Hartley Act even to determine what proposals a union might make in the course of collective bargaining.

BACKGROUND

The origins of this contempt case lie far back in American trade union history. Very early in the 1800's, the budding local printing unions—called typographical societies—learned that, in order to improve the living standards of their members it was necessary to eliminate, so far as possible, the competition of the sweatshop employer, who survived in the trade, despite his inefficiency, by paying wages below those paid by fair employers to union members. The simplest way of not aiding such an employer in his wage-cutting tactics was an agreement among union members not to work for him—called "ratting" in the printing trades—and to work only for fair employers. As a consequence of this policy, the printing industry has been traditionally divided between nonunion shops, "closed" to union members, and "union" shops wherein the employer agreed to the standards, fixed by the democratic action of the members of the union, as the conditions under which they would sell their labor.

When, about 1886, the collective agreement made its appearance, the fair employers inserted in their contracts a clause agreeing to hire only members of the union. In the course of time, by a curious inversion, the term "closed shop" which once meant that union men would not work there, came to be applied to the agreement that only union men would be taken on. Such undertakings were valuable from the employer's point of view. Since most skilled men in the industry have been, and are, union members, it meant that the employer had a readily available pool of skilled men from which to man his enterprise. Union members have traditionally, and for clear reasons, had an antipathy to working with competing nonunion men who were ready to undermine the standards of the craft; such an agreement assured the employer of harmony in his composing room. By assisting in the elimination of sweatshop competition, it assured the employer that he might operate his business with a greater security than was otherwise possible.

From the point of view of the union and its members, the benefits of the closed-shop agreement are equally self-evident. It provides a pool of jobs at fair wages and conditions for union members. It means job security, for the pressure of semiskilled competitors, willing to work at lower wages, is eliminated. It means a strong and stable union, able to bargain on an equal basis with employers. The agreement of the employers not to hire outside the ranks of the union gives an assurance that he does not intend to undermine the union in the shop or to undercut its standards. It facilitates the mobility of printers, for union conditions are the same in New York as in San Francisco and the union member going into a new situation knows exactly what is expected of him. And, under these agreements, the practice of hiring in order of seniority, known as priority in the trade, has been in effect for a great many years for the protection of the employees and the benefit of the industry.

The strength and stability of the locals of the International Typographical Union have been matched by strong and stable employer associations with which collective bargaining has been locally conducted. Under these arrangements, there were few strikes—the last major one was in 1922. Notable strides have been made in employer-union cooperation; for example, in New York City ITU Local No. 6 and the employer associations jointly financed for many years a school for the training of apprentices in the trade. The ITU, through its bureau of education, has undertaken to supervise the training of most apprentices at the trade in localities where facilities such as those in New York could not be provided. Printing is a skilled craft—and for more than a century the ITU has dedicated itself to assuring the highest possible standards of competence at the trade.

No one was ever excluded from the industry. Those who completed the course of lessons of the ITU and passed an examination to demonstrate their competency, were automatically eligible to union membership and to work at the trade; likewise, any competent printer could be admitted to local union membership upon proving himself qualified. Those in the industry who did not desire to join a union, or could not demonstrate the requisite skill, were free to work in the nonunion shops. The ITU includes in its membership persons of every race, creed, and color, and has never been, in any sense, a "closed union."

THE TAFT-HARTLEY ACT

Into this complex web of delicate relationships, laboriously constructed over the years by persons in close touch with the industry, the Taft-Hartley Act dropped like a meat-ax. It clearly made illegal the agreement by which the employer undertook to hire only union men. It thereby endangered the jobs of all union members, for it was insisted that the act gave the employer the unlimited right to hire whom he would and thereby to replace his union workers with nonunion lower-paid help. Under the act, the entire system of "priorities" was jeopardized. Unless jobs were available for its members, the ITU could have no interest in the training of apprentices, or in assuring the competence of its members at the trade. And, by the same token, if nonunion men and union men were to be equally entitled to jobs irrespective of their training, no applicant or apprentice would have an interest in meeting the competency tests required of union members. This one prohibition of the Taft-Hartley Act—to say nothing of another score of equally unwise provisions—threatened the free displacement of union members from their jobs, the hiring in their stead of those most willing to work for wages and standards below those gained by the ITU, the destruction of the apprentice training system, the dilution of craft standards, and the introduction of a chaotic and haphazard wage structure with a consequent throatcutting competition based solely on wage reductions.

It is unthinkable that any group of trade unionists, conscious of its responsibilities, should have taken no steps to meet these challenges. True, the Taft-Hartley Act legalized the so-called union shop agreement by which a newly hired employe might be compelled, 30 days after hiring, to join a union. But this could not be an answer for the ITU. First, the ITU has steadfastly opposed the concept of compulsory unionism; traditionally, printers have joined the ITU because they freely believed in the principles of trade unionism and because the ITU voluntarily desired to have them as members. The so-called union shop meant that the employer would determine who were to be ITU members. Second, the asserted freedom of the employer to hire as he liked opened the way for introducing into composing rooms notorious anti-unionists, or incompetents, or persons willing to undercut union standards. The ITU emphatically rejected this philosophy of the Taft-Hartley law.

The attitude of the industry concerning the closed shop was summed up by Mr. John O'Keefe, secretary of the Chicago Newspaper Publishers' Association, testifying on December 22, 1947, before a subcommittee of the Committee on Education and Labor of the House of Representatives inquiring into the causes of the Chicago newspaper strike, as follows:

"Congressman KERSTEN. Up until now and for a great many years past you had a closed-shop agreement, didn't you?

"Mr. O'KEEFE. Yes, we did.

"Mr. KERSTEN. How did that feature work out in your previous contracts, so far as your closed-shop provision of the contract was concerned?

"Mr. O'KEEFE. We never even discussed it. It had been there for years and it has remained there.

"Mr. KERSTEN. Did you have any real difficulty with it, so far as your union (the ITU) is concerned?

"Mr. O'KEEFE. We did not * * * as a matter of fact most of the Chicago publishers, or all of the Chicago publishers, I would say, would prefer to continue a closed shop if it were legal.

"Mr. KERSTEN. The reason for that is that this particular union has been a long-term institution that has a certain amount of tradition behind it, a considerable amount, and it is a responsible union, and under those conditions a closed shop has worked out so far as the Chicago publishers are concerned, is that right?

"Mr. O'KEEFE. Yes, it has."

Since these arrangements had been acceptable over many decades, the 1947 convention of the ITU adopted a collective bargaining policy, designed to perpetuate them without violating the law. While the closed-shop agreement was illegal, there appeared to be nothing in the law which outlawed closed-shop conditions. Despite a concerted barrage of misrepresentation to the contrary, the ITU has not asked for a closed-shop agreement since Taft-Hartley became law. It did, however, conceive that its members retained Constitutional rights to refuse to work with competing nonunion men. The convention, therefore, determined to waive the collective-bargaining agreement so far as possible and to rely on the economic strength of the union to prevent employer efforts to destroy it by the unlimited hiring of nonunion men.

Thereupon howls of anguish arose from employer ranks; some employers who, a few months before, had been unwilling to enter into written agreements with the ITU, now professed to find in this policy dangers which, in fact, were nonexistent. Most fair employers were willing to continue relations on a basis of a continuing discussion and settlement of differences without a formal collective agreement, and thereby indicated they had no intention of taking advantage of the provisions of the Taft-Hartley Act which allowed damage suits for breach of contract where a union was forced to take action to defend itself. But attacks upon this policy by the general counsel of the Senate Labor Committee, and the issuance of a complaint in September 1947, challenging its legality, at Baltimore, forced the ITU to reexamine its position.

The result was the offer by the ITU of a collective agreement known as Form P6A. As Trial Examiner Leff of the NLRB later found "It is clear from the record as a whole that P6A was not designed as a legally enforceable closed-shop contract, was not represented as such, and was not so understood." While employer attorneys exhausted their ingenuity in digging up grounds on which this agreement might be declared illegal, the heaviest attacks were made upon a clause allowing either party to cancel the agreement upon 60 days' notice (though such a clause had been standard in many collective agreements) and a clause stating, in substance, that since the ITU could not compel its members to work with nonunion men, their refusal to do so should not be considered a breach of the agreement. Various NLRB trial examiners subsequently found the 60-day cancellation clause unlawful on the ground that it "restrained and coerced" employers or caused them to "discriminate" against nonunion men; they disagreed concerning the legality of the second clause. In considering the claim that the ITU was seeking to cause "discrimination," it is significant that at no time since the act was passed was a single person produced who would even suggest that he had been discriminated against.

THE INJUNCTION

While these matters were proceeding in hearings throughout the country before various NLRB trial examiners, General Counsel Denham sought an injunction against the ITU. On March 27, 1948, Federal Judge Swygert issued an injunction which, in brief, enjoined the ITU and its officials in sweeping terms from refusing to "bargain collectively," from using Form P6A, clauses permitting cancellation of an agreement upon 60 days' notice, seeking to "cause employers to discriminate," or from supporting strikes for any of these purposes. There was no claim, no evidence, and no finding that the ITU or any member had engaged in any violence, fraud, misrepresentation, or other improper activity; the injunction was based solely upon proposals of a kind designed to protect its existence, made by the ITU and its locals in collective bargaining.

As a result of the injunction, an agreement was reached between the ITU and the NLRB general counsel concerning the method of complying with the decree. Part of this agreement consisted of instructions to be sent to local unions.

The restraints embodied in the injunction were bitter ones to swallow. Every trade-union will seek to protect the jobs of its members, and advance their job opportunities. To be told that the carrying out of this normal ambition represented a "discrimination" against nonunion men was like telling a Ford automobile salesman that he was "discriminating" against General Motors products and ordering him to plug the lines of both companies equally. Despite the manifest injustice of the law and the injunction from the point of view of the members of the ITU, it made every effort to comply with the injunction.

Almost contemporaneously with the issuance of the injunction, the New York commercial printing employers and Local 6 of the ITU had arrived at an agreement submitted by officers of the ITU. A clause in that agreement provided that a demonstration of competency at the trade was a prerequisite to employment. All present employees, and members of the ITU, were judged automatically competent (in view of the competency requirements for membership in the ITU) and all others were to be given an examination similar to that required for ITU membership. That clause was distributed to all ITU locals as meeting the requirements of the injunction. It came to the attention of the general counsel of the NLRB in early April 1948; thereafter it was accepted, with no objection from him, as the basis for contracts with employers in Detroit, Chicago, Philadelphia, Newark and other cities.

SENATOR TAFT INTERVENES

Since November 24, 1947, Local 16 of the ITU has been on strike against the Chicago newspaper publishers, who, following the advice given by the American Newspaper Publishers' Association, had refused to discuss wages, hours, or other working conditions with the union unless and until Local 16 agreed to the publishers' definition of a "legal" contract. By complying with the injunction, the ITU had been able to continue its support of that strike, but the Chicago publishers by no means relinquished their efforts to induce General Counsel Denham of the NLRB to do some strikebreaking for them.

So it came about that a significant meeting was held in Senator Taft's office on July 28, 1948. Present were representatives of the Chicago publishers, Senator Taft, and NLRB attorneys—needless to say that the ITU was not represented. Senator Taft appears to have made it clear that he expected the NLRB attorneys to initiate contempt proceedings against the ITU. President Truman, on complaint of the ITU, caused an investigation of this meeting to be made and accurately characterized it as an effort of Senator Taft's to "put the heat on" the Executive branch of the Government.

But General Counsel Denham obediently followed instructions. On August 15, 1948, a trial examiner of the Board issued his intermediate report finding that the competency clauses circulated by the ITU in early April 1948, were not illegal. These clauses had been approved by employer attorneys, and had been embodied in important contracts in the industry. No complaint concerning them had been made to the ITU by the NLRB general counsel, who had knowledge of these clauses when they were circulated in April 1948, despite an understanding reached after the injunction was issued that no contempt action would be instituted without informal efforts to adjust the matter between the NLRB and the ITU. Despite the claim that they had been "investigated," no effort was made by the NLRB to obtain from the ITU any information concerning the manner in which such clauses had operated.

THE CONTEMPT CASE

On August 25, 1948, carrying out Senator Taft's wishes, a complaint was filed alleging that the ITU and its officers were in contempt of the injunction. The grounds were the following: (1) The demand for competency clauses which, it was claimed, favored ITU members. These clauses had not been in issue in the injunction proceeding and had been found by a trial examiner of the NLRB, 10 days before, to be lawful. It was not claimed that any specific person had been discriminated against, and the sole claim was that they were "illegal" on their face—a matter as susceptible of ascertainment in early April, 1948, as in late August. (2) The demand for a clause that foremen be union members. This issue had been expressly withdrawn from the injunction proceeding by General Counsel Denham; it had been expressly agreed after the injunction issued that demands for such clauses were lawful. (3) The failure to include a provision for a "tie-breaker" in a clause providing for a joint employer-union committee to supervise the training of apprentices. This had not been in issue in the injunction, or any other proceeding. All three of these clauses had been freely rejected by employers who were not willing to agree to them, though many were.

Thus it came about that, for the first time in American history, a group of responsible union officials were charged with contempt of court for proposing certain clauses in collective bargaining meetings. It was not disputed, and is readily apparent, that each of these proposals was designed to advance the legitimate interests of the union and its members; they represented no more than an effort to continue, so far as possible within the injunction, practices found to be mutually beneficial by both employers and the union. Important areas of the industry had agreed both with the legality and desirability of these proposals. Yet, once again, the ITU found itself bargaining, not with the employers in the industry, but with the NLRB general counsel and the courts.

But the real bite of the case was in the NLRB's prayer for relief; it was demanded that the ITU be required to "cancel, discontinue, and withhold the payment of strike benefits or other moneys to Local No. 16 (the Chicago local) or its members in support of said strike." In early April the general counsel had known of the proposals then being made by the ITU; no objection to them was voiced. On July 28, Senator Taft at the instigation of the Chicago newspaper publishers had urged action against the ITU—obviously in the hope of breaking the Chicago strike. On August 15 the ITU proposals were found to be lawful by a trial examiner of the NLRB. On August 25, 1948, the proceeding was instituted. From this sequence of events, it is apparent that the allegations of the contempt petition were afterthoughts, resurrected only to carry out the desires of the Chicago publishers and Senator Taft, and that the sole aim of the proceeding was to break the strike, and force the Chicago printers—free citizens—to work for such wages, during such hours, and under such conditions as the Chicago publishers would unilaterally impose.

On October 14, 1948, the decision in the contempt action was announced. The competency clauses drawn from the New York commercial employers' agreement were found to be "discriminatory." But certain variants on that agreement which had been developed, principally in an agreement with the New York newspaper publishers, were found to be "not unlawful." Clauses providing that foremen were to be union members were approved, but it was found that the ITU was required to include a provision for a "tie-breaker" in clauses setting up joint employer-union committees to supervise the selection and training of apprentices. The effort of the Chicago newspaper publishers, Senator Taft, and General Counsel Denham to cut off strike benefits at Chicago and thereby break that strike failed. But, because the ITU and its officers had been found in contempt, they were required to pay the costs incurred by the NLRB in "investigating" the case (without once approaching the ITU) and the costs of litigating it on behalf of the Chicago publishers.

Thus, the ITU was required out of its funds to finance an effort by Government attorneys, paid out of public funds, to break one of its strikes, including the salaries paid the attorneys for that effort.

The ITU felt that it had good grounds to appeal both of these lower court decisions. Yet any injunction issued under section 10 (j) is "temporary," and fails when the NLRB decides the case out of which the injunction arose. Since the court twice refused stays of its orders pending appeal, the ITU was forced to comply with those orders during the period while the appeal was pending. If, during the time the matter was pending on appeal, the NLRB decided the case, the whole case would become "moot," the injunction and the appeal would disappear, and the ITU would have incurred heavy costs without ever obtaining a decision. There is no practical appeal from injunctions and contempt orders under section 10 (j).

CONCLUSIONS

What rational bystander could suppose that in the year 1948 reputable trade-union leaders might be held in contempt of court, and punished, for failing to include a provision for a tie-breaker in a collective-bargaining proposal dealing with the training of apprentices? Where is the American citizen who can say to himself that the making of such a proposal warrants setting in motion the ponderous machinery of the NLRB and the Federal judiciary? Who will defend the proposition that the Federal Government should dictate to unions—or employers—the exact form of the clauses which they shall propose in their dealings with each other? What has become of the phrase "free collective bargaining" when proposals, whether satisfactory to employers or not, must be cleared with the general counsel of the NLRB and the Federal courts under the whiplash of contempt citations before they can be made? Yet this is the point to which the American trade-union movement, under the combined prodding of the Taft-Hartley Act, some employers, an antilabor Senator and a biased administration of the act, as we have demonstrated, has been driven.

To this pushing around the American labor movement, sparked by the experience of the ITU, gave its thunderous answer on November 2. The issues are grave, and admit of no temporizing or equivocation. The slate must be wiped clean. If the trade-union movement—and employers—are to remain free, they cannot admit that the Federal Government shall dictate to the parties how the competency of new employees shall be determined or how apprentices are to be trained. The existence of a few employers, like the Chicago publishers, who are unwilling to handle their economic problems without the support of an antilabor Congress and a proemployer administration of a hostile law is no justification for throwing the shackles about those trade unions and those employers who are sufficiently strong and independent to handle their own problems in a responsible and democratic fashion. If freedom is to return to the American labor scene, all of Taft-Hartley must go.

THE TAFT-HARTLEY LAW IS A SLAVE LABOR LAW

The Public Interest Demands Its Repeal and Reenactment of the Wagner Act

(Issued by the International Typographical Union, February 10, 1949)

Since the International Typographical Union has been an outstanding victim of the Taft-Hartley law, what we say to you is the voice of experience.

The most influential group of employers in the country, the American Newspaper Publishers Association, set out to destroy a hundred years of progress attained through collective bargaining by locals of the ITU. They were joined by a recently organized group of commercial printing employers and both organized employer groups were aided and shepherded through the procedures of persecution provided for us by the Taft-Hartley law.

Our long and expensive fight to survive the effects of the Taft-Hartley law continues. To date it has cost the ITU about $11,000,000 and our members are paying 5 percent of their earnings every week to finance those members who are on strike and for other defensive purposes.

In view of these facts of our experience, we hope to show you that the Taft-Hartley law is a slave labor law and that is about as good for labor as the compulsory labor syndicates of Mussolini when fascism ruled Italy.

The Taft-Hartley law is a definite departure from the legal theory of constitutionally guaranteed freedom of the working people of this country.

In proving that fact we shall rely on the words of the act itself. It is only necessary to read them to you in comparison with the provisions of the Wagner Act to prove the intent and scope of the slave labor law.

It is therefore necessary first to read the four paragraphs of the first section of the Wagner Act to show the rights recognized and protected therein.

Then we shall show the departure therefrom as contained in the Taft-Hartley slave labor law.

"National Labor Relations Act

"WAGNER-CONNERY LABOR ACT

"Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. Code, title 29, §§ 151–166

(P. 14,061:)

"AN ACT To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

"(P. 14,061.1:) *Findings and Policy.*—Section 1. The denial by employers of the rights of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the cause of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The Wagner Act stated—

1. Denial by employers of employees' right to organize and employers' refusal to accept collective bargaining with unions caused much strife and general hardship.

There is no question but that employers generally denied the employees their right to organize and to bargain collectively through representatives of their own choosing. The industrial history of this country is replete with instances of interference by employers with the right of employees to organize. The tactics of the employers ranged from the use of private police, stool pigeons, spy systems, blacklists and the use of thugs and gunmen to control by corporations of the law enforcement officers. The LaFollette Investigating Committee of the United States Senate brought out many instances of that kind. The Wagner Act recognized these facts by a clear and definite statement to that effect.

2. Inequality of bargaining power between unorganized workers and organized or corporate employers burdens commerce and tends to aggravate recurrent business depressions by depressing wage rates and purchasing power of wage earners and by preventing stabilization of wages and working conditions.

This last statement is a clear recognition of the necessity of labor unions for the purpose of preventing wage cuts and to stabilize wages and working conditions. It states the fact of inequality and the disastrous results of that inequality of bargaining power.

3. Protection by law of employees' right to organize safeguards commerce and promotes the flow of commerce by removing employer interference in that right; by encouraging friendly collective bargaining and by restoring equality of bargaining power between employers and employees.

He is a clear recognition of the employees' existing right to organize. It is not a new right nor privilege given labor. The right to organize is an inalienable and existing right of freemen under our constitutional guarantees. Here is a clear pronouncement of the good results of protection of that right and the manner in which such good results can be obtained.

4. It is the declared policy to eliminate and migitate obstructions to free flow of commerce by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

In this clear and definite policy we find the determination to eliminate existing evils brought into being by employers through their violation of existing rights of employees and we also find the exact method by which the evil is to be eliminated. A very important point must not be overlooked as to that method. It encourages employees to exercise their existing right to organize and by that voluntary effort sit around a table as equals with employers to bargain for terms and conditions of employment.

Summarizing: Very briefly the Wagner Act recognized labor unions to be absolutely essential to our economy. It recognized employers were interfering to prevent unions from forming or functioning. It recognized the need for protecting by law the right of employees to organize and function as labor unions.

It declared the policy of the United States to encourage collective bargaining and to protect the right to do so for the purpose of negotiating terms and conditions of employment.

It did not propose to stop strikes because the right to strike is necessary to preserve freedom and to avoid totalitarianism of any kind whether fascism, nazism, or communism. The right to strike is a part and legal necessity of the right to organize and bargain collectively.

There is no constitutional authority in our Government to force employees individually or collectively, to render service to any employer. Our Constitution does provide clearly that there shall be no involuntary servitude except as a punishment for crime. The Government does have the fundamental right to take over any property when necessary to the public interest but it must pay a fair price for such property. If that procedure is followed the Government then becomes the owner and employer and is responsible for the terms and conditions of employment. So-called free enterprise then loses its opportunity to make a profit and the employees' right to strike is questionable. Recourse to elected officials then becomes the method for betterment of terms and conditions of employment.

Here is the addition to the four paragraphs just read from the Wagner Act:

The Taft-Hartley Act states:

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary conditon to the assurance of the rights herein guaranteed."

While the Wagner Act (4 paragraphs of "Findings and Policies") did not bar strikes and while those four paragraphs are still a part of the law the additional paragraph declares strikes must be eliminated as "a necessary condition to the rights herein guaranteed." Therefore, a policy contrary to and the opposite of the Wagner Act policy was inserted in the heart of it as though it were a dagger in the heart of labor.

Here in this additional paragraph is a controlling statement of policy that nullifies the recognized right to strike contained in both the policy and by section 13 of the Wagner Act.

Here is a plain statement that strikes must be eliminated if labor is to have such rights as the Taft-Hartley law sees fit to give labor.

This no-strike policy and regulated and limited right policy is further stated in the amended section 13. The Wagner Act section 13 was a plain statement as follows: "Nothing in this act shall be construed to interfere with or impede or diminish in any way the right to strike." The amended Taft-Hartley law section provides: "nothing in this act, except as specifically provided for herein shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Thus, the Taft-Hartley law takes over completely the power to limit the right to strike by such limitations as may be provided therein. This means that once such a denial of the right to strike is established more and more limitations can be legislated.

A further additional and new "Statement of Policy" is placed immediately after its title and again after its "Short Title."

"LABOR MANAGEMENT RELATIONS ACT, 1947

"AN ACT To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembeld,

"SHORT TITLE AND DECLARATION OF POLICY

(Short title)

"SECTION 1. (a) This Act may be cited as the 'Labor Management Relations Act, 1947.'

(Statement of policy)

"(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

The first paragraph of 1 (b) is a plain declaration that neither labor nor management have any rights except "legitimate" rights. The statement that industrial strife can be avoided if everyone recognizes each other's "legitimate" rights is indeed far-fetched.

Second paragraph of section 1 (b) states the purpose and policy to be:

1. To prescribe the legitimate rights of employees and employers.

This is a reaffirmation of the first paragraph, only more definite and exact. So long as Taft-Hartley law policies persist labor will lose one right after another and employers will be wholeheartedly for the law until the pendulum swings the other way by election of those who are not slavishly obedient to the demands of the corporate interests.

So far the "legitimate" rights of labor sound like a new list of "thou shalt nots." Our "legitimate" rights seem to be a few of those we had, most of which have been taken away by the Taft-Hartley law.

2. To provide orderly and peaceful procedures for preventing interference with the legitimate rights of the other.

These peaceful and orderly procedures mean that NLRB attorneys listen very attentively to complaints of employers against unions and at the first opportunity drag a union before a trial examiner where it must spend its treasury on lawyers and unending controversy and delays until after 3 or 4 years the right involved might be determined by the Supreme Court.

These peaceful procedures mean that a union or an individual must wait until the NLRB has no employer squawks to handle before it will give even a disdainful glance at a union or individual complaint. Employers get priority under section 10 (1).

These peaceful procedures mean that the NLRB attorneys can interpret the law to suit themselves and then get an injunction against a union and its officials on the mere probability that the law has been violated. These peaceful procedures mean that the NLRB general counsel can club unions into doing his will while the slow legal process drags its way through trials and courts. The Taft-Hartley law injunction racket is worse than the injunction evil once abolished by the Norris-LaGuardia Act.

3. To protect the rights of individual employees in their relations with labor organizations.

Why all the concern about individuals who prove by the fact that they refuse to join with their fellows in bettering or protecting their terms and conditions of employment that there is something wrong with them?

Why all the concern about stooges for the boss, free riders on the efforts of union people, strikebreakers, union busters, borers from within and other antisocial creatures?

Why deprive one group of people the right to contract with a corporation for fair wages and working conditions only for those who belong to the union making the effort?

Why legislate for the so-called union shop and bar the closed shop when the difference means the moral trash just described must be forced into a union after 30 days of employment?

Why permit the employer to thus select those who are to become members of the union rather than the union be allowed to determine who may join?

4. To define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Proscribe means to outlaw. Anything the NLRB or the courts want to rule is inimical to the general welfare or anything thought to protect the rights of the public as regards labor disputes is in accord with the purpose and policy of the Taft-Hartley law.

The Taft-Hartley law does proscribe or outlaw many rights labor unions had under the Wagner Act. No rights were taken away from employers.

This part of the law plainly opens the way for unlimited control over unions and business at the whim or caprice of NLRB attorneys, the NLRB or courts through interpretations they may make as to the rights of the public or the general welfare.

WORKING UNDER INJUNCTION IS SLAVERY

When a court orders workingmen to continue at work for any firm or corporation which makes a profit from their labor, actual slavery exists. To adopt a law giving a court such authority is to forge the chain of slavery.

HOW ABOUT CHAINS FOR THE EMPLOYER?

Apply the same illegal pressure to the opposite side and hold your ears while the employers scream. How about the court issuing a mandatory injunction compelling the employer to pay the wages demanded by the union in order that production be maintained and the public interest protected?

PROPERTY RIGHTS VERSUS HUMAN RIGHTS

It is more important to protect the rights of freemen to strike or not to strike than it is to protect the property rights of the employer. If any rights are to be sacrificed, it is better that freedom be preserved and property rights be sacrificed.

It is well established that the Government must pay for the invasion of property rights. How about paying for the invasion of human rights?

THE EXCUSE FOR ADOPTING THE TAFT-HARTLEY LAW

1. To give employers an even break with unions. Since when has an employer not had more than an even break? When, if ever, did any labor union have an even break with its employer? The employer owns the plant and controls the jobs. He can shut the plant down indefinitely while the employees starve or find other jobs. Unless the members of the union belong to an organization that will assess itself heavily enough to pay adequate strike benefits, there is no possibility of the union ever equaling the employer in either bargaining power or staying power. Where the employers believe that they can break the union in a reasonable length of time regardless of public inconvenience, they do not call on the Government and the Government does nothing about it. An incident such as this occurred when telephone workers on a national basis lost their strike because the telephone company did not care how much inconvenience the public suffered. The union did not have sufficient finances to pay strike benefits to their members. It is sheer nonsense to claim that labor became too powerful and that employers had to have the Taft-Hartley law to even things up. The Taft-Hartley law is a club with which corporations had hoped to kill off labor unions.

2. To eliminate alleged abuses by labor unions. If there were any abuses of law by any labor unions, such particular abuses should have been handled in a legal way and what changes needed could have been made to take care of the particular abuse. It was not necessary to change the whole theory of legal labor relations and to institute a basis for fascistic control over our people.

ACTUAL REASONS FOR ADOPTING THE TAFT-HARTLEY LAW

1. To budgeon unions into accepting governmental permission to bargain collectively. While the Wagner Act was adopted for the purpose of preventing the employers from depriving workingmen of their right to organize and bargain collectively through representatives of their own choosing, the Taft-Hartley law was adopted for the purpose of depriving members of organized labor of many of their rights and for the purpose of setting up a specified, limited number of rights which could not be enforced unless the unions accepted the status of slave-labor organizations begging for their rights under the law and complying with stultifying requirements. The fundamental basis for these requirements to file affidavits and financial statements was really to create the legal fiction that since the Government granted rights to labor, labor was bound to accept the price exacted by the Government for those rights.

As a matter of fact, members of organized labor always had those rights and the Wagner Act simply acted as an agency to enforce rights labor always had. It is unsound and of no benefit to organized labor to beg for permission to exercise rights belonging to a free people.

2. To impoverish unions by forcing them to hire lawyers for guidance in every move. Since unions have to hire lawyers to conduct their cases for them and to guide them in the technical phases of the Taft-Hartley law, an unwarranted and unreasonable expense is saddled on them. Not only that but lawyers never see industrial relations in the light of actual experience in them. This is a further strain on the efforts of working people to organize and bargain collectively. If at every turn they are subjected to punishment under the law, the members of the union are apt to be discouraged in unionization rather than encouraged as contemplated by the Wagner Act.

3. To enmesh labor unions in so much technical legal procedure they cannot use their economic strength. There are so many "thou shalt nots" in the Taft-Hartley law and so many pitfalls that it is difficult for a union to use its economic strength in a way that will avoid its becoming charged with violating the law. Not only are unions embarrassed by the provisions of the law as they are read and interpreted by the unions' attorneys, but they are also embarrassed by the further interpretations made by the general counsel of the National Labor Relations Board who is set up as a czar interpreter as to how the law should be enforced. If unions do not go the way indicated by the General Counsel's Office, they are subject to having charges preferred against them and complaints issued which will drag them into trials and courts. Even if a union strikes for wages only, the General Counsel's Office tries its best to interpret some hidden motive in the strike to make it illegal and to try to prevent strikers from getting strike benefits from their international union.

4. To deprive unions of their legal status as strikers when they do strike for economic reasons. Even if a union is striking for better wages and hours only and cannot be charged with violating any of the fancier provisions of the Taft-Hartley law, the union is still subjected to a heavy penalty for having struck. The minute men are on the street for economic purposes they lose their status as strikers. Thereupon the employer can replace them with strikebreakers or scabs and the strikebreakers and scabs can apply for and be certified as employees entitled to bargain legally in the plant. Thus, strikebreakers and scabs are glorified by the Taft-Hartley law and given a preferred status in the matter of collective bargaining. Truly, the avowed purpose of the Taft-Hartley law to prevent strikes is being carried out in every detail possible.

5. To help employers to force nonunion men or strikebreakers into unions to help wreck them from within. Also to thus force Communists into unions but bar unions any benefit of law if said Communists get control. Under the Taft-Hartley law a union is subjected to being diluted and washed out of a plant by the employer hiring nonunion men and firing union men for one cause or another. In order to camouflage that obvious evil the framers of the Taft-Hartley law put in provisions for the infamous so-called union shop. Under the provisions of that section a sufficient number of employees in the plant might ask for and receive an election (by the grace of the National Labor Relations Board) to determine whether or not the employees would like to have this so-called union shop under which, if granted by the Government and the employer, an employee would be compelled to join the union after being employed for a period of 30 days. However, there is a hurdle to jump on that one too. The employer does not have to agree to said union shop if he doesn't want to agree to it even after a majority of employees in the bargaining unit have signified their desire to have it. But if it is finally granted and put into a contract, it simply means that the employer will select those who are to become members of the union instead of the union doing the selecting. That section also provides that if he is an unfit character and the union expels him, the employer does not have to take him off the job unless the expelled man refuses to pay dues. According to the Taft-Hartley law an employee may be of the worst character and any strikebreaker, scab, or union buster or any other antisocial individual can still maintain his employment so long as he is willing to pay the small sum of dues usually required by an upstanding labor union. Thus, virtue is scorned and selfishness, greed, and crime are glorified.

6. To help employers break down skilled crafts or trades by allowing them to give a union's job opportunities to other "trades, crafts, or classes." Section 8 (b) (4) of the Taft-Hartley law makes it illegal for a union to strike for its own jurisdiction no matter how long its members have lived on jobs involving a particular kind of work. The law gives an employer the right to give the work to anybody he pleases regardless of what it may do to the union. He can give work to other trades, crafts, or classes of workers, union or nonunion,

and that is supposed to be quite all right and quite American in the warped sort of way provided for in the Taft-Hartley law. The law wipes out jurisdictional strikes by giving all of the authority to the employer to determine where and by whom the work shall be done. Since the employer can hire either union or nonunion people and since the law protects him from economic strife in the event of the use of his unwarranted but unlimited power to destroy unions, it is easy to see what this law will do to many labor unions now working because there are plenty of jobs. Times will change and more and more damage will be done to trade or craft unions.

7. To help employers to break down union scales by hiring nonunion people at less money on the excuse they are not fully trained. A union may have been successfully serving an industry for many years through journeymen and an apprentice-training system. Such matters are now discarded and destroyed unless the union can secure agreement by the employer to hire only journeymen and apprentices. Otherwise, the employer who may hire either union or nonunion help would be free to hire anyone whether half-trained or in any other way partially trained employees. He would then pay them what they were worth and even though the union had an agreement on a set scale for journeymen the union would find itself unable to enforce it for people who were obviously not journeymen. Unless a union can secure an agreement on the number of apprentices to be trained, it is likewise subject to dilution and destruction.

8. To help employers break down unions by preventing unions from taking action on struck work or nonunion work. It is against the law for any union, through any concerted activity whatever, to instruct its members to refuse to handle struck work or nonunion work. Of course, an individual may decide not to handle such work and will probably be fired for his unionism. That portion of the law allegedly protecting such an individual amounts to an invitation to be fired. Unless he can have the protection of the union in such a discharge he has no protection and it is against the law for the union to take concerted action on such a matter.

Under the Taft-Hartley law an employer may buy a portion of a product from a nonunion plant hiring people at substandard wages and conditions, and compel members of a union to complete a product upon which none of its members were permitted to work in the nonunion plant. There are still many plants functioning on a substandard nonunion basis and were doing so even under the Wagner Act. Compelling a union member to work on a product against which some other member of his union may be on strike in another plant is compelling him to be a strikebreaker. Of course, that is quite all right with the framers of the Taft-Hartley law whose main object was to break unions anyway.

9. To help employers break down unions by limiting the right of unions to take action as to picket lines. In an effort to appear big-hearted, the framers of the Taft-Hartley law provided "that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer) if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this act." The words in parentheses "(other than his own employer) ' provide a little sardonic humor. A plant may provide work to members of half a dozen different unions and one union may be on strike and picketing the plant owned by one employer. The other unions may not honor that picket line because they are all working for the same employer. It is seldom that a member of a union would be asked, or required, to cross a picket line of some other employer. Of course, it would apply to unions of the workers engaged in a delivery service from plant to plant but it is difficult to see how it would apply to very many other union members. It is a safe enough rule to follow that if the Taft-Hartley law appears to give labor anything, examine it very thoroughly not only once but several times.

10. To help employers against strong unions by forcing unions to bargain for a contract if they previously had contracts even though to contract under the Taft-Hartley law deprives the union of many benefits enjoyed under previous contracts. It is another example of inconsistency and perhaps a devilish humor that the Taft-Hartley law requires weak unions to beg for the protection of the law and comply with the requirements of filing reports and affidavits while another section of the law compels other unions to bargain collectively whether or not they meet the requirements as to reports and affidavits. In spite of the fact that in order to be covered by the law a union is required to file non-Communist affidavits and reports of its financial condition, section 8 (b) (6) (d)

provides that where there is in effect a collective bargaining contract covering employees in an industry affecting commerce the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract unless the party desiring such termination or modification serves notice of the change, offers to meet and confer, notifies Federal mediation and State conciliation services and continues in full force and effect without resorting to strike or lockout all the terms and conditions of existing contract for a period of 60 days after such notice is given or until the expiration date of such contract, whichever occurs later. A further ridiculous situation is created by the fact that the International Typographical Union is compelled to bargain with the employers because of the Taft-Hartley law and while the employers can bring all the charges they want, accusing us of unfair labor practices, the union cannot charge the employers with unfair labor practices in the same bargaining sessions. The fact of the matter is that the Taft-Hartley law is framed and enforced so as to give the employer every possible help that he can be given and to deprive unions of as much as it is possible to deprive them of, including their self-respect.

11. To help employers localize their trouble with international unions so joint action is difficult and under constant surveillance. Where one employer has plants in various localities and where the history of collective bargaining indicated that that employer was a member of a local or city-wide bargaining unit, each local group of employers will stick together and make it as difficult as possible for unions to take practical advantage of their right under the law to strike the same employer in several cities. It appears that a union has a right to strike the same employer in several places but you cannot depend on what the law says, you have to depend on how the general counsel interprets it.

12. To help employers break unions by use of injunctions based on a "probability" of violating the law. Then punishing unions by citations for contempt of court on that probability of having violated the law. In the old injunction days the courts at least accused union people of violating the law before they issued injunctions. Now it's only a probability that you have violated the law and the injunction now secured under 10 (j) of the act is worse than the old injunction evil barred by the Norris-LaGuardia law. It makes little difference what the law reads. It's what the National Labor Relations Board attorneys read into the law that they insist you follow and if you do not follow it they will get some judge to issue an injunction against you ordering you to do what the National Labor Relations Board general counsel thinks you ought to do. During the past year when the International Typographical Union decided it did not want contracts under the burdens of the Taft-Hartley law the employers who did want contracts under which they could disrupt the union appealed to the National Labor Relations Board general counsel for help. According to Government attorneys locals of the international union do have to bargain for a contract and from all indications not only a contract but the kind of a contract that the employers want preserving to them all of their weapons to destroy the union while holding it around the neck by a contract.

13. To put labor unions under the domination of a bureaucracy of lawyers and clerks which is the beginning of Fascist control of unions and business. The ambitious scope of the Taft-Hartley law is to provide the so-called legitimate rights of both employers and employees and while the going is good on behalf of employers at this time it may get rougher later on. The Taft-Hartley law puts labor unions under the control of the National Labor Relations Board general counsel and his corps of lawyers and clerks. It was so intended and so it is. Big business was in the saddle and organized labor was in the dog house. The propagandists of big business screamed about the administration of the Wagner Act because big business was told to bargain collectively with unions and to get rid of their unfair and illegal efforts to prevent unions from organizing and functioning. They now have a new tactic. They are using the laws of the land to prevent labor unions from organizing and functioning effectively.

14. To help employers destroy unions before the long tortuous path of legal appeals can be trod to the Supreme Court for final decision on the legality of the Taft-Hartley law. A union that does not have sufficient skill to back it up in an industrial contest can be destroyed by employers while the red tape is being unwound and while cases are being made for the Board and for the courts thereafter. Of course, the framers of the Taft-Hartley law knew what they were doing when they drafted that law.

Statement by Ella Best, R. N., Executive Secretary of the American Nurses' Association, Relative to H. R. 2032, the National Labor Relations Act of 1949

The American Nurses' Association, which is the national professional organization of registered nurses in this country, with a membership of over 164,000 graduate registered professional nurses, and constituent State associations in all of the 48 States, the District of Columbia, Puerto Rico, and Hawaii, urgently requests that any amendment to the National Labor Relations Act or any new Labor Relations Act (1) retain the provisions of sections 9 (b) (1)[1] and 2 (12) (a) (iv) [2] of the present act, as amended, which guarantee to professional employees, including nurses, the right to select their own representatives for purposes of collective bargaining, and (2) eliminate the unjusitfied and unjustifiable exemption of nonprofit hospitals contains in section 2 (2)[3] of the present act, as amended.

Since September 27, 1946, when its house of delegates unanimously adopted a platform endorsing the greater development of nurses' professional associations as spokesmen for nurses in all questions affecting their employment and economic security, the American Nurses' Association and its constituent State nurses' associations have been engaged in a strenuous campaign for the improvement of the salaries and working conditions of professional nurses. The present-day exploitation of the professional nurse is a matter of common knowledge. In the past few years the salaries or wages of practically all groups of employed persons have increased very greatly, in order to keep pace with the rise in the cost of living. Even various categories of so-called white-collar workers have enjoyed very substantial increases in compensation. During this time, however, the salaries of registered professional nurses, particularly those employed in hospitals and similar institutions, have failed to keep pace with those of other employed groups in the national economy and with the increased cost of living At best, a few groups of employed nurses have received very small increases in compensation; many have received no increase at all. At the same time, the educational and other requirements for registered professional nurses have been constantly increasing. As a result, the registered professional nurse is at the lowest point, relative to comparable groups in our economy, in many years; and a serious shortage of nurses threatens the Nation.

It would be disastrous to our efforts to combat this situation by improving the employment conditions of professional nurses and increasing the incentives to enter the profession, if the present provisions of sections 9 (b) (1) and 2 (12) (a) (iv) were repealed. Professional nurses' associations do not endeavor to represent any groups of employees except members of their own profession. Such associations exist primarily for professional purposes, and have adopted their programs of collective bargaining, important as such programs are, merely as one phase of their professional activities. As a consequence, such associations will be seriously hampered in their efforts to conduct collective bargaining on behalf of their members and of other registered professional nurses who desire it, in accordance with their professional standards, if professional nurses are prevented from organizing themselves in appropriate units for such activities. It will be readily apparent that, if professional nurses are grouped with other employees in large units, professional nurses' associations will be unable to represent them. Conversely, the organization of professional nurses in separate units for collective bargaining is in accordance with the teaching of experience that control of all matters relating to nursing properly belongs in professional hands rather than in those of laymen. The great advances in the science and art of nursing have paralleled the increasing recognition on the part of educators, government and public alike, that the maintenance of the highest standards of nursing service requires the greatest possible degree of self-government in the nursing profession. Improvements in nursing education, the system of State boards of nurse examiners, and the commissioning of nurses as officers with permanent rank in the Army and Navy Nurse Corps all testify to the recognition by the general public that nurses can render their best service when they are permitted to have full voice in the determination of their qualifications and the administration of their duties.

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[1] Sec. 9 (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; * * *

[2] Sec. 2 (12) The term "professional employee" means—(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a *prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital,* as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes. (Italics ours.)

[3] Sec. 2 (2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual.

The American Nurses Association feels that the right of professional nurses to select their own bargaining representatives should be preserved in its present statutory form. In *Matter of Bethlehem-Alameda Shipyard Inc.* (59 N. L. R. B. 1525 (1945)), decided before the enactment of the Labor-Management Relations Act of 1947, the National Labor Relations Board grouped registered professional nurses with nonregistered personnel in the same unit. In other cases the Board treated other professions in like manner. In the *Matter of Standard Oil Company* (*Indiana*) (case No. 13–RD–13), decided December 1, 1948, the Board, in its opinion, clearly showed that, but for the statutory provisions, it would still regard all nurses, whether professional or otherwise, as a single category. When it is recognized that a registered professional nurse is a member of a highly trained, clearly defined professional group, and that, in most States, any person, without any training whatsoever, may be employed as a so-called practical nurse, and when it is further recognized that professional nurses' organizations cannot accept into membership or represent nonprofessional personnel, it then becomes quite apparent that the grouping of professional nurses with large numbers of nonprofessional employees will thwart the desire of professional nurses to engage in collective bargaining through their professional organizations. Nurses feel strongly that this guaranty of their free choice of bargaining representative is a matter of too great importance to be left to administrative discretion, and urge that the guaranty be embodied in statute.

While the Labor-Management Relations Act of 1947 gave to professional nurses with one hand, it took away with the other. Section 2 (2) of the present National Labor Relations Act, as amended in 1947, for some inexplicable reason exempts nonprofit hospitals from the operation of the act. This provision, during the past 2 years, has seriously impeded the efforts of nurses' professional organizations to improve the economic conditions of their members. Nurses have found that many employers use the exemption as a pretext for refusing to recognize and deal with the State nurses' association as the representative of the professional nurses in their employ.

The exemption of nonprofit hospitals is highly unfair for at least two reasons: (1) Professional nurses have voluntarily given up such weapons as the strike, to which other groups of employees are ordinarily able to resort when all other methods have failed. As a result, nurses are particularly dependent upon the machinery which has been established by law to compel employers to recognize and deal with the duly accredited representatives of their employees. (2) The exemption of nonprofit hospitals is peculiarly discriminatory against nurses and other employees of such hospitals. No satisfactory reason has ever been suggested why nonprofit hospitals should be treated differently from all other nonprofit organizations or from other employers. Employees of any business organization, or any nonprofit organization other than a nonprofit hospital, are entitled to bargain collectively with their employer; but employees of nonprofit hospitals are, for some inexplicable reason, denied such right.

We are gratified to know that the administration's bill known as S. 249, sometimes referred to as the Thomas bill, as reported to the Senate, would eliminate this unjust exemption of nonprofit hospitals. We trust that any bill reported by your committee will do likewise. The 164,000 members of the American Nurses' Association are eager to take part, in the approved democratic fashion, in the determination of their compensation and working conditions. They cannot understand why they alone should be compelled to accept whatever terms their employer may see fit to grant them, without even the right to sit down at the table and discuss them with him. They wish to conduct their program in a professional manner, without resort to weapons which, like the strike, may endanger the patient. If their employers had voluntarily granted their request for collective bargaining, their concern with legislation would not have been necessary. However, the experience of the past 2 years has abundantly demonstrated that many employers of professional nurses will not grant them their basic economic rights unless such rights are clearly prescribed by statute.

Several State nurses' associations have filed with us documentation of persistent refusals of hospital management even to meet with the nurses' designated representatives for the purpose of discussing employment conditions.

In addition, peremptory dismissals by hospitals of nurses for participation in the activities of their professonal association have occurred in increasing instances in localities where the association has inaugurated a program to improve the economic status of nurses. Reports of intimidation, coercion, and other interferences on the part of employers with nurses' rights to bargain collectively through their chosen representatives are being received from many areas.

Such unfair labor practices are inimical to the public interest as well as to nurses' interests, since they seriously impede the efforts of the American Nurses' Association to stabilize nursing service in this country through its program of collective bargaining affecting the employment of its 164,000 registered nurse members.

For these reasons the nursing profession requests that the present discriminatory legislation be terminated and that any new legislation extend to them, as it undoubtedly will to other groups of employees, the right to bargain collectively with their employers.

STATEMENT BY GWILYM A. PRICE, PRESIDENT, WESTINGHOUSE ELECTRIC CORP., RELATIVE TO H. R. 2032

The purpose of this statement is to offer the experiences of the Westinghouse Electric Corp. with present and past labor laws in the interests of assuring legislation which will adequately protect labor, management, and the public.

I am not attempting to cover all of the provisions of the Taft-Hartley Act. My statement is confined to five major provisions with which we have had actual experience, and which, on the basis of such experience, I firmly believe should be preserved in any labor legislation adopted by the Congress. This statement was prepared with the assistance of our vice president in charge of labor relations, our legal counsel handling our cases before the National Labor Relations Board, and other associates who have had active experience with the subjects discussed.

Briefly, as a result of our experience, we urge:

(1) That employers continue to be permitted to refrain from bargaining collectively with members of management, namely, foremen and other supervisors.

(2) That professional employees continue to have the right to be excluded from the same bargaining unit with nonprofessional employees if they so desire.

(3) That the prohibition against the closed shop, which deprives citizens of their right to work, be maintained; and that safeguards against loss of work under other lesser forms of union-security agreements be continued.

(4) That freedom of speech for employers continue to be specifically guaranteed in labor laws.

(5) That both employers and union leaders be required to sign non-Communist affidavits.

Each of these points is developed more fully in the following pages of this statement.

There are several provisions of the Taft-Hartley Act with which we have had little or no experience, and I do not attempt to comment on them in this statement. However, this does not indicate indifference to such provisions or a belief that they can be safely discarded in future labor legislation. On the contrary, I believe that the reasons which led to the adoption of most of the Taft-Hartley Act's provisions remain sound and that elimination or change of any of such provisions should be done only after exceedingly careful consideration and with certainty that neither labor, management, nor the public is being deprived of essential safeguards.

I would also like to say that I do not subscribe to the theory that labor-management relations can best thrive, or that the public can be adequately protected, with no Federal labor laws to serve as rules of the game or with a return to the original Wagner Act whose unfairness and lack of safeguards for both employer and public welfare were fully demonstrated in the years prior to its amendment.

COLLECTIVE-BARGAINING RIGHTS FOR SUPERVISORS

The present law does not require employers to bargain collectively with management personnel—that is, those who exercise independent judgment on matters of hiring, transferring, promoting, discharging, rewarding, and disciplining employees. I think these are wise provisions which should be retained.

Approximately 5,900 out of a total of 95,500 employees of Westinghouse are in this category; 4,530 of them are foremen and general foremen, or office supervisors of corresponding rank, of the type held by the National Labor Relations Board to be within the scope of compulsory collective bargaining in a series of decisions[1] during the 2 years before the Taft-Hartley law was passed (although the Board had previously taken a contrary position.[2] In Westinghouse, these men are intensively trained as members of management, in all phases of the work which they are called upon to do as the managers of sections, departments, or recognized subdivisions thereof. Such training programs were commenced in our company at the beginning of the century and have continually expanded and improved, particularly during the past 25 years. We have spent many thousands of dollars in teaching our supervisors how to handle the innumerable problems, including personnel problems, which confront management personnel.

The very nature of our business requires these men to be managers, in every sense of the word. In peacetime, we undoubtedly turn out as diversified a group of products as any company in the country. Many of our products, particularly the larger ones, such as motors, generators, turbines, etc., are "tailor-made" for particular applications. Supervision of this kind of work requires a considerable degree of versatility and judgment, as well as technical skill and knowledge in broad fields. If proof of this fact were needed, we would cite our record in manning and operating successfully two new naval ordnance plants and a new merchant marine plant during the war largely from the existing ranks of our supervisory and executive personnel, as well as the numerous cases where our supervisory organization was able to take on war work completely foreign to our peacetime activities and meet unusually short production schedules.

Our supervisors function as members of management. They determine the number of employees needed in their departments, and no employee is hired for them, or transferred into their departments, until after the supervisor has interviewed and accepted them. They have authority to decide all other questions involving the status of employees under them, such as promotions, demotions, lay-offs, rerates, etc., within the framework of established labor contracts and company policies, which, contrary to the arguments of supervisory union supporters, do leave the supervisors a wide area for the exercise of discretion and judgment. They actively take part, as management, in the grievance procedure, not only at the first step where they generally are the sole company representative and where the vast majority of grievances are settled, but also in the later steps if their decisions are appealed by the union representatives. They have ultimate responsibility for the adequacy and maintenance of the machines and equipment used in their departments, and for the safety of those who work under their supervision. They are called upon for ideas and recommendations on many important operating phases of the company's business, including employee policies and collective bargaining. In every way possible, they operate their department or section as their own business and they fully realize that the company's success or failure depends upon the sum total of the results which they accomplish.

As members of management, our supervisors receive salaries which compensate them for the responsibility which is theirs. During both the major strikes which we have suffered since the end of the war supervisors were paid their salaries, whether or not work was available for them to do. Along with each of the three rounds of wage increases since the war, they have received substantially larger salary increases than have been granted in collective bargaining. We are constantly on the alert to maintain their compensation on a level substantially above that of nonsupervisory employees, and to pay them as much or more than the average paid to supervisors with corresponding responsibilities by other companies in the areas where we do business. This is nothing new at Westinghouse—it has been our policy since long before the Taft-Hartley law. In addition to these salary policies, our company inaugurated an incentive plan early in 1948 to reward management people, including the supervisors I am talking about in this statement, for conscientious effort, faithfulness, and skill. The first distribution under this plan, just before Christmas last year, included approximately $2,230,000 paid to supervisors.

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[1] Beginning with *Packard Motor Car Co.* (61 N. L. R. B. 4), decided March 26, 1945.

[2] Between *Maryland Dry Dock Co.* (49 N. L. R. B. 733), decided May 11, 1943, and the Packard decision, the Board denied compulsory bargaining rights to supervisors in all but a few industries where such bargaining had long been an accepted practice. The Maryland Dry Dock decision was, however, itself a reversal of earlier decisions, in *Union Collieries Coal Co.* (41 N. L. R. B. 961), and *Godchaux Sugars, Inc.* (44 N. L. R. B. 874). In each of these landmark decisions, the Board split 2 to 1 on the issue of collective bargaining by supervisors. When the United States Supreme Court reviewed the Board's interpretation of the Wagner Act as covering supervisors, the Board was upheld by the narrowest of margins—a vote of 5 to 4. *Packard Motor Car Co.* v. *N. L. R. B.* (330 U. S. 485).

I want to emphasize that I am not talking about the class of workers who are variously referred to in industry as "working foremen," "gang leaders," or "straw bosses," who direct the work of other employees without, however, having any responsibility for the formulation or execution of general company policies. We call such people group leaders, and have always recognized them as being legitimately included in collective-bargaining units with the rank-and-file employees. While they receive extra compensation for their group-leading activities, they are universally included within our collective-bargaining units. A great deal of the confusion on the question of unionization of foremen and supervisors has resulted from the different names applied, by different companies, and in different industries, to various levels of supervision—we are talking here only about the men who are actually a vital part of our management team. This line of demarcation between our group leaders and our supervisory organization has been definitely established throughout our company and is accepted by the unions which represent our employees.

Actual experience with unionization of supervisors has been almost entirely confined to one of our plants—our plant at East Springfield, Mass., where we make a wide variety of consumer items in the electric appliance field.[3] Late in 1944, some of our supervisors at East Springfield organized a chapter of the Foremen's Association of America, and sought recognition from the company for collective bargaining purposes. When such recognition was denied, they petitioned the National Labor Relations Board for certification,[4] and a hearing was held in which there was developed, in considerable detail, the nature and responsibilities of their jobs as outlined above.[5] The bargaining unit for which the Foremen's Association of America sought certification included all supervisors up to the level of plant superintendent. Had the union prevailed, all but the works manager, the assistant works manager, and 13 department managers and divisional superintendents would have been included in collective bargaining. Think of that—at a plant employing approximately 5,000 employees, only 15 men could have been relied upon, in matters of collective bargaining, as being entirely free of union bias and union obligations.

At the time of the first Labor Board hearings, which were held in the summer of 1945, we had had very little experience which could be cited as specific proof of the intolerable situations which we firmly believed would result if all but 15 of the members of the management team at the East Springfield plant were unionized. However, we did find, through a series of questions to the supervisors who testified, that conflict would inevitably arise between their management obligations to the company and their obligations as union members.

For example, we asked several of the foremen what they would do if they made an adverse decision on a grievance submitted by the rank-and-file union which led to a strike by that union, and if a majority of their own foremen's union should then vote to go on strike in sympathy with the rank-and-file. In an effort to show additional problems created if second-line supervisors became a part of the same bargaining unit as first-line supervisors, we also asked a general foreman what he would do if, while a member of the foremen's union, he promoted a nonmember of the union from a lower paid to a higher paid foreman's position, because he felt the nonmember was better qualified than any member of the union for such promotion, and then was faced with a majority vote in his own union for a strike in protest against his own decision. In every instance, the answers to these and similar questions were either that the supervisor didn't know what he would do, or that he would support the action of his union even though his union was taking a position contrary to his own personal judgment as to what was the proper thing to do.[6] It is shocking that not a single one of the supervisors was willing to testify that he would stand by his own best judgment as against a contrary position taken by a majority of the members of his union.

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[3] Other petitions for certification as bargaining representative for supervisors were filed with the Board, but later were withdrawn prior to the adoption of the Taft-Hartley law, at our East Pittsburgh (N. L. R. B. case No. 6-R-1247) and Lima, Ohio (N. L. R. B. case No. 8-R-1840), plants, and at two of the naval ordnance plants we operated for the U. S. Navy during the war (Louisville—N. L. R. B. case No. 9-R-1813, and Center Line, Michigan.—N. L. R. B. case No. 7-R-2118). A similar petition covering supervisors at our Bloomfield, N. J. plant was pending when the Taft-Hartley law was enacted, and was dismissed by the Board (case No. 2-R-7405).

[4] N. L. R. B. case No. 1-R-2488, 66 N. L. R. B. 1297.

[5] A printed brief of 143 pages was submitted to the National Labor Relations Board following such hearing, which summarized the 1,650 pages of testimony and 65 exhibits. This case presents a complete case study of the responsibilities and status of supervisors at a typical large industrial plant. In the interest of brevity we have not included this brief as a part of this statement, but we will be glad to make copies available to the committee upon request.

Later on, after the first Board hearing, while the East Springfield foremen's union was still actively seeking certification and recognition, we had a chance to see how the divided loyalties of the supervisors would be evidenced in a specific situation. In September, 1945, the union representing salaried clerical employees went on strike for more money. The union representing the shop production employees did not join in or support the strike, and counseled its members to continue at work. For about the first 10 days of the strike, the office supervisors continued to do the essential paper work, such as preparation of pay-roll checks and the handling of records of incoming and outgoing shipments of materials and finished production, without which it would have been impossible to keep the 4,600 production employees at work. Suddenly, however, these supervisors announced to the divisional superintendents that they had received instructions from "their legal department" in Detroit, where the headquarters of the Foremen's Association of America was located, that they should not continue to perform the work which they had been doing, because it was considered by their union to constitute strikebreaking. From that time on, several of the union-minded supervisors refused to do any further clerical work. Fortunately, the strike ended after 3 weeks, but had the strike continued for any considerable additional period, the plant would have had to shut down and the production workers would have been thrown out of work because the supervisors chose to follow the course dictated by their union officers in Detroit.[7]

In following this course, the foremen's union members acted entirely in accord with a publicly announced statement of policy which the Foremen's Association of America issued early in January 1946 (issued on January 8, 1946, and reported in the Bureau of National Affairs, Daily Labor Reporter, for July 16, 1946, pp. A-12 to A-14). Among other things, this statement provided that Foremen's Association of America members might enter a struck plant only by agreement between the employer and the striking union, and that members of the Foremen's Association of America "shall not perform any work similar to that normally performed by the nonsupervisory employees on strike."

The statement further instructed its members not to use "undue effort" to enter a struck plant, even for the purpose of performing their regular work. Supervisors in a plant when a strike started were authorized by the statement to protect property and equipment from damage only temporarily in the absence of an agreement between "all parties"—meaning, of course, the employer, the striking union, and the Foremen's Association of America.

Under the Foreman's Association of America statement, no member was authorized to work under any circumstances unless the employer also agreed to pay other supervisors who were not permitted to enter the struck plant.

Fortunately, the Taft-Hartley law was passed before the various Board proceedings arising out of the East Springfield foremen's situation had been concluded, so the company never reached the point where it was specifically required to recognize and bargain with the foremen's union.[8] Since passage of the law, the East Springfield chapter of the union has disbanded. We feel, however, that a real catastrophe was narrowly averted. We are convinced that we could no more run the East Springfield plant, or any other plant, efficiently with union representation of supervisors than an Army could be run effectively without captains and lieutenants.

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[6] See pp. 374–382, 389–407, 409, 573, 575–578, 653–660, 851–854 of the transcript of testimony in N. L. R. B. case No. 1–R–2488, 66 N. L. R. B. 1297.

[7] The facts recited above were established at a hearing in July 1946 before the National Labor Relations Board in case Nos. 1–R–3089–3092, 73 N. L. R. B. 818.

[8] Board certifications of ch. 215 of the Foremen's Association of America as bargaining agent for production foremen and general foremen, and for corresponding office supervisors, were issued on May 17, 1946 (N. L. R. B. case No. 1–R–2488, 66 N. L. R. B. 1297), and June 13, 1947 (N. L. R. B. case Nos. 1–R–3089–3092, 73 N. L. R. B. 818), respectively. The company refused to bargain, and an unfair labor practice proceeding was instituted (case No. 1–C–2849). While this case was pending before the Board on the trial examiner's intermediate report (dated December 6, 1946) recommending that the company be ordered to bargain, and the company's exceptions thereto, the Taft-Hartley law was adopted; and on September 29, 1947, the Board dismissed the case (75 N. L. R. B. 1). We understand this was the first decision by the new 5-man Board established by the Taft-Hartley law.

We also caught a glimpse of another aspect of the foremen's union movement, when the East Springfield foremen's union branched out and attempted to secure Board certification as bargaining agent for a group of nonsupervisory employees. The action of the supervisors in attempting to interfere with the rights of the nonsupervisory group obviously subjected the company to the possibility of an unfair labor practice charge. Because of the provisions in the Taft-Hartley law, the company was able to stop this movement before it could ripen into a situation where nonsupervisory employees were being bargained for by members of Westinghouse management. We told the supervisors involved that they would either have to withdraw the petitions for certification which they had filed with the Board or give up their jobs with Westinghouse. The petitions were withdrawn.[10] We think any reasonable person will agree that organization by supervisors of nonsupervisory employees simply could not work.

In view of this experience, we believe that the provisions of the Taft-Hartley law which give employers the right to refrain from bargaining collectively with supervsors should be preserved.

PROFESSIONAL EMPLOYEES

We urge retention of the provisions of the Taft-Hartley Act which prevent the inclusion of professional employees in the same bargaining unit with nonprofessional employees, unless the professional employees so desire.

A relatively high proportion of our employees are, by training and work assignments, of professional status. The nature of our business requires extensive use of professional engineers in the design of our products and production methods, the application, sale, and installation of our apparatus, and the continuation of our extensive research and development programs.

In the early days of the Wagner Act, neither the National Labor Relations Board nor, I am sorry to say, our company, gave adequate consideration to the fact that the problems and interests of professional employees are quite different from those of other salaried employees. As a result, we now have four bargaining units in our district sales offices which were established between 1940 and 1943 as a result of consent elections agreed to by the union, the company, and the Board, and in which highly trained professional engineers are included in the same bargaining unit with clerical workers. Similarly, at a number of our plants, we have bargaining units which include engineers in bargaining units completely dominated, from the standpoint of numbers, by clerical employees. At one of our plants, at Bloomfield, N. J., the engineers and laboratory technicians in a separate research department, conducting fundamental research on uranium and other rare metals, and on other important projects, were included in a broad unit of salaried employees represented by the United Electrical, Radio and Machine Workers of America, CIO (hereafter called UE-CIO). This was the result of a consent election in a Board case in which the wishes of these employees were not considered by anyone.[11]

It is true that the Board, by a change in its decisional doctrines began to recognize the differing interests of professional and clerical employees before the passage of the Taft-Hartley Act. Thus, in the first case involving one of our district offices in which the company objected to the lumping together of professional and nonprofessional employees, the Board in 1945 divided them into separate bargaining units. [12] However, the plight of those professional people already in clerical bargaining units, who desire separate representation, was not improved until after enactment of the Taft-Hartley Act. Two actual case histories illustrate this point:

(1) The research department engineers and technicians at our Bloomfield plant started action during the UE-CIO strike in 1946 to attempt to remove themselves from the salaried unit represented by UE-CIO. They first appealed to the company to do something about the situation, but we had to advise them that, under the Wagner Act, it was absolutely impossible for us to do anything for them. Since there was no procedure for "decertification" of the UE as their bargaining agent under the Wagner Act, the only available procedure open to them was the organization of another union and the filing of a certification petition. They organized such a union and filed a petition in April 1946, but it was dismissed in June by the regional director of the Board, apparently on the ground

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[10] N. L. R. B. case No. 1–RC–476–477; petitions filed on or about June 23, 1948, and withdrawn on or about July 2, 1948.

[11] N. L. R. B. case No. R–5705 (2–R–4066); Board certification dated July 23, 1943.

[12] N. L. R. B. case No. 7–R–1936, 62 N. L. R. B. 137.

that a unit consisting of such employees would not be appropriate.[13] The union's appeal to the Board was denied in September 1946. Again in the spring of 1947 at a time when, under the Board's rules, it was proper for other labor organizations to file petitions for certification covering employees represented by UE-CIO, the same independent union of research department employees filed a second petition for certification.[14] Again, the Board delayed action on the petition, and there is every reason to believe it would have dismissed the petition a second time, had it not been for the enactment of the Taft-Hartley Act. However, after the act became effective the Board processed the petition, held a hearing and ordered an election,[15] at which the research engineers and technicians voted 28 to 1 in favor of representation by their independent organization.[16]

(2) Our district sales office in Pittsburgh was one of those at which the company agreed, in the early days of the Wagner Act, to an over-all unit including both professional and nonprofessional employees.[17] The sales engineers at that office were, of course, not consulted with respect to their inclusion in the unit, and however they may have voted at the consent election that was held in 1941, they were far outnumbered by the votes of the clerical and other nonprofessional employees. In April 1947 they organized an independent union which filed a petition for certification.[18] This union met with one delay after another in its efforts to secure a hearing and an election. It was only after the Taft-Hartley Act was passed, and after the petition had been pending before the Board for more than a year, that these professional people received a hearing and an election. They voted by a substantial majority in favor of their independent union.[19] Shortly after they were removed from the clerical bargaining unit and their union was certified by the Board, it had a meeting at which it was voted to disband.

A somewhat similar situation exists at another of our district offices, where the sales engineers have for a long time protested against their representation by the union which also represents the clerical office personnel.[20] At one point, before the Taft-Hartley Act, these sales engineers hired an attorney who threatened legal action against the company if it continued to recognize the certified union as bargaining representative for them. The local union officers recognized the problem and simply refrained from bargaining on behalf of the salesmen, but they are still technically a part of the bargaining unit. The present provisions of the Taft-Hartley Act will, when the union agreement is reopened again, afford these employees an opportunity, through decertification proceedings, to remove themselves from the bargaining unit if they so desire, and to achieve legally in an orderly manner the results which they have thus far been able to obtain only by threatened legal action and internal pressures against the union.

Since the Taft-Hartley Act a number of Board proceedings have been conducted involving both professional and nonprofessional employees. In some cases both groups have voted for union representation. In others the professional employees have not signed sufficient union cards to permit the presentation of certification petitions covering them and have, consequently, remained outside the collective-bargaining units established for office and clerical employees.

We feel strongly that engineers and other professional employees should have the right, which is accorded them by the Taft-Hartley Act, to have a voice in deciding whether or not they wish to be represented in collective bargaining by the union which represents other salaried employees or by any other union, and this voice is preserved for them by the present provisions of the act. Without such provisions, this right could be taken away from them either by another change in the Board's decisional doctrines or by agreements between employers and unions for consent elections in units including both professional and nonprofessional employees.

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[13] N. L. R. B. case No. 2–R–6424.

[14] N. L. R. B. case No. 2–R–7713, case docketed March 7, 1947.

[15] 80 N. L. R. B. No. 101, 23 N. L. R. B. 1156.

[16] A similar course of events marked the attempt of the engineers outside of the Bloomfield research department to also remove themselves from the bargaining unit represented by the UE-CIO. They, too, organized an independent union during the UE strike and filed a petition for certification on or about April 17, 1946 (N. L. R. B. case No. 2–R–6493) which was dismissed by the regional director on June 26, 1946. Their subsequent petition, filed on or about February 5, 1948 (N. L. R. B. case No. 2–RC–160) was consolidated with the research department case discussed above, and at the election ordered by the Board these engineers voted 104 to 35 in favor of their independent union.

[17] N. L. R. B. case No. R–3028 (6–R–272), 36 N. L. R. B. 339, 37 N. L. R. B. 497.

[18] N. L. R. B. case No. 6–R–1733.

[19] Thirty voted for the new independent union, fifteen for the prior bargaining agent, and two for "no union."

[20] Unit certified by National Labor Relations Board October 9, 1942, after a consent election which the union carried by 1 vote—the vote being 31 for the union and 30 against, with 6 eligible employees not voting (N. L. R. B. case No. R–4348, 9–R–781; 44 N. L. R. B. 1001).

UNION SECURITY

I should like to comment particularly on two phases of the union-security provisions of the Taft-Hartley law: (1) the abolition of the closed shop, and (2) the restrictions, under other lesser forms of union-security agreements, against arbitrary denial by unions of membership privileges sought by those who are willing to contribute financially to the union's support.

We oppose the closed shop in principle, and support the right of every man to seek employment in any job for which he is qualified. We have never agreed to a closed shop in any of our major plants or offices, except in a very few special situations where we purchased going businesses which already had signed closed-shop agreements and where we saw no practical alternative to their continuation. We feel strongly, however, that the closed shop is so contrary to the principles of freedom and equality of opportunity on which our economic system is based that unions should be prohibited from seeking it and management should be prohibited from granting it.

We also have a practical reason for opposing the closed shop. Our operations are so diversified, and call for such a wide variety of skills, that we have never been convinced that any union particularly under the kind of "industrial type" organization that has taken place in our industry, would be able to furnish the people we need from within the ranks of its own members.

We have had some experience along this line at a plan at Sunnyvale, Calif., which we purchased in the spring of 1947. At that plant we inherited modified closed-shop agreements providing for so-called preferential hiring, which have remained valid and enforceable because they were entered into prior to the Taft-Hartley law, but which will expire March 31, 1949. Two different unions are involved. Our experience under those agreements has been that the unions have been unable to furnish workers in anything like the qualities we have needed. Fortunately, the unions have been quite cooperative, with the practical result that we have recruited our employees from among nonmembers and then sent them to the unions for clearance and membership. However, without such cooperation—which could as easily be withdrawn as it has been granted—our ability to produce would be directly affected by the union's ability to obtain members and their willingness to furnish them to us. As a matter of fact, we have already experienced at the Sunnyvale plant a situation where competent and qualified workers who were employed at our Emeryville, Calif. plant have applied for jobs at Sunnyvale but have been denied clearance by the unions, presumably because the individuals have been supporters of a rival union which represents our employees at Emeryville.

During and since the war, as a direct result of policies originally established by the War Labor Board, we have agreed to so-called maintenance-of-membership provisions under which employees who join the union must continue their membership as a condition of employment, subject to their right, exercisable during a limited period once each year, to withdraw from such membership. We do not now have such an agreement in effect with the UE-CIO because that union has not seen fit to qualify for the privilege of having such an agreement under the Taft-Hartley law, and we have never been asked for such an agreement by the Federation of Westinghouse Independent Salaried Unions, which represents about 12,000 salaried employees. We do have such agreements with the International Brotherhood of Electrical Workers, AFL (hereafter called IBEW-AFL). However, we have seen maintenance of membership used, under the old Wagner Act, as an instrument of coercion and intimidation by unions, and we ourselves have been placed in the unfortunate position of being found guilty of unfair labor practices as a result of carrying out our contractual obligation to discharge employees whose union membership has been terminated. These experiences lead us to the conclusion that the protection against such arbitrary and unfair use of such provisions, which is afforded by the Taft-Hartley law, should be continued.

During the war, at one of our smaller plants which was engaged in war work of vital importance, we were asked to discharge four employees in a bargaining unit represented by the IBEW-AFL[21] and covered by a maintenance-of-membership agreement. These four individuals were salaried employees who had become dissatisfied with the representation given to salaried employees by the union, and who had consequently attempted to organize an independent union to take over the bargaining rights for this group. Their group filed a certification petition with the Board [22] but lost the election, and then the four men were singled out as the leaders of the abortive attempt to secede from the IBEW-AFL. They were expelled from membership by the IBEW-AFL, and we were called upon to carry out our contractual obligation to discharge them. We at first refused to do so, primarily because we felt sure that, under the circumstances, the National Labor Relations Board under previous decisions would find us guilty of an unfair labor practice. Also, one of the men involved was the sole electrical engineer working on a radar project and another secret project for the United States Navy, and was considered by the plant manager to be irreplaceable. However, the union took the matter to the Regional War Labor Board, and the company was ordered to fire the four men,[23] on the theory that the union was "the sole determinant of the status of its members." We very reluctantly carried out this order (except as to one of the four who made his peace with the union), but in doing so we realized that not only were we depriving three men of their jobs because they exercised their rights as free Americans to avail themselves of the procedure set up under the Wagner Act, but we were also placing an impediment in the way of vitally needed production.

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[21] N. L. R. B. case No. R-3063, 36 N. L. R. B. 222.

More recently, we received a request from the UE-CIO to discharge two men at our Cleveland lighting plant who had been expelled from UE membership. We knew that shortly before such request, during the 1946 UE-CIO strike, the IBEW-AFL had attempted to organize the workers and to supplant the UE-CIO as their bargaining agent. We had no knowledge of the part played in these activities by the two individuals in question. We made a number of attempts to get the UE-CIO to tell us the basis for their action in expelling these men from membership, but for a long time we only got in reply some general statements which added up to a polite, but firm, statement that it was none of our business. Nevertheless, we resisted the UE's request for almost a full year, during which time the IBEW-AFL obtained a Board election and lost it by an overwhelming majority.[24] Finally, we received a letter from the general counsel of the UE-CIO, assuring us that the expulsion of the two men from membership was not in any way based upon any action by them during the period of the UE-CIO strike, which coincided with the IBEW's first organization activity. Shortly after this letter came a strong representation from the UE-CIO that these men either had to be fired or our national negotiations with the UE-CIO, which were then in progress, would likely "bog down." Faced with this situation, the company reluctantly discharged the men, whereupon unfair-labor-practice charges were filed.[25] Because the discharges took place a few months before the Taft-Hartley law became effective, we were unable to convince the Board that the charges should be dismissed. In spite of the fact that the Board found that we acted entirely in accord with an existing binding agreement with the UE-CIO, the Board ordered us to reinstate these employees with back pay and rejected our contention that it was the UE-CIO, and not our company, which should be held responsible for the action that we took. Board Member James J. Reynolds, Jr., wrote a short separately concurring opinion which, we think, admirably sums up not only the injustice of the decision against us but also the wisdom of the Taft-Hartley Act provisions which prevent a repetition of this kind of a situation. Mr. Reynolds said:

"Considering myself bound by the doctrine established in the Rutland Court [26] and subsequent cases, I reluctantly join my colleagues in this decision. However, my personal views in the matter, as expressed in dissenting opinions in two earlier cases,[27] remain unchanged. It is the flagrant example which this case affords of the unconscionable dilemma of an employer in a Rutland Court situation that prompts me to a reiteration of such views. Here, the respondent for more than a year resisted the demands of the UE that Minch and Cunningham be discharged, prophetically envisioning a violation of the act if it acquiesced. When faced with the subtle threats that negotiations with the UE for a new collective-bargaining contract would 'bog down,' thereby imperiling by strike its own production and the jobs of some 65,000 employees, only then did the respondent acquiesce with measured reluctance in the UE demands. It was this type of situation, here so pointedly demonstrated, that impelled the Congress to enact section 10 (c) of the act, as amended. I only regret that the occurrence before August 22, 1947, of the events herein *preclude the present application of this section.*"

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[22] N. L. R. B. case No. 4-R-1599, 15 L. R. R. M. 238 (not officially reported).

[23] Case No. 111-15172-HO, regional War Labor Board, third region, order dated September 10, 1945.

[24] N. L. R. B. case No. 8-R-2588, not officially reported.

[25] N. L. R. B. case No. 8-C-2174, 80 N. L. R. B. No. 143.

[26] *Matter of Rutland Court Owners, Inc.*, supra.

[27] *Matter of Lewis Meier & Company* (73 N. L. R. B. 520, 524); and *Matter of E. L. Bruce* (75 N. L. R. B. 522, 529).

One further instance of misuse of union-security provisions by unions should be cited. Our national agreement with the UE-CIO immediately prior to our 1946 strike contained a maintenance-of-membership provision, coupled with a provision for annual "escape" periods for the union members. However, as a penalty for withdrawing from union membership, the contract provided that the withdrawing employees should lose their seniority rights. We felt this was unfair and unjust, and fought vigorously to have this latter restriction removed from the contract. When our negotiations were completed for the new 1946 national agreement, we were able to remove this penalty provision. There had been several instances during the strike, which were brought to my attention in letters I received from employees, where the union had threatened employees with loss of their jobs under the maintenance-of-membership provisions if they failed to do everything the union thought they should do during the strike. Therefore, while we agreed to a maintenance-of-membership provision in the new agreement, we also anticpated that such provision might be used by the union as a basis for reprisal against employees who had incurred its displeasure during the strike. To forestall this use of the maintenance-of-membership provision, we incorporated into the strike-settlement agreement, which the union signed, a commitment that neither the company nor the union would discriminate or retaliate against any employee because of "any occurrence pertaining to the strike," and the further commitment that the maintenance-of-membership provision of the labor agreement would not be used for the purpose of circumventing this provision against discrimination and retaliation.

Not long after the end of the strike, we became aware of the fact that several UE-CIO members at our Mansfield, Ohio, plant had refused to pay a so-called strike assessment levied by the local on all its members. Several of these members were declared by the union to be in bad standing and we received requests to discharge them. The union made no attempt to conceal the fact that it was proceeding against this group for the purpose of frightening a much larger group of other people into paying their assessment. We refused to discharge these people, on the ground that this was a clear case of discrimination and retaliation for an occurrence pertaining to the strike, in violation of the union's agreement made in settlement of the strike. The union has never accepted the company's position, but the men were never discharged.

In still another case, a member of the UE-CIO local at one of our plants protested vigorously against a proposed assessment of the members to finance a trip by one of the union officers to Pittsburgh and New York to participate in discussions among local and international union representatives of the kind of proposals the union should make to the company for a new national agreement. Because he had the temerity to oppose the wishes of the local union leadership on this matter, he was expelled from the local and we were forced to discharge him, under the maintenance-of-membership agreement then in effect. He filed charges of unfair labor practice against the company, which were later withdrawn.[28] Since this occurred before the Taft-Hartley law, he was without any recourse against the union before the Board, although the union was the direct cause of his losing his job.

We have seen enough of the way in which union security provisions can be and are abused to be convinced that the Taft-Hartley law's safeguards against such abuses are desirable and should be retained.

FREEDOM OF SPEECH FOR EMPLOYERS

I feel very strongly that the rights to free speech by employers should be safeguarded, as long as there is no coercion, intimidation or bribery involved, and should continue to be provided for in any labor law.

What does free speech for the employer mean to me?

It means, for one thing, the right to report to our employees the facts about our company's operations and business—as we have done in letters, in talks, in our company newspaper, on bulletin boards and in special reports.

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[28] NLRB case No. 20-C-1685, not officially reported.

It means the right to talk with our employees, through such mediums as I have mentioned, about the problems of our company—such as competition, supplies of materials, inventories, taxes, our margin of profit, and disposition of profits. All this we have done.

It means the right to urge our employees to take an active interest in their unions, to attend union meetings and to select their officers with care and thought. This, too, we have done, because we have been concerned about newspaper accounts of consistently small attendance at union meetings, particularly when matters of vital importance to the company and its employees are being considered. To facilitate participation by our employees in union affairs, we have permitted union representation elections and elections for union officers to be held in some cases within our plants.

We do not believe freedom of speech gives us the right to coerce or intimidate our employees in the selection of a union. And we have never done so.

I realize that many people feel that the rights which I have commented on already are guaranteed to us under the first amendment to the Constitution and that it is not necessary to spell them out in a labor law. But I believe the experiences which employers suffered during the earlier years of the Wagner Act were ample indication that such a provision is necessary.

I would also like to comment briefly upon objections that have been raised to provisions of the Taft-Hartley law which prevent the Labor Board from using instances of free speech as evidence in unfair labor practice cases. We readily admit that in some cases, this limitation may hinder the Board in its attempts to prove the existence of an improper motive in discrimination cases. However, it must be recognized that the use of noncoercive statements as evidence against an employer was the favorite device by which the Board, under the Wagner Act, effectively denied the right of free speech to employers, while at the same time paying lip service to it. The freedom which the Board enjoyed under the Wagner Act to predicate its findings upon such evidence—no matter how far removed in point of time and no matter how little connection it had with the alleged discriminatory action—had the practical effect of a complete denial of the right itself. It seems to me, therefore, that, on balance, the few cases in which the limitation may lead to a failure of proof in individual cases are considerably outweighed by the broad protection given to both members and unions against the indirect, but nevertheless effective, denial of free speech which this provision affords.

NON-COMMUNIST AFFIDAVITS

Another provision of the Taft-Hartley law which we believe should be continued is the requirement of non-Communist affidavits.

This is a subject in which Westinghouse has a rather vital and legitimate interest due to the fact that it has been publicized as an issue within the UE-CIO which represents approximately two-thirds of our employees. Also, Westinghouse was involved in testimony last year before a subcommittee of the House Labor Committee which investigated communism in the labor movement. The UE-CIO was among the unions investigated by the subcommittee. A former president of the UE-CIO testified before the subcommittee that employers, including Westinghouse, prefer to deal with Communists rather than with non-Communist labor leaders because Communists are less aggressive and easier to get along with.

Let us assure the committee that Westinghouse does not prefer to do business with Communists—either in labor, in government or in any other field.

We believe that any person whose first loyalty is to a foreign government and who advocates the overthrow of our Government by undemocratic methods should be excluded from any position where his activities can influence the economic or political life of this Nation. Labor leaders clearly can exercise such influence—and therefore we cannot see that there can be any serious challenge to the non-Communist provision of the Taft-Hartley law.

But, as I said, we also believe that Communists and supporters of Communist doctrines should be excluded from any position where they can influence the economic and political life of this Nation. As far as I am concerned that means management, government and professions, as well as labor.

Some labor leaders have testified that the non-Communist provision discriminates against labor, that it has embarrassed them and has reflected upon their patriotism and that of the whole labor movement, in that such affidavits are required only of union leaders; not of management members.

I will willingly sign any such affidavit, and I see no objection whatsoever to including management in this requirement.

Because of widespread publicity which has been given to charges of Communist domination of the United Electrical Workers, we have been asked many times why we continue to deal with this union. We can only say that the law requires us to bargain collectively in good faith with any labor organization which has been chosen as bargaining agent by our employees through the democratic processes under the National Labor Relations Act. Also, we cannot see how we could refuse to deal with any officer or steward of any union who was duly elected by the union as its spokesman or representative. Wherever Westinghouse bargains with the UE-CIO as exclusive bargaining representative, that union has been so designated by the Board.

As we see it, if the leaders of any union with which we do business should be removed from their positions, there are two ways in which that should be done: either by the Government, after it proves in court their unfitness for such positions, or by the members of the union from whom these leaders receive their positions of authority.

If the Government has evidence to support charges that the leaders of any union are guilty of violating any existing laws and are unfit to continue in their positions of responsibility, this evidence should be produced and used by the Government to prosecute such leaders. If present laws are inadequate, new legislation should be enacted; but its enforcement should be in the hands of the Government. If, on the other hand, members of the union decide they want new leaders, their right to freely exercise their privilege of voting them out of office should remain inviolate and, if necessary, be protected by the Government. We think that Westinghouse has no right to initiate either governmental or membership action of this type.

To some extent, we agree with Secretary of Labor Tobin's statement before the Senate Labor Committee that communism is an over-all problem that should be handled by adequate legislation * * * but we do not think that the anti-Communist provision should be omitted from labor legislation pending the time when wider legislation might be adopted. Because of the importance of labor-management relations to the economic welfare of this country, and because of the vast power which Communist seizure of labor unions gives to forces hostile to our form of government, I firmly believe that non-Communist affidavits from both labor and management should be required.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases Nos. 8-RC-158, 8-RC-159, 8-RC-160, 8-RC-161, 8-RC-162, 8-RC-163 (consolidated)

IN THE MATTER OF THE WILSON TRANSIT CO., INTERSTATE STEAMSHIP CO., THE INTERLAKE STEAMSHIP CO., M. A. HANNA CO., BETHLEHEM TRANSPORTATION CORP., AND PITTSBURGH STEAMSHIP CO., EMPLOYERS,[1] AND NATIONAL ORGANIZATION MASTERS, MATES, AND PILOTS OF AMERICA (A. F. OF L.), PETITIONER

DECISION AND ORDER

Upon petitions duly filed, an order consolidating the above cases was filed on July 8, 1948. A hearing on the consolidated cases was held at Cleveland, Ohio, on various dates between July 29 and August 9, 1948, before Philip Fusco, hearing officer. At the hearing the Employers filed numerous motions to dismiss the petitions upon various grounds. The Employers' motion to dismiss upon the ground that the unit sought is inappropriate is granted for reasons hereinafter stated.[2] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.

Upon the entire record in the case, the Board finds:

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[1] The names appear as amended at the hearing.

[2] In view of our ruling on this motion we find it unnecessary to pass on the other motions to dismiss.

1. The Employers are engaged in commerce within the meaning of the National Labor Relations Act.[3]

2. The National Organization Masters, Mates, and Pilots of America, affiliated with the American Federation of Labor, is a labor organization and claims to represent employees of the Employers.

3. The Petitioner seeks in each case a unit composed of licensed pilots who sign on as mates, on all ships owned and operated, and on all ships operated but not owned, by each of the Companies.[4] The Petitioner contends that the employees sought are nonsupervisory professional employees. The Employers contend that such unit is inappropriate since they do not employ any pilots as such; that the employees for whom the Petitioner would bargain collectively are mates who are qualified to serve as pilots, and that these individuals are supervisors within the meaning of the Act. The Employers have no history of collective bargaining with respect to the employees sought herein.

The statutes and regulations of the United States Coast Guard applicable to the control of navigation on the Great Lakes require that each vessel of the type herein involved carry as part of the ship's crew a master and pilot, two first-class pilots, and one second-class pilot, all of whom are licensed deck officers. Pilots as such are, however, not employed by the Employers, but are signed on as mates and are required to carry pilot licenses in order to secure employment.

At the beginning of the shipping season in early spring, the mates, who report from 3 to 10 days before the master, are required to make the vessels ready for official inspection and navigation. As part of such duties they may be called upon to hire certain unlicensed crew members in order to complete the ship's complement of personnel, without which the vessel would not receive its certificate of inspection from the U. S. Coast Guard. The first mate takes charge of the work and assigns certain tasks to the other mates. Each mate is responsible for the work of the crew members assigned to him and for the satisfactory completion of the work. When the ship is ready to leave port, the master comes aboard and takes charge. The mates are then required to stand watch,[5] and the master delegates to the mates the duties of maintaining and providing for the upkeep of the vessel. In the absence or incapacity of the master the first mate assumes complete control over the vessel. Should the first mate also be absent or be incapacitated, the second mate takes charge, and in corresponding circumstances, the third mate will take command of the ship.

In discharging his duties as pilot, a mate has complete charge of, and is responsible for the safety of the ship until relieved by the master or mate next on watch.[6] He has under his immediate control the wheelsman and watchman, and is also responsible for the work being performed by the deck crew then on duty.[7] Whether he be considered mate or pilot, while navigating the ship he has the duty and authority to direct and advise the Wheelsman.[8] He may, in the exercise of his judgment, relieve an incompetent wheelsman or watchman and transfer any other qualified deck member to these positions. In addition, the record shows that as mate or pilot he has the authority to recommend the discharge or promotion of unlicensed deck personnel.[9]

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[3] All the companies stipulated, in effect, that they are domestic corporations engaged in the business of transporting bulk cargo on the Great Lakes principally between the ports of the various States on the Great Lakes and that during the past year each carried in its vessels cargos of substantial tonnage valued in excess of $1,000,000 or larger stipulated sums. All but the M. A. Hanna Co. admit that they are engaged in commerce within the meaning of the act. We have in previous cases found the M. A. Hanna Co. engaged in interstate commerce within the meaning of the act. See *Matter of M. A. Hanna Company* (75 NLRB 185; 65 NLRB 605).

[4] The vessels in question are steam vessels ranging in carrying capacity from 7,000 tons to 18,000 tons and are separately valued up to $3,000,000. The number of vessels involved is as follows: The Wilson Transit Co., 11; Interstate Steamship Co., 4; The Inter-Lake Steamship Co., 36; M. A. Hanna Co., 13; Bethlehem Transportation Corp., 12; Pittsburgh Steamship Co., 62. The parties stipulated that each vessel carries in addition to a master, who is also a licensed pilot, 3 licensed pilots who sign the ship's articles, or contract of employment, as first, second, or third mate. It is conceded that the master is a supervisor within the meaning of the act.

[5] The mates are called upon to stand individual watches of 4 hours' duration in rotating shifts. They have under them at such times a wheelsman, watchman, and deckwatch, and during the daylight shift, three deck hands and a boatswain, where boatswain are employed.

[6] It has been variously estimated by the Petitioner's witnesses that a mate, depending upon his experience, will spend from 75 to 95 percent of his hours on duty in the pilot house. However, he is not infrequently relieved by the master, on which occasion he will go down on deck to look after the work of the deck crew.

[7] Captain Ernest N. Pollock, district officer in charge of marine inspection, U. S. Coast Guard, called as a witness by the Petitioner, testified that even when on watch in the pilot house, the pilot is acting as mate since he has the entire deck crew under his supervision.

[8] The mere fact the pilot is under a statutory duty with respect to the direction of the wheelsman does not alter or detract from his status as supervisor and representative of the Employer concerned. Cf. *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, 395.

The Petitioner contends, however, that mates or pilots are first and foremost professional employees without supervisory authority;[10] that their professional status may not be changed simply by the imposition of a supervisory title; and that on leaving the pilot house they merely relinquish their professional status for the moment to assume the routine tasks of gang pushers or straw bosses.[11] Moreover, the Petitioner contends that mates as such may not lawfully be employed on the Great Lakes; that their duties in the capacity of mates are of doubtful validity and ought not to be used to deprive them of their rights as employees. In view of the present record, we find it unnecessary to pass on the Petitioner's contention as to the validity of such employment. However, we note that the record itself tends to disprove the Petitioner's contention in this respect.[12]

As regards Petitioner's contention that the personnel involved herein do not have supervisory authority, such contention is supported neither by the record nor the authorities cited by the Petitioner. The record shows that these employees have the same responsibilities and perform the same duties as do the employees in similar classifications in other cases heretofore considered by the Board.[13] Moreover, the parties hereto have stipulated for the purposes of the record that the duties and responsibilities of the employees involved herein are generally similar to the duties and responsibilities of the employees classified as mates who were considered in the record of proceedings formerly before the Board in the case of Wyandotte Transportation Company.[14] In the latter case, cited by the Employers in support of their position, it appears, as in the instant proceeding, that the mates concerned were designated as pilots on the certificates of inspection issued by the Government inspection service. In that case we decided that the mates there employed were executive employees and constituted a part of management. We recognized that the position of those mates was the same as that of the licensed deck officers involved in prior decisions of the Board. Accordingly, we determined that, notwithstanding their supervisory authority and managerial responsibilities, such employees were entitled to the benefits of the act. However, as a result of subsequent changes in the law brought about by the passage of the Labor Management Relations Act, 1947, we ultimately concluded that the duties and responsibilities of the mates in question fell clearly within the purview of the definition of supervisor as set forth in section 2 (11) of the amended act excluding supervisors from the definition of employees entitled to the benefits of collective bargaining. Accordingly we agreed to a discontinuance of all enforcement proceedings with reference thereto.[15] There is nothing in the present record which alters our opinion in this respect.

Upon the basis of the present record, and the stipulation of the parties, we find that the unit herein proposed in each of the aforesaid cases is inappropriate upon the ground that all the individuals sought to be included therein are supervisors within the meaning of the act. We shall, therefore, dismiss the petitions.

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[9] One of the Petitioner's witnesses, who is a licensed pilot and has served on Great Lakes vessels for many years, testified that his own recommendations as to promotion, transferring, hiring, demotion, rewarding, and assigning ship's personnel have been followed in the majority of cases by 10 out of 11 masters with whom he had served.

[10] In view of our finding hereinafter we deem it unnecessary to pass on the issue raised by the Petitioner as to whether or not pilots are professional employees.

[11] The Petitioner in furtherance of this contention points to the fact that mates, when not on duty in the pilot house but working with the deck crew, do a substantial amount of manual labor. The mere fact, however, that a supervisor spends a large part of his time in the performance of manual labor does not necessarily affect his status as a supervisor. (See *Matter of The Murray Company,* 77 N. L. R. B. 481; *Matter of Steelweld Equipment Company, Inc.,* 76 N. L. R. B. 831.)

[12] Petitioner's own witness, Captain Pollock, testified that the practice was well known to the inspection service and that it did not regard the employment of mates as illegal. Moreover, administrative recognition of the practice and, by implication, approval thereof seems to be contained in section 10.05–13 of "Rules and Regulations for Licensing and Certificating of Merchant Marine Personnel," United States Coast Guard, introduced in evidence by Petitioner as exhibit 15. The section provides that a minimum requirement, among others, for an applicant to qualify for a master's license on Great Lakes steam and motor vessels is "1 year's service as first-class pilot *while acting in the capicity* of first mate on Great Lakes steam or motor vessels * * *." [Italics added.]

[13] See *Wyandotte Transportation Company* (62 N. L. R. B. 1518), and cases cited. See also *Matter of Charles Zubick* (74 N. L. R. B. 356); *Matter of Crucible Steel Company of America* (72 N. L. R. B. 1202); *Matter of Standard Oil Company* (67 N. L. R. B. 506); *Matter of Nicholson Transit Company* (65 N. L. R. B. 418). Cf. *Matter of Kinsman Transit Company* (75 N. L. R. B. 150); *Matter of Wilson Transit Company* (75 N. L. R. B. 181); *Matter of M. A. Hanna Company* (75 N. L. R. B. 185) (where the Board found stewards, or chief cooks, unlicensed personnel on Great Lakes bulk cargo vessels, supervisors within the meaning of the Act).

[14] 62 N. L. R. B. 1518; 65 N. L. R. B. 930.

[15] *N. L. R. B.* v. *Wyandotte Transportation Company* (166 F. 2d 434 (C. A. 6th) 1948).

ORDER

Upon the basis of the entire record in this case, the National Labor Relations Board hereby orders that the petitions filed in the instant matters be, and they hereby are, dismissed.

Signed at Washington, D. C., this —— day of December 1948.

[SEAL]

James J. Reynolds, Jr.,
Abe Murdock,
J. Copeland Gray,
Members, National Labor Relations Board.

NATIONAL LABOR RELATIONS ACT OF 1949

FRIDAY, MARCH 18, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Cleveland M. Bailey, presiding.

Mr. Bailey. The subcommittee will be in order.

Mr. Jacobs. Mr. Chairman.

Mr. Bailey. Mr. Jacobs.

Mr. Jacobs. Before we open the formal hearings, I would like, if there is no objection, to enter into the record a clipping from the Washington Post of this morning, in regard to the closed shop and the hiring hall, disclosing that both parties had agreed that the hiring hall was beneficial, but that General Counsel Denham had refused to drop charges on the west coast.

Mr. Bailey. If the Chair hears no objection, the article will be accepted for inclusion in the record.

Mr. Jacobs. I might say, Mr. Chairman, it is not offered as evidencing any opinion on my part that the law, as written, should be violated, but rather to show the law is not in keeping with the desires of many employers and employees.

(The article referred to is as follows:)

Denham Won't Drop Protest on T-H Charge

[By the Associated Press]

Robert N. Denham, general counsel of the National Labor Relations Board, yesterday refused to drop a complaint that union hiring halls for west coast waterfront workers violated the Taft-Hartley Act.

Both Harry Bridges' longshoremen and the West Coast Waterfront Employers Association had asked Denham to drop the charges.

The union and employers joined in urging at a long conference with Denham yesterday afternoon that the complaint—originally filed by the waterfront association—be dismissed.

The current contract, providing for the preferential hiring of union members through the hiring hall, was written at the conclusion of last September's strike. The strike broke out September 2 as the 80-day Taft-Hartley injunction obtained by President Truman expired.

Denham said he would proceed with his plan to ask NLRB Trial Examiner Irving Rogosin at a hearing in San Francisco April 5 to reopen the record in the complaint case so he could insert the new contract as further evidence of Bridges' violation.

The Taft-Hartley Act outlaws the closed shop. Denham told a reporter after the conference that the contract contains all the closed-shop provisions which the act prohibits.

"We are glad that people agree, but when they agree to do something illegal it kind of puts the enforcing officer on a spot," Denham said.

"As far as we are concerned there is nothing for us to do but to pursue the complaint. So long as the law remains unchanged and I am the enforcement officer, that has got to be my position.

"When and if Congress wants to change that law, that will be different," he added.

Mr. BAILEY. At this time the committee will be pleased to hear Mr. Theodore W. Kheel.

TESTIMONY OF THEODORE W. KHEEL, FORMER DIRECTOR, DIVISION OF LABOR RELATIONS, CITY OF NEW YORK

Mr. KHEEL. Mr. Chairman, I have prepared a statement which I have submitted to the committee, and I would like to read parts of it, and paraphrase other parts of it, and give you the testimony that I would like to present on the matters before you.

Mr. BAILEY. I am sure that will be agreeable to the committee.

You may proceed.

Mr. KHEEL. I state in this prepared statement my qualifications to speak before the committee on the matter of new labor legislation, and I would like to address myself primarily to the so-called emergency strikes affecting the health and welfare of the people of this country. I do that because I served, up until very recently, as a Director of the Division of Labor Relations of the city of New York, a very unique agency of municipal government, which Mayor O'Dwyer created because the city of New York had been faced with many serious strikes of an emergency nature so far as New York City was concerned, of its 8,000,000 local inhabitants and 13,000,000 people in metropolitan New York, and it so happened that every time a strike arose of a critical nature, so far as the people of New York were concerned, the people inevitably turned to the mayor for help.

To be sure, there were agencies of the State government prepared to meet the emergency conditions, but nevertheless they selected the mayor to do something about it.

I state my other qualifications to testify, in this prepared statement, and I will not bother you with reciting them at this point.

I will say we have had experience in the handling of emergency disputes in the Division of Labor Relations which I think might be of value to your committee in considering what to do about emergency disputes of a national nature. I would like to stress initially that the Division of Labor Relations, as we called it, was set up in October of 1946, and handled possibly 150 or 200 disputes in New York City from that time until the present. We have never had any fixed procedures. We never tried to impose on employers or unions any time limits or cooling-off periods, or other procedural requirements for the adjustment of their disputes, other than those they set up; nor did the division have any weapons other than public opinion in helping in diverting strikes.

I should like to define what I mean by the force of public opinion or community concern, and how we used it to help adjust disputes.

Whenever a dispute arises which materially affects the welfare of the people of New York City, the mayor calls the disputing parties to City Hall. Then at a joint meeting he discusses the gravity of the dispute, as it affects the people of the city. The mayor avoids at these meetings any discussion of the immediate issues which caused the dispute. In conclusion, he usually designated what we called a citizen's committee to help bring about a settlement. And the use of the so-called citizen's committees has been very effective in helping adjust emergency disputes in New York City. What we did was to reach out and get people of outstanding reputation in ability and in labor and in education, and in the judiciary, to help in a mediatory capacity with these disputes. We paid these people no compensation whatsoever. The only reward they got was the satisfaction of helping the city. The people of all political complexions made no effort whatsoever to consider that factor at all. They came from all walks of life. The single distinguishing factor was their outstanding reputation for having achieved something of significance in the community.

The mayor would bring the parties to city hall, and he would try to instill into the parties a sense of obligation to the community to do something about the dispute, and then just let these citizen's committees go to work. And I must say we found that that was extremely effective. We found that people of outstanding ability and reputation in business, labor, or what have you, were good mediators. The experience they had had in dealing with people we were able to put to good use in the settlement of labor disputes. I think, that while there is nothing revolutionary about that discovery, I think it is something, nevertheless, you might consider for use on a national scale.

Mr. Bailey. May I interrupt the witness at this point to bring forcibly to your attention that the Bureau of Labor Standards is a part of your legal set-up of the Department of Labor, and in New York——

Mr. Kheel. No, this is a special division of the city of New York, and it was created by Mayor O'Dwyer. It is, in fact a very small division, and its prime function is to help settle emergency disputes that affect the people of New York City.

Mr. Bailey. You may proceed with your regular presentation.

Mr. Kheel. And, as I say, in the process of dealing with these emergency disputes, one of the prime techniques we developed was the use of the citizen's committees, and the attempt through people and through the mayor, and through city hall, and through the newspapers, who were very cooperative in the work we did, to instill in the parties a sense of obligation to the community to achieve a settlement without a strike. I know you might view cynically the doctrine of trying to impress upon companies and unions their obligations to the community to avoid a strike in such matters as milk and food and electricity, and so forth, but the fact is, and I can testify from personal experience, that we have had success in instilling that type of responsibility and sense of obligation in the parties.

And we find further that the people whom we have asked to serve on citizen's committees—and we have no dividing line; they can come from labor or industry—and when they are asked to serve in a mediatory capacity, they serve impartially, and we are not particular to have a balanced board.

We have had exceptional cases where we have used a board of five persons, all from a labor union, or all from the American Federation of Labor, in a dispute involving a union of the American Federation of Labor, and they brought about a very effective settlement under a difficult set of circumstances.

And there are other instances where we have had three or four representatives of management, so-called, in that their primary work in everyday life is on the management side of things; and yet we found that they were able to serve impartially and without regard to their background.

I would like to stress again we used no regularized formal procedures; each case is taken up on its own merits, and treated as a separate problem, different in its issues and personalities from all others. The only procedural deadline we observe is the feeling set by the parties, and that is usually the termination date of their existing agreement. Sometimes, when circumstances warrant it, the mayor may request a postponement of the strike deadline for a short period of time. But we carefully refrain from establishing a pattern for getting a strike postponement and thereby creating the expectation on the part of the companies and unions that a postponement will always be sought. I think that is very important, and I would like to stress that. Sometimes we have asked for a postponement, but we do not do it as a regular matter, and we try to avoid a postponement of the strike deadline, and thereby avoid creating the expectation on the part of companies and unions that a postponement will always be sought.

To explain further why we avoid regularized postponements or cooling-off periods, I must make clear our attitude toward the role of the strike or lock-out in bringing about agreements. We are never disturbed by the threat of a strike. On the contrary, we find that the establishment of a deadline for agreement helps bring about settlements.

Labor unions dislike strikes as much as do employers and consumers. A work stoppage costs the striking employee his wages for the time he is off and, in most cases, he has to work many months for what he loses.

When the parties know that they both stand to be losers unless they reach an accord by a certain date, there is an incentive for them to settle their differences. By the same token, as experience has proven over and over again, in the absence of a deadline the parties tend to avoid any concessions in their positions, since they suffer no disturbing inconvenience for failing to agree.

We can see how this works when we consider the effects of the emergency provisions of the Taft-Hartley law, with its 80-day cooling-off period, on several recent disputes in the New York City area.

Early in January 1949, the division of labor relations, through the assistance of Mr. William J. McCormack, a leading New York businessman, settled a dispute between the operators of tugboats in New York Harbor and local 333 of the International Longshoremen's Association.

I might say that in the early part of 1946 we had a tugboat strike in New York City and, I believe, that of all the strikes that New York City has had, that was probably the worst. We did not fully realize how important our tugboats were until the tugboat strike occurred. The island of Manhattan is dependent upon oil and food which must be brought in by tugboats. It cannot be brought in in adequate supplies by rail or truck, and when this tugboat strike occurred in 1946—and it was really perhaps the most important reason for the creation of this division of labor relations—New York City faced a state of serious emergency.

Again in 1948, or 1949, on January 1, we were faced with the same problem. At this time we had these procedures I am telling you about, to deal with the tugboat emergency, and immediately Mr. William J. McCormack accepted the responsibility—with complete confidence by the labor groups—to act as a mediator in this dispute. The big problem we faced in that dispute was the Taft-Hartley law, in this sense: When we first knew about it or heard about it, we first tried to do something about it in the middle part of December. Their contract expired on December 31. When we consulted with the parties at that time, we found that they were uncertain as to whether or not the tugboat would, if a strike occurred, create a national emergency within the meaning of the Taft-Hartley law; to be sure, it would create a New York City emergency; whether that was national or not, was a legal question which the parties did not have the answer to, and because of that uncertainty, and because of the uncertainty as to whether or not they would be enjoined in the event of a failure to agree, there was absolutely no collective bargaining taking place whatsoever, for the reason that if there was the possibility of an injunction then they were not going to bargain against the December 31 deadline, but March 20. The union would make no concessions and the employer would make no concessions, if the deadline was going to be December 31, and they would be able to bargain in the light of that deadline. That is the way the employers acted, and the way the unions acted. They were not going to make concessions before the expiration of their contract, as they would have roughly 80 days after the contract expired. So we had a state of great uncertainty with no collective bargaining taking place.

We were able, at that time, to communicate with the Federal authorities, and ask them whether they thought an injunction was likely, and without committing themselves—obviously, as they could not—they did indicate that an injunction was not likely because of the local character of the dispute, and we were able to pass that on to the parties, and that made it possible for the wheels of collective bargaining to begin to revolve. And it made it possible for us to work out a settlement. As a matter of fact, we got a postponement of a week or two at the request of the mayor, and some time around the 10th of January we worked out a settlement of that dispute, which probably still would be lingering with us right now if an injunction had been issued, and the deadline had been postponed from January 1 to March 20.

In contrast, I would like to tell you about another dispute we had up in our area. That involved the longshoremen on the water front, not only in New York City, but up and down the east coast. There the parties were engaged in bargaining, and they knew full well that they were going to be enjoined, because their industry, it would seem, constituted an emergency-type industry. I believe their initial contract expired some time in June—I am not certain of the date—but in view of the fact that they knew they were going to be enjoined there was no bargaining to speak of that took place before the injunction date, nor could you expect the employers to make any offers, nor could you expect the union to make any concessions in its position.

The deadline was then postponed for 80 days. During the 80-day period the employers made an offer and I believe that one of the reasons, perhaps, they made the offer was because the law said—I believe it is 10 days before the injunction expires—the National Labor Relations Board must poll the employees on the employer's last offer. The election takes place, as I say, 10 days before the injunction expires. In this particular industry 10 days before the final date happened to be 10 days too soon, because the parties were still bargaining in light of a deadline. At least the employees felt the employers might be bargaining in light of the deadline and, consequently, the employers felt, quite properly, as a matter of self-protection, that they would be silly to make the last offer 10 days before the injunction expired. The employers made their supposedly real last offer, and the National Labor Relations Board was compelled by law to conduct a ballot that the United States Government prepared as the employers' last offer, and it was put to the employees at an election. The employees voted on it, and all the while everyone knew it was a phony offer, and that it was really not their last offer. They would have been very silly if they had made it as their last offer.

And, as everybody expected. the so-called last offer was turned down by a vote of 90 to 1 or 10, or something in that neighborhood, and the parties resumed bargaining, and the employers made another offer which I believe—I do not know for certain—but I believe they intended it to be their real last offer. That was accepted by the negotiating committee of the union, but then when it was reported back to the rank and file, a strike took place, and this last offer was also rejected by a vote of the membership. A strike took place, and the circumstances of that strike were that the employers had twice made a last offer, and it was once voted upon in an NLRB election and, secondly, an improved offer that a negotiating committee had accepted both of them, and they were rejected, and the strike took place.

On the day of the strike the employers could not, with any degree of self-respect make any further improvement in their offer, without completely destroying the integrity of their bargaining position then and for years in the future.

I felt at that time, under those circumstances, and in view of those complexities, that the 80-day provision of the Taft-Hartley law created an impossibility for a settlement for several weeks, and that is exactly what took place. The strike went on for several weeks until it was possible to get the parties, and the parties to get themselves, in a position where they could reach an adjustment where it would be, let us say, face-saving to the employers and to the union, and that is what happened.

They made another offer which was still a further improvement upon their last offer, and which was an improvement upon the offer they put on a ballot of the National Labor Relations Board, as their final offer. That, I say, is the contrast that I bring to your attention between this water-front dispute, where the 80-day injunction applied, and where they knew in advance it would apply, and to the tugboat dispute where we were able to get a settlement, and where the injunction probably would not apply.

I would like to also bring to your attention the fact the 80-day "cooling-off" period creates additional problems. It creates the problem of retroactivity, and that becomes a new issue. That did not exist before the injunction was issued. When the contract expires, if an agreement is reached at the time of the expiration of the contract, presumably it takes effect on that date. When the United States Government comes along and enjoins a strike for 80 days it is only fair to expect that the employees will try to get any adjustment subsequently agreed upon—subsequent to the date upon which their contract expires.

On the other hand, it is very unfair to the employers. It is unfair to those employers, particularly, who are subject to regulatory bodies, because they cannot adjust their prices retroactively and, particularly, as I say, in cases of companies subject to regulatory bodies—and most of those in the so-called emergency disputes are subject to regulatory bodies—they have to apply, after the adjustment is finally made, for rate relief.

On the one hand you get the employees with a justifiable claim for retroactivity, and then you get the employers in a position where any adjustment made retroactive cannot be properly inserted into their price structure and, consequently, they resist retrocativity, so you have a new issue—the question of retroactivity—with equities on both sides, for the employer who cannot recoup the cost of the adjustment, and for the employees who have been restrained from striking for 80 days by the United States Government, who claim quite properly that they are entitled to retroactivity.

So I say there is a new issue: The 80-day injunction creats a new issue that you do not have without the 80-day injunction.

There is another problem it creates in most cases, and that is that particular contract termination dates have some historical significances in the light of the bargaining of the parties. It may come at a time when the business of the employer is in the slow season, and whatever the reason for the particular time, the fact is that the parties have bargained, and you come along with an 80-day injunction, and you can do great harm to employers, and you can do great harm to unions, in that respect because you can alter their basic bargaining positions. You can take an empolyer from the slow season into his very busy season, where a strike would be absolutely fatal to him; and therefore the union's position is strengthened that much. Or, it may work in exactly the reverse.

This problem the injunction creates, of putting the termination date 3 months beyond what the parties themselves have agreed to, can work to the disadvantage of the union, or it can work to the disadvantage of the employers. It is a matter of chance in a particular case. The important thing is that by law you are changing what the parties themselves have selected as the proper termination date of their agreement for whatever may be the reasons they have selected it.

I would also like to bring to your attention the effects of another law, to deal in a regularized way with the relations of employers and unions, and the unfortunate consequences of that law. I refer to the Condon-Wadlin law, which was a law passed in New York State about 2 years ago to deal with these strikes by public employees.

This law sets up certain fixed procedures, including certain fixed penalties for strikes by employees, and it has no escape valve whatsoever; everything flows automatically from what takes place, and the public officials are charged—it would seem, anyway—with the duty applying the fixed procedures.

Just recently in New York, a minor grievance in Yonkers developed into a garbage strike. The garbage collectors were out on strike for several days, 10 days, I believe, and the Yonkers officials found themselves in the position where they could not adjust the grievances of the employees and settle the dispute even though they wanted to. They started legal proceedings for an injunction. They tried to hire replacements for the men who had gone out on strike. And all of those procedures failed.

Finally, they called off their injunction proceedings and reinstated all the employees with the hope, I presume, that nobody would press too hard about the application of the fixed rules of the Conlon-Wadlin bill. In any event, the men went back to work under the old conditions that existed before this unfortunate circumstance took place.

You had the spectacle of a law having to be bent, so to speak, to fit the circumstances of the particular case, which certainly is not calculated to develop the kind of respect for the laws of our governments that we should have.

From this experience we have had in New York, I come to these definite conclusions:

(1) A "cooling-off" period will not contribute to the settlement of labor disputes, but merely postpones the evil day, sometimes intensifies the dispute instead of helping in its settlement, and creates new issues for the parties to settle. In addition, the use of injunctions in labor disputes serves as a further irritant to a settlement when, as a matter of fact, labor negotiations yield only to persuasion and not to force.

(2) Fixed procedures specifying time limits and other requirements for the various stages of collective bargaining will not help settle disputes. The parties merely adjust their strategies to the new procedures.

(3) The most effective method of settling labor disputes is to concentrate all efforts on bringing about a settlement within the time limits fixed by the parties themselves or any extension that is mutually agreeable but not fixed by a blanket law for all disputes.

(4) The use of citizens' committees can be of great help in bringing about settlements if they are composed of outstanding men whose status and ability command the respect of the parties. These committees should function primarily as mediators. They should also be given the power to make recommendations, but should not be required to make recommendations. That matter should be left to their judgment so as to achieve the greatest degree of flexibility in order to fit the circumstances of the particular case.

I might interject at that point that under the Taft-Hartley law, these boards that the President sets up are directed to find the facts and to do nothing more, and that seems to me to be one of the most futile gestures that could be conceived of, because the facts are rarely in dispute in these labor disputes. Everybody knows what the union is asking for and what the employers are offering them in exchange. The dispute is how to achieve a settlement. And these boards that the President is required to appoint in emergency disputes are sent out to find the facts, and they find the facts and then they leave.

It seems to me that the committees that the President could appoint, as we have done in New York, should be given the power to mediate and help to try to bring about a settlement. People of outstanding ability in mediation can help to bring about settlements. If it seems appropriate, they can make recommendations. I do not think they should be forced to make recommendations. I think they should be given the widest latitude, with the object in mind of achieving agreements.

I say, fifthly, that every effort should be made to impress upon the parties their obligation to the public to reach a settlement without any interruption of work.

I am well aware that these suggestions do not guarantee complete elimination of "emergency" type strikes. And I do not want to leave the impression that our system of mediation averted all "emergency" type strikes. We have had a few critical strikes in the last 3 years. But for every strike we had, we averted 100 potential strikes of a serious nature. And the few strikes we had were brought to an end in less time, I am sure, than would have been the case if our procedures had not been used.

The plain fact is that there is no way to guarantee absolutely against strikes unless we enjoin them entirely and adopt the methods of the dictator countries. Even the Taft-Hartley law does not ban strikes permanently; it postpones the beginning of an "emergency" strike with the resultant harmful consequences I have described above.

So long as we want free private enterprise, we must also accept free collective bargaining with the possibility of a strike. But if we focus our main attention on ways and means of achieving agreements through collective bargaining, I do not believe we need be unduly concerned about strikes.

The Taft-Hartley provisions are defective because they start with the assumption that there will be a strike and then set up fixed procedures, with irritating injunctions, for dealing with them. These procedures, as I have shown, stifle collective bargaining and make agreements more difficult to achieve.

The primary emphasis must be placed on agreement making. If that is done "emergency" strikes will virtually be avoided. Those few that may possibly occur will be far less of an evil than the procedures that upset collective bargaining and interfere with the ability of the parties to reach voluntary agreements.

Those are the conclusions I have reached on the basis of my experience as Director of the Division of Labor Relations in handling "emergency" disputes for Mayor O'Dwyer, which I respectfully submit for your consideration.

Mr. BAILEY. The Chair would like to make the observation that this has been one of the fairest and most unbiased presentations that has been made to the committee since it has held hearings.

Mr. KHEEL. Thank you, sir.

Mr. BAILEY. I am sure the committee is intensively interested in actual facts of how you have been handling your labor relations in the city of New York. I am sure as one member of the committee that I am wondering if we might not be able to do that pretty well on a national basis.

At this point, I would like to ask you this, since you said you were directing your remarks more to the matter of Presidential emergency boards that would be set up as a final effort to settle disputes affecting the public welfare. You would suggest that these Boards not only include representatives of labor and management, but that they be composed of businessmen and professional men, regardless of their affiliation with labor or with industry? Do you think they would be more effective?

Mr. KHEEL. Absolutely, sir. I think that men who have been successful in life in dealing with the problems of life and the give and take of day-to-day relations one with the other, have the necessary qualifications to help in the settlement of labor disputes.

Mr. BAILEY. What has been your experience in New York? How has labor and how has management reacted to the idea of having people selected at large from the citizenry? How have they reacted? Have they accepted willingly?

Mr. KHEEL. Mr. Chairman, I can say with all due modesty that the reception has been very, very good. The labor groups and the management groups have viewed with great pleasure the use of these citizens' committees in their disputes.

I think I can say there was not a single dispute that we have handled, and we have handled hundreds, where either party ever left City Hall with a feeling that he had not gotten a fair shake of the dice. And the fact that they have had as mediators people whom they know in the community, leading labor leaders, leading industrialists, bankers, department-store people, insurance people, and what have you, has given them, first, a sense of community obligation, and, secondly, a feeling that their particular problems were being intelligently handled. It has worked exceedingly well, and the reception has been exceedingly good, sir.

Mr. BAILEY. You came very near in your suggestion to saying that these boards have authority to make recommendations, although you do not go so far as to say that the recommendation would be binding. You would be getting pretty close to compulsory arbitration then.

Mr. KHEEL. You would, indeed. Very definitely not. I would oppose vigorously any procedure where in advance the parties were committed to accept by law the recommendations of the Government-appointed body. I think that if the parties themselves agree to accept the decision of the body, that, of course, is not only legally permissible, but is something to be desired. I think that these committees should be empowered to make recommendations. But I would go very slowly about making recommendations. I think perhaps I would not go quite as far, even, as the bill that you have now before you goes in providing there should be boards appointed with the specific job of making recommendations.

Mr. BAILEY. You were referring there to H. R. 2032?

Mr. KHEEL. That is right, sir. I think that once the parties even know that recommendations are going to be made, you see, then the proceedings degenerate, if I can use that word, into a legal proceeding instead of a collective-bargaining meeting where there is give and take.

Now, I think that if a committee is set up with the power to mediate, and it is a high-class committee of really outstanding people, and they have the power to do whatever they think is right, not binding on the parties, of course, to help bring about a settlement, they should not be limited in the scope of their work. They should go very slowly about even making recommendations. There may be some circumstances where recommendations will be desirable. But I think you will find that in more cases it will be possible for them to achieve agreements without making any recommendations whatsoever.

I would not tie their hands by requiring them to make recommendations, but I would permit them to make recommendations if in their judgment recommendations appear to be desirable.

Mr. Bailey. Mr. Irving?

Mr. Irving. I do not have too many questions. I notice in the statement the name Battle, Fowler, Neaman, Stokes & Kheel. What type of firm is that?

Mr. Kheel. That is a law firm, sir.

Mr. Irving. Is that your vocation?

Mr. Kheel. That is right. I am an attorney.

Mr. Irving. I was interested in your comments on the "last offer." I had previously in this committee made some issue in regard to that, and recited some examples approximately the same as you have recited. I think that this view shows a decent philosophy and a fair approach to the problem.

Many new ideas, at least to me, have been exposed, and I think it has been enlightening because of the recitation of practical examples of experience in the matter.

I first would say that I believe that the Golden Rule can be a practical law in the affairs of Government, business, labor, and everyday life, and I think perhaps you injected a little of that idea into this problem.

That is all I have to say. Thank you, sir.

Mr. Bailey. Mr. Jacobs?

Mr. Jacobs. Mr. Kheel, I have wondered a good many times about this matter of emergency strikes. I would like to ask you a few questions beyond your statement.

Under the present law, we can get an injunction for 80 days. At the end of the 80 days, if the dispute is not settled, we still have the problem, have we not? We had one gentleman who testified here who said that the injunction should be renewed from time to time and as long as dispute existed. He likewise stated in answer to a question that I put to him that he would not in the meantime fix any terms of employment—that is, the Government should not fix any terms of employment.

What would your reaction be to that?

Mr. Kheel. I would throw up my hands in horror at the thought of a perpetual injunction with what it means so far as compulsory arbitration is concerned and the maintenance of existing conditions throughout. I would like to ask that particular person how he would feel with regard to that matter if the employer happened to be seeking a cut in wages, and to avoid a strike there was to be a perpetual injunction which maintained wages at the existing level.

Mr. Jacobs. I think that would have been a very good question for me to have asked him. But it is staircase wit, as far as I am concerned right now.

For your information, if you would like to write and ask him, it was Mr. Mosher of the National Association of Manufacturers.

In the last analysis, if we would follow the procedure as set out in the Taft-Hartley law with a report to Congress in the case of a critical strike situation, we might run slambang against that very perplexing problem. Do you agree with me on that?

Mr. KHEEL. Absolutely. You solve nothing by the 80-day injunction. In fact, you create new issues.

Mr. JACOBS. And if we should have the matter thrown in the lap of Congress at the end of 80 days with the dispute still existing and we should obtain, then, a compulsory settlement of the employment conditions, what do you think would be the next thing that would follow in the wake of that action?

Mr. KHEEL. I think one compulsory settlement would encourage other settlements.

Mr. JACOBS. Of wages?

Mr. KHEEL. Of wages and working conditions.

Mr. JACOBS. And that would require, do you think, as time went on, perhaps, a fixing of prices?

Mr. KHEEL. Undoubtedly. And there is another respect in which I would like to comment, because there have been several States that have passed compulsory arbitration laws for public utilities.

Mr. JACOBS. New Jersey and Indiana.

Mr. KHEEL. New Jersey, Indiana, and Pennsylvania was considering one just recently. I would like to point out something in connection with that which I do not think has been properly considered. It is one thing to compel arbitration on wages. I am opposed to it, but I could see that there is some possible basis for it in the public utility cases by analogy to the fixing of rates by public utility bodies. But when you compel arbitration, I do not think you can limit it to wages, because there are other issues in dispute which can cause strikes. You can have a strike about seniority or grievance procedure or union shop——

Mr. JACOBS. Or vacations.

Mr. KHEEL. Or vacations or holidays, or what have you.

Logic, therefore, would require you to say that any issue in dispute can be arbitrated. Then you find that the employers are put in this very unfortunate position under such a law. The union will throw everything in the hopper. Why not? What have they got to lose? And so they come in—and I have seen this happen—with 100 issues in demand, and all of them must go to arbitration. Now, on the law of averages, they are going to win some of them, and it puts the employers in a very unenviable position.

If you confine the arbitration to wages, you have one thing. You have at least a clean-cut issue. But you cannot confine it logically so long as what you are trying to do is avoid the strike. Therefore, you open the whole gamut of issues that the mind of a union man can conceive of for arbitration.

Mr. JACOBS. I think we are only started down the road in that direction. I wonder if there is not some more implication? We have agreed, at least you and I have, and I do not see how it can be logically disputed, that if we fix wages, we are ultimately going to fix prices, and that would result, then, in a permanent OPA, as I figure it; and with a permanently controlled economy, do you not think that some of the zest for private ownership and proprietorship would be lost, and we would lost a great deal of resistance to the nationalization of industry? Do you agree with me on that?

Mr. KHEEL. There is no question about it.

Mr. JACOBS. So that actually, if we analyze the emergency provisions, particularly, in the Taft-Hartley law, and consider its trend and the logical conclusion that we would finally come to and then the destination to which that leads us, it actually points the way to national socialism.

Mr. KHEEL. I agree.

Mr. JACOBS. That is all.

Mr. BAILEY. Mr. Wier?

Mr. WIER. I want to make a couple of comments.

The gentleman refers to New York City's particular and direct type of dispute which the plan arranged by him can help settle. But behind that there is another evil in the mayor of your city getting up these boards of public opinions to step into a dispute threatened or in process. In my experience I have witnessed that invariably these boards of public opinion, while they try to get the two parties to find a common ground, cannot at any time forget that the employer, or the management, concerns itself with the increased cost that is involved in the settlement.

When management makes an offer, they usually make an offer within their means, and if that seems to be insufficient to settle the dispute, then, of course, they have to defend themselves, on the assumption that they are going to have an increase. So in these two or three strikes—and bear in mind that I am a friend of the court here in this case, and I am for the elimination, because it has not solved a thing—but in the cases which you cite, New York City is directly the victim of this city-wide strike. It is not like an industrial dispute between Westinghouse and its employees, that does not affect the whole population. All of your population is affected by a light strike, by a heat strike, by a coal strike, by a tug strike, by a streetcar strike, and by a telephone strike. Your whole city is involved.

Now, then, I presume, and this is the experience that I have witnessed, that the assumption of this board of public opinion, which is usually some responsible citizenry of the community, when they get to the bargaining table and when they get the two parties to the bargaining table and the sun begins to shine on a possible settlement, management says, "We are willing to make this concession, but it is not within our means to make the settlement. We have not the resources. We will be very happy to make the settlement and proceed to settle the strike provided we have some support in an adjustment of our rates or costs."

Now, in the tugboat strike, it meant rates; in the light company, an increase to the public and in the case of the telephone strike, likewise, So the public meeting is usually a group that sponsors the idea that, "We have settled the strike; we have brought the two sides to an amicable settlement"; and then comes the blow to the public, "This is going to cost you an increase."

The only criticism I have of that is that in many cases that is a surface position and not one in which an investigation is made to find out whether the company is justified in their claims relative to a need for an adjustment of their rates. Too often I have found that companies have taken the position that, "This is the way we can get a rate increase, and the only way we can get it," such as in the utilities, for example, with streetcar, gas, light, heat, or any of those.

So it is in these two strikes of yours. So it would be in the case of the Yonkers strike where it was again municipal employees against municipal government. It is a question of getting the increased amount of money involved from some source.

That is the only evil that I find in your plan.

Mr. IRVING. Would you yield, Mr. Wier?

Mr. WIER. But I agree with you that the injunction and the 80-day cooling-off period in the labor movement—now, they begin to call it a heating period, and not a cooling-off period, because neither party is going to move unless the machinery is perfected and further advancements are made. If the law is in favor of present employers, they sit tight waiting for this machinery that they can operate here, that operates in their favor.

Mr. IRVING. Will you yield to a question?

Mr. WIER. Yes.

Mr. IRVING. I just wanted to mention that I do think that the 80-day period, or injunction, as you brought out, has a very significant factor in the extending of the expiration date, because, as you said, it could work to the advantage or harm of either party. And those dates, in my experience, have been negotiated with very definite reasons and purposes.

Mr. KHEEL. That is exactly so.

Mr. BAILEY. Mr. McConnell?

Mr. McCONNELL. Mr. Kheel, I have been interested in your statement here. Of course, you realize that is one of the toughest parts of labor-management problems that we have to contend with. We have never felt that we had fully solved the matter. As you can tell, we have left it in an open-end way, because we did not know exactly how to bring about a settlement. I am not entirely sure that I understand what you would have us do. Have you thought of the way it should be written in a bill? Can you give us your idea?

Mr. KHEEL. No. I have not attempted to give precise phraseology to what I suggest. But I think I should explain it in this way. I do not mean to imply in any way, shape, form, or manner that what I am suggesting is a guaranty against strikes. My point is that if you begin from that end of the problem—and I quite agree with you that it is probably the most difficult problem that there is before this country today—if you begin from the end of trying to guarantee against strikes, you get into all of these difficulties that Congressman Jacobs is bringing out. I think that you have to begin from the end of trying to reach an agreement, and you have to think of all the procedures that there are that you can possibly conceive of that will help make collective bargaining work, if you proceed on the assumption of collective bargaining. I think you will wind up with the conclusion, nevertheless, that there is no absolute guaranty against strikes in emergency industries, unless you want to have a dictatorship-type of operation or a national socialist type of operation for this country.

I do believe that by concentrating your primary emphasis on bringing about agreements, through citizens' committees, through better mediation, through procedures that are as flexible as possible so that they can be adapted to the particular industries, to the particular personalities, to the existing problems—and there are different problems for different industries each year—that you will——

Mr. McConnell. That general theory is good. How would you write it in a bill? What would you say in a bill? Would you just say nothing, except that they have a right to strike where a national emergency is threatened, and so on, and hope that they work it out?

Mr. Kheel. I would find difficulty just spouting off language that would be adequate for a bill without trying to frame it more carefully.

Mr. McConnell. You say that there is no procedure set up. Now, I presume by that it is just left free and open.

Mr. Kheel. That is right. I think ultimately you would have to leave it free and open. I would take the administration bill and possibly enlarge upon the procedures for bringing about agreements by providing for the use of citizens' committees and providing for——

Mr. McConnell. But you are going to provide some procedure? That is what I mean.

Mr. Kheel. That is right. And providing for the greatest measure of flexibility by these committees in terms of acting as mediators and making recommendations.

Mr. McConnell. I do not quite understand what we are to say in a bill. That is what I mean. Are we to ignore it, or just provide for something, or what?

Mr. Kheel. No. I think you should provide for procedures that would make available by designation of the President the most outstanding people in this country to serve in a mediatory capacity with the power to make recommendations, but without the requirement that they should make recommendations, and that these persons should be given the greatest latitude in devising ways and means that would fit the exigencies of the particular disputes, to bring about agreements.

Mr. McConnell. Now, assuming a strike has started, then what would you provide? If the strike is under way, what would you provide? Would you leave it entirely to the discretion of the President? Would not that be dangerous, too, assuming we had a President who would step in and assume authority over it?

Mr. Kheel. No. I think there is an element of danger, sir, in what I propose, to be sure. I think, however, that it is far less of a danger than the procedures which are now contained in the Taft-Hartley law or any other type of fixed procedures which, in attempting to correct a particular situation, with the assumption that you make, "Supposing there is a strike," upsets our whole procedure of collective bargaining and makes it more difficult to reach the settlements in 100 other disputes. I say "Yes," the possibility of a strike in a particular situation does exist under what I am suggesting. I say that danger, which I recognize, is far less of a danger and will create far less trouble than a fixed procedure which upsets collective bargaining and makes for strikes in many other situations.

Mr. McConnell. Of course, you realize that the most conservative of the capitalists and others who have come before us have advocated leaving this free, "Do not interfere with it at all; let them work it out between labor and management.

Mr. Kheel. I find myself in that respect in accord with the conservative capitalists.

Mr. McConnell. Then your theory would be to leave it entirely out of the bill, and say virtually nothing about it; would that be it?

Mr. Kheel. I would say that the bill should provide the facilities for the designation of committees and other procedures of a mediatory nature; that is, that would not be binding upon the parties; and the bill should not contain any provisions for fixed procedures that have to be followed in particular cases, but the President, through his designees and through himself should have the power to devise procedures of a mediatory nature, not a binding nature, and therefore I do not think their precise nature need be spelled out, except to say that it should be the most effective in dealing with the particular dispute that comes before them.

Mr. McConnell. Would you let them strike and then proceed with that?

Mr. Kheel. I would let the possibility of a strike continue; yes. I think once you start with the assumption that you are going to try to prevent the strike, then you get yourself either into the difficulty that the Taft-Hartley law finds itself in, where it just postpones things for 80 days, creates an issue of retroactivity, and changes the expiration date of the contract, and then faces the same problem 80 days later; or you find yourself in a position where you permanently are enjoining strikes and having to substitute compulsory arbitration procedures with all that that brings about. I think you must in the final analysis leave the possibility of the strike as a possible eventuality.

Mr. Wier. Would you yield for a minute, Mr. McConnell?

Mr. McConnell. Surely.

Mr. Wier. On the point that we are on now, we could say what he is driving at is somewhat similar to the Railway Labor Act. But picking up the argument from the present labor law, suppose we leave the law as it is here. The danger is that both sides start anticipating an 80-day period with that opportunity of somebody's extending and settling it. But suppose you reverse the machinery and say that they shall start negotiations 60 days prior to the expiration date when the dynamite starts, giving opportunity for not only the President, if it is on a national level, but the local government, if it is on a local level, to do something.

Now, Mr. McConnell, the reason I say that, and I say it to both of you, is that under the present law employers are not too prone to desire that. A union is required to give a 60-day notice for the renewal of the opening of a contract. That is correct, is it not?

Mr. McConnell. That is correct.

Mr. Wier. It has been my experience, and I think experience generally, that employers are not too prompt in accepting that responsibility of "Let us try to get that settled now."

I have heard employers say, "We have a lot of time. We have 2 months, and we ought to get this thing settled in a week."

Now, that is on the assumption that it is going to be easy to settle. And behind that lies the theory that we have this law here which will give us additional time with its processes. So I think that, instead of having the attempt to settle afterward by legal means, all the pressure should come before the expiration date of the contract, giving sufficient notice, 60 days, for management and labor to get together with the help of such agencies as the witness speaks of in New York

State, or, in the national picture, with the President appointing a board as he does under the Railway Labor Act.

That is my reaction to your questioning. That is all.

Mr. McConnell. The biggest pressure we have found has come from the public in all these matters.

Mr. Kheel. I agree.

Mr. McConnell. I have said to various people in many cases, "Well, let labor and management be free in the handling of these strikes, or in any type of strike."

However, they will always say, "What difference does it make what management and labor want? We are the ones hurt by this whole matter, and we demand action."

And there you are, right in it, right away. It is the public that keeps the pressure on this matter.

Mr. Kheel. That is right, sir. I think the factor of public pressure is an important factor in bringing parties together.

Mr. McConnell. In connection with the administration bill, H. R. 2032, on page 17; it says in section 302, under (c):

> After a Presidential proclamation has been issued under section 301, and until five days have elapsed after the report has been made by the board appointed under this section, the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute unless a change therein is agreed to by the parties.

I imagine you would be opposed to such a section, particularly if the President has the inherent right, either by an injunctive or a military process, to enforce such a proclamation; would that be correct?

Mr. Kheel. The period, of course, is only 5 days, which in the nature of things should not be too serious. But I frankly would be more in accord with Congressman Wier's suggestion, that these figures that we talk about should be attempted before the normal expiration date, rather than after it, and you avoid, then, this question of compelling the maintenance of the status quo, even for as short a period of time as 5 days.

Mr. McConnell. Do you see any harm in the requirement for a period within which this citizens' committee should make some report?

Mr. Kheel. I think a period of 5 days certainly is not going to be——

Mr. McConnell. No. They have 25 days, I believe, for the report of the Board. I am substituting your citizens' committee for a Board.

Mr. Kheel. I think the administration bill has narrowed it down to about the least possible amount that you can have to enable the Board to give some intelligent consideration, and at the same time to avoid these other problems that I mentioned, of retroactivity, of heating up instead of cooling off, or changing the normal expiration date of the parties, and so forth.

Mr. McConnell. There is a 30-day period in H. R. 2032.

Mr. Kheel. A 30-day period or a 50-day period is better than an 80-day period.

Mr. McConnell. It violates your principle, whether it is 1 day, 50 days, or 80 days?

Mr. Kheel. That is right.

Mr. McConnell. It still violates your principle, when the President under a directive, issued because of the inherent power claimed for him by the Attorney General, requires them to work under those conditions, whether it is 1 day, 5 days, or 60 days? It does not make much difference.

Mr. Kheel. I agree, sir, although it is still a matter of degree.

Mr. McConnell. Just one other question. These settlements that you were successful in achieving in New York, did practically all of them end up with an increased wage agreement?

Mr. Kheel. Most of them did. But some of them did not involve wages.

Mr. McConnell. That is all, Mr. Chairman.

Mr. Bailey. Mr. Smith?

Mr. Smith. Mr. Kheel, I think I am in agreement with Mr. Bailey about what he said about the importance of your testimony. I think you have a very splendid approach to this problem, and I think that we are dealing here, to get it down to common terms, in preventive medicine. This is preventive medicine. I think that all doctors will agree that preventive medicine is the most important medicine. But as Mr. McConnell indicated, there comes a time in the field of medicine where there must be an operation, and the public is going to demand that operation.

Do you agree that we should ever use the knife? In other words, do you believe that the Government should ever use the knife and just say, "You have to settle this for the matter of public interest"?

Take the railroad strike, or something that is vital to the whole country.

Mr. Kheel. The great difficulty with your analogy, sir, is that in this field of labor relations when you start with the assumption that a knife is going to be used in one form or another, then you alter the course of collective bargaining in practically every other case and create new problems over and above those which you seek to settle by the use of the knife. I think you start from the wrong end. You have to start from the end of trying to bring about an agreement.

Mr. Smith. Now, you and I are not in disagreement about that at all. But is it not possible that sometime we will just have to get down to the point where we have to do something? Now, what are you going to do about that?

Mr. Kheel. I think that that is so. The circumstances may arise where something has to be done.

Mr. Smith. Do you think we should just leave that wide open and not say anything about it?

Mr. Kheel. I do, indeed, sir. That may sound as if I am leaving the welfare of the country in jeopardy. I do not think that is so. I think if you ask a hypothetical question and get a hypothetical answer and then build the law upon such circumstances, which then alters the whole procedure of collective bargaining in other cases, you get a distorted result in labor relations. I do think that the problem of what you do in theoretical circumstances where a strike takes place of such a critical nature that something has to be done, should be left open. It has been open until the Taft-Hartley Act was passed, and it is still open under the Taft-Hartley law. That does not solve the issue. We have gotten by so far, and I think we will get by in the future, too.

Mr. SMITH. I would like to ask this rather personal question. In your opening statement you say you were invited to be here. Now, I would like to know who invited you.

Mr. KHEEL. I received a telephone call from the secretary to the committee, sir.

Mr. SMITH. The secretary of this committee?

Mr. KHEEL. Yes, sir.

Mr. SMITH. I just wanted to know, because I want to compliment him on getting you down here. That is why I asked. I appreciate a great deal what you have had to say here. Under your theory, do you think we should get away from professional conciliators, as now provided in the Conciliation and Mediation Service?

Mr. KHEEL. Not for what I might call the routine dispute. I think that they perform a very valuable function and do a good job in 99 percent of the cases. I think that when you get a dispute of national significance and national importance, where you are dealing with a major company or a major industry and a very important union, and they are all top-level men speaking for both sides, the Government should seek out as its representatives the most able men that are in the country to do that work.

Mr. SMITH. In other words, it does not follow that we should not abolish, then, the Mediation and Conciliation Service?

Mr. KHEEL. Certainly not. You have thousands of cases——

Mr. SMITH. Well, if it will work in public emergency strikes, as you have designated, will it not work there, too?

Mr. KHEEL. I think you can wear this thing thin. I think there are too many cases that come up every day where the mediation services of the State and Federal Government are really a part of the collective bargaining processes and I think that that function they perform is a very necessary one and must be continued. The use of outstanding citizens for particular cases ought to be reserved for those special cases.

Mr. SMITH. Now, let us take the case of any town in Indiana, Ohio, Illinois, or any place like that where there is a quite sizable industry. We will say they employ 1,000 people and it is a town of 5,000 or 6,000 people. The economy of the whole town and the welfare of the community is based upon that particular plan. Now, under your theory, you would have public opinion. Why would not public opinion work in that town in that case?

Mr. KHEEL. Absolutely. I quite agree with you. I think for that town, the mayor of that town or the industry and labor people should get together to provide some special procedures, because that particular company is an emergency company.

Mr. SMITH. It is an emergency for that community.

Mr. KHEEL. For that town, in much the same manner as we have set up this division of labor relations of New York for New York City labor disputes.

Mr. SMITH. And do you not think, according to this theory, that this service that you have in New York City would be more effective in a town that I have described than if you brought in professional conciliators and arbitrators?

Mr. Kheel. I think it could be used effectively. I do not want to be categorical in my answer. I think that each situation is a different one.

Mr. Smith. We have all the elements in this town that I have described that you have in New York.

Mr. Kheel. I think something of that sort can be developed very effectively if you have the proper people on the side of management and labor with some sort of coalescing force to bring them together.

Mr. Smith. But the coalescing force is public opinion.

Mr. Kheel. Public opinion, plus somebody to take the initiative to achieve it. But I think it can be used very effectively in those circumstances.

Mr. Smith. You mentioned something about the longshoremen's strike, and you said it was voted 90 to 10. What did you mean by 90 to 10?

Mr. Kheel. I meant that in percentage terms.

Mr. Smith. Well, it is 9 to 1, then, about?

Mr. Kheel. Nine to 1; 90 percent to 10 percent. I meant that 90 percent of the employees who voted, voted to reject the employers' so-called last offer. Now, it might have been 89 percent or 91 percent, sir. I do not vouch for the figure.

Mr. Smith. But when you said 90 to 10, I wanted to know if there were only 100 people voting on it.

Mr. Kheel. Oh, no; it ran into the thousands.

Mr. Smith. That is all, Mr. Chairman.

Mr. Bailey. Mr. Nixon.

Mr. Nixon. No questions.

Mr. Irving. Would you yield?

Mr. Nixon. Yes.

Mr. Irving. As I see it, it is a great deal of an educational problem on both sides. I think our unions and our union leaders need to be educated; I think management needs to be educated, as proven by the fact that some larger corporations and industries have developed very fair and reasonable plans, and they are working satisfactorily.

I would like to comment on the public opinion in this small town, or any town. It perhaps should be considered how that opinion is formed or developed. The amount of propaganda on either side, if the public opinion was formed that way, could have a harmful effect.

Mr. Kheel. Yes.

Mr. Irving. I was going to ask Mr. Nixon if he is familiar with C. F. Braun there, in his district?

Mr. Nixon. That is in Bell Haven.

Mr. Irving. Yes. Their president has developed quite a lot of literature. I have the full set of his literature on labor-management relations and employee relations and department relations, and so forth. As I understand it, they have very good relations. It is a very fine firm. They are working in my district at present.

Mr. Nixon. They have an excellent reputation.

Mr. Irving. That is all.

Mr. Bailey. I thank the witness, and I am sure the committee appreciates your appearance.

Mr. Kheel. Thank you very much, Mr. Chairman.

Mr. Bailey. The formal statement of Mr. Kheel will be included in the record at this point.

(The statement referred to is as follows:)

Statement of Theodore W. Kheel

I am pleased to accept your invitation to give my views regarding the labor legislation now under consideration by your committee.

I should like to address myself primarily to the problem of adjusting labor disputes, with particular reference to the so-called emergency strikes affecting the health, welfare, and safety of the American people.

Until January 1, 1949, I was the director of the division of labor relations of the city of New York. I had served Mayor William O'Dwyer in the division from October 1, 1946, when this department was set up to cope with the many serious labor disputes which New York City faced. I resigned on January 1, 1949, to return to the private practice of law, engaging mainly in the arbitration and mediation of labor disputes. During the war I served as the executive director of the National War Labor Board, and before that I was on the legal staff of the National Labor Relations Board. Only for the purpose of qualifying myself to comment on the legislation before your committee, I would like to say that in all probability I have aided in settling as many strikes and labor disputes in the last 12 years as any other person in the United States.

The division I headed in New York City was created by Mayor O'Dwyer to deal with emergency labor disputes which almost weekly confronted the people of New York City and a metropolitan area of more than 12,000,000 inhabitants. In the several months before the division was established, New York City experienced several paralyzing strikes, including a tugboat workers' strike which cut off vital oil and other essential supplies, a communications strike which isolated the city from the rest of the world, a general trucking strike which brought all commerce almost to a complete halt, constant threats of strikes on the city's complex network of subways, elevated lines, and busses, and dangers of walk-outs in several other vital industries.

The establishment of the division enabled the mayor to deal effectively with disputes involving hundreds of union, CIO, AFL, and independent, with many hundreds of thousands of members working in virtually every industry essential to the well-being of New York City. Specifically, we averted walk-outs in transportation, communications, trucking, tugboats, bakeries, dairies, fuel oil and coal, water front, groceries, printing and publishing, and building construction. I might mention in passing that the division played a most important part in creating a master wage stabilization program for approximately 35 crafts in the building construction industry, and that this program has eliminated strikes for the last 15 months by more than 200,000 unionized building construction workers, and promises to maintain peace in this all-important industry at least until July 1950.

Out of this experience have come certain definite conclusions regarding the adjustment of emergency disputes which I believe may be of value to the committee in connection with the formulation of new labor legislation. It represents what has come to be known as the O'Dwyer plan for industrial peace.

Primarily, it should be stressed that the division of labor relations has not and has never had any fixed procedures. We never tried to impose on employers and unions any time limits, "cooling-off" periods, or other procedural requirements for the adjustment of their disputes other than those which they themselves set up. Nor has the division ever had any weapons other than the force of public opinion to help it in averting strikes and bringing about agreements.

I should like to define what I mean by the force of public opinion or community concern and how we use it to help adjust disputes. Whenever a dispute arises which materially affects the welfare of the people of New York City, the mayor calls the disputing parties to city hall. Then, at a joint meeting, he discusses the gravity of the dispute, as it affects the people of the city. The mayor avoids, at these meetings, any discussion of the immediate issues which causes the dispute. In conclusion, he usually designates what we call a citizens' committee to assist the parties in eliminating their differences.

These citizens committees represent, in my judgment, a major contribution to the techniques of settling labor disputes without strikes or lock-outs. Composed of leading citizens of our city, persons of outstanding reputations in business, labor, education, and other fields, these committees serve without compensation. Their only reward is the satisfaction of helping their fellow citizens to avert catastrophic economic dislocation. As a matter of fact, neither the city nor the Federal Government could ever adequately compensate these persons for the time they spare from their positions as heads of big corporations, huge unions, and, in many cases, important posts in our big universities and our high courts.

We follow no set rule regarding the composition of these committees. Sometimes we use one man, sometimes as many as five, but most often three. One committee consisted entirely of persons who were officials of labor organizations. Another committee had four industry men and one labor man. We settled one dispute through the efforts of two nationally famous sports writers.

We have found that irrespective of a man's background, his primary concern as a member of a mayor's citizens' committee in dealing with a dispute of vital concern to the city is to adjust the dispute without a strike on the most equitable basis for all concerned.

Community concern becomes the motivating factor in the settlements achieved by these committees. Civic responsibility, invoked by the mayor, spurs committee members and the representatives of companies and unions to their topmost efforts to spare the community, of which they are a part, the social and economic dislocation of a serious work stoppage.

It is my sincere belief that similar measures can be used with the aid of persons of national reputation to help settle disputes that might become national emergencies.

I want to stress again that the division uses no regularized, formal procedures. Each case is taken up on its own merits and treated as a separate problem different in its issues and personalities from all others. The only procedural dead line we observe is the dealing set by the parties, and that is usually the termination date of their existing agreement. Sometimes, when circumstances warrant it, the mayor may request a postponement of the strike dead line for a short period of time. But we carefully refrain from establishing a pattern for getting a strike postponement and thereby avoid creating the expectation on the part of companies and unions that a postponement will always be sought.

To explain why we avoid regularized postponements or "cooling-off" periods, I must make clear our attitude toward the role of the strike or lock-out in bringing about agreements. We are never disturbed by the threat of a strike. On the contrary, we find that the establishment of a dead line for agreement helps bring about settlements.

Labor unions dislike strikes as much as do employers and consumers. A work stoppage costs the striking employee his wages for the time he is out and, in most cases, he has to work many months to make up what he loses.

When the parties know that they both stand to be losers unless they reach an accord by a certain date, there is an incentive for them to settle their differences. By the same token, as experience has proven over and over again, in the absence of a dead line the parties tend to avoid any concessions in their positions since they suffer no disturbing inconvenience for failing to agree.

We can see how this works when we consider the effects of the emergency provisions of the Taft-Hartley law, with its 80-day "cooling-off" period, on several recent disputes in the New York City area. Early in January 1949, the divisions of labor relations, through the assistance of Mr. William J. McCormack a leading New York businessman, settled a dispute between the operators of tugboats in New York Harbor and local 333 of the International Longshoremen's Association. This dispute first came to the official attention of the division of labor relations in the middle of December 1948. At that time there was great uncertainty on the part of the employers and the unions for the reason that they did not know whether they would come under the emergency provisions of the Taft-Hartley law in the event of a strike.

The dispute was local in character but might have become national in scope because of the serious effect of a tugboat strike on the economy of the biggest city in the country.

We know that the parties felt that if they were subject to the Taft-Hartley law, they would not make any concessions toward a new agreement until close to the expiration of the 80-day injunction. The reason was obvious. If a strike was to be delayed for 80 days, there was no need to reach an agreement before the expiration of their contract. The employers justifiably feared that any offer they made would be rejected because the union would have an additional 80 days to try to get more. Similarly, the union was reluctant to reduce its demands because of the prospect of having 80 days added to their normal collective-bargaining period.

In order to get the wheels of true negotiation in motion, we urged the Federal authorities to give the parties some indication of whether an injunction was likely. If it was contemplated, then we would have relaxed our efforts to obtain a settlement because we knew full well that none would be possible until the latter part of March 1949 when the injunction was due to expire.

The Federal authorities were wise and helpful enough to indicate that an injunction was unlikely. It then became possible for us to roll up our sleeves, get down to work, and settle the dispute. Incidentally, the dispute was settled a few minutes before the final dead line.

The water front dispute involving the longshoremen which tied up the entire east coast began the same way. But there the parties knew for certain that there would be an injunction. Consequently, no true collective bargaining took place before the injunction was issued.

Sometime during the 80-day period, the employers made an offer to the union. Indications were that they were prompted to do this because the law requires the National Labor Relations Board to poll employees on the employer's last offer 10 days before the injunction expires.

But the employers knew full well that that last offer would be rejected no matter what it was. The employees were also aware that the employers were unwilling to make their real last offer at that time. Consequently, the NLRB was compelled by law to conduct a ballot on a last offer which both sides knew was not the final word. Thus the Taft-Hartley law forced the water-front employers into a deliberately dishonest position which they had to take as a matter of self-protection. Such a situation does not, obviously, make for sound labor relations.

After the election, in which the employers' last offer was rejected overwhelmingly, the employers advanced what I am sure they intended to be their real last offer. When this was also rejected and a strike took place, the employers found themselves in the unenviable position of having twice made a last offer which was twice turned down. If only to preserve their bargaining integrity for future years, the employers could not immediately alter what they had advanced as their final position for the second time. No wonder, then, that the water-front strike dragged on for 3 weeks before both sides could find a face-saving compromise.

I feel strongly that the 80-day so-called cooling-off period of the Taft-Hartley law, which in this case became, instead, a heating-up period, actually impeded settlement of that dispute. This case, and others I have studied, convince me that the emergency provisions of the Taft-Hartley law are as harmful to employers as they are to unions.

For example, take the problem of retroactivity which the 80-day cooling-off period creates. If the Government enjoins a strike for 80 days, it is only fair to the employees to expect that any adjustment ultimately granted will be made retroactive to the date on which the contract expired. But this can be unfair to the employer since any adjustment in prices which he may have to make because of the wage increase cannot be made retroactive. This becomes especially difficult in the case of regulated companies who must apply to some public body for permission to make an adjustment in prices. Many of the regulated companies are in emergency industries. With employees understandably seeking retroactive adjustments and employers understandably resisting them, this issue of retroactivity, created by the 80-day cooling-off period, further complicates the dispute and makes it that much more difficult to settle.

There is another respect in which the 80-day cooling-off period can be harmful to employers as well as to unions. The date on which a contract expires usually has some special significance. It may be in the slow season of the employer's business so that he will not be under pressure of the full demand for his products or services while negotiating a labor contract. It might possibly be at the beginning of the period he negotiates with his customers for the services which he is to perform for them during the year. In order to fix his prices, the employer may have to know just what his labor costs will be. When, in effect, the termination date of the contract is extended for an additional 80 days, the basic relationship between the employer and the union may be altered. It is possible that such a postponement will improve the union's bargaining position and thereby work to the disadvantage of the employer. It might also have exactly the opposite effect. What the effect will be in any particular industry cannot, of course, be determined in advance. But this much is clear: The 80-day injunction provisions change by a substantial period of time the termination date which the parties themselves have selected for whatever reason they believe to justify such a date and thereby the injunction may work to the disadvantage of the employer, the union, or both.

The difficulty of applying fixed procedures to relations of employers and unions becomes clear when we consider the impact of the so-called Condon-Wadlin law of New York State on the garbage workers in Yonkers. That law makes it mandatory for any agency of the State Government to impose fixed penalties on employees who engage in a strike or other form of work stoppage. No matter what may be the merit of their complaint the same fixed penalties must be applied under this law. Because of these rigid requirements, a small grievance in Yonkers was blown up into a municipal calamity, with a garbage strike that threatened to endanger the health of the people. Finally the municipal authorities found it necessary to reinstate the strikers, withdraw all legal proceedings, and hope, I presume, that sleeping dogs would be permitted to lie.

The plain fact of the matter is that the relations of labor and management cannot be fitted into any fixed procedures no more than you can have one size shoe for every person in this country. There must be sufficient flexibility so that the problems of particular industries can be given proper consideration.

The experience we have had in New York leads me to these definite conclusions:

(1) A cooling-off period will not contribute to the settlement of labor disputes, but merely postpones the evil day, sometimes intensifies the dispute instead of helping in its settlement, and creates new issues for the parties to settle. In addition, the use of injunctions in labor disputes serves as a further irritant to a settlement when, as a matter of fact, labor negotiations yield only to persuasion and not to force.

(2) Fixed procedures specifying time limits and other requirements for the various stages of collective bargaining will not help settle disputes. The parties merely adjust their strategies to the new procedures.

(3) The most effective method of settling labor disputes is to concentrate all efforts on bringing about a settlement within the time limits fixed by the parties themselves or any extension that is mutually agreeable but not fixed by a blanket law for all disputes.

(4) The use of citizens' committees can be of great help in bringing about settlements if they are composed of outstanding men whose status and ability command the respect of the parties. These committees should function primarily as mediators. They should also be given the power to make recommendations, but should not be required to make recommendations. That matter should be left to their judgment so as to achieve the greatest degree of flexibility in order to fit the circumstances of the particular case.

(5) Every effort should be made to impress upon the parties their obligation to the public to reach a settlement without any interruption of work.

I am well aware that these suggestions do not guarantee complete elimination of emergency-type strikes. And I do not want to leave the impression that our system of mediation averted all emergency strikes in New York City. We have had a few critical strikes in the last 3 years. But for every strike we had, we averted 100 potential strikes of a serious nature. And the few strikes we had were brought to an end in less time, I am sure, than would have been the case if our procedures had not been used.

The plain fact is that there is no way to guarantee absolutely against strikes unless we enjoin them entirely and adopt the methods of the dictator countries. Even the Taft-Hartley law does not ban strikes permanently: it postpones the beginning of an "emergency" strike with the resultant harmful consequences I have described above.

So long as we want free private enterprise, we must also accept free collective bargaining with the possibility of a strike. But if we focus our main attention on ways and means of achieving agreements through collective bargaining, I do not believe we need be unduly concerned about strikes.

The Taft-Hartley provisions are defective because they start with the assumption that there will be a strike and then set up fixed procedures, with irritating injunctions, for dealing with them. These procedures, as I have shown, stifle collective bargaining and make agreements more difficult to achieve.

The primary emphasis must be placed on agreement-making. If that is done "emergency" strikes will virtually be avoided. Those few that may possibly occur will be far less of an evil than the procedures that upset collective bargaining and interfere with the ability of the parties to reach voluntary agreements.

Those are the conclusions I have reached on the basis of my experience as director of the Division of Labor Relations in handling "emergency" disputes for Mayor O'Dwyer which I respectfully submit for your consideration.

Mr. BAILEY. The next witness is Dr. Arthur Kornhauser.

To avoid the necessity for any member of the committe getting serious enough to ask about the party responsible for this gentleman's appearance, may I say that I suggested that this gentleman be invited to address the committee. I think he has some information that will be of benefit, and I would just like to say that I would like to have the Doctor give us just a little of his background. I am sure that he is well qualified for the purpose for which he makes his appearance.

You may proceed, Doctor.

Mr. KORNHAUSER. Thank you, Congressman.

TESTIMONY OF ARTHUR KORNHAUSER, PROFESSOR OF PSYCHOLOGY AND RESEARCH PSYCHOLOGIST, INSTITUTE OF INDUSTRIAL RELATIONS, WAYNE UNIVERSITY, DETROIT, MICH.

Mr. KORNHAUSER. I am glad to be of any use that I can to the committee in its deliberations. I am a psychologist by profession and have concerned myself, especialy for some years, with the problems of industrial relations, and especially the attitudes and opinions bearing upon labor relations.

I come before you this morning to discuss specifically the evidence from some of the opinion polls that have been widely publicized in recent times as bearing upon these labor relations questions and the laws pertaining to them.

My background, if I may say a word about it, in line with the request that the chairman just expressed, can be briefly summarized this way. I have my doctorate degree from the University of Chicago. I spent quite a few years on the faculty of the University of Chicago; during my period in Chicago, I also was the managing director of the Chicago office of the Psychological Corp., which is an organization of psychologists that has conducted a good deal of work in the industrial relations field and in the opinion polling field. I also conducted opinion and attitude studies there toward the social science research committe of the University and for the Office of Civilian Defense of Chicago during the war.

Subsequently, I spent several years with the Bureau of Applied Social Research at Columbia University as a research project director and consultant, and there, too, we conducted number inquiries in the attitude and opinion measurement fields, largely in reference to publications and radio audiences. At that time, too, I conducted a special type of polling effort, now terminated, which dealt with the polling of expert and specialized opinion on public questions rather than the ordinary sort of attempt to find out what the members of the public at large believe about these matters.

One of the questions which we polled experts at that time upon was specifically in this field of labor relations, and I may wish to say a word about that later. Currently I am at Wayne University in Detroit as professor of psychology, and as research psychologist for the institute of industrial relations which has been established at Wayne University to try to carry on educational and research work on these problems of labor-management relations in the Detroit area.

I want to speak particularly this morning about some of the polls, as I mentioned, which have been receiving rather wide publicity in recent weeks or months in connection with the legislative efforts pertaining to labor relations.

I should preface my further remarks on those particular matters by saying that I think public opinion polling has a very important and valued type of service, that it can and in many instances does perform. At the same time, like other good instruments, it is subject to abuse, and in my judgment a number of these recent polls have misused the public opinion polling technique in a manner that proves misleading and against which we need to be on guard.

I am referring particularly to the use of public opinion poll questions in some of the newspaper advertisements and circulated lists of questions by General Electric Co., by the Revere Copper & Brass, Inc., and in the way of a more specific opinion poll conducted among working people, both office and factory, which was widely publicized early by Dr. Claude Robinson, the president of Opinion Research Corp.

That material, with which I am sure most of you are familiar, was published in Look magazine originally in September 1947, and in a later follow-up publication in, I believe it was, June 1948. The details are more specific in the prepared statement that I have put into the hands of the committee.

The questions that I think we need to ask ourselves with respect to such opinion-polling materials are two, that I want particularly to deal with this morning. One is the question of how adequately and how fairly and fully any such list of questions does correspond to the actual content of the Taft-Hartley Act or of proposed legislation in this field. The second question has to do with the matter of how far the ordinary member of the public, the kind of person who is reached by polling techniques, is equipped by special information and understanding to answer in an intelligent and meaningful way the points that are put before him in those questions.

There are, of course, many other critical questions that can be raised and need to be raised with respect to polling procedures: The selection of the sample of people, whether it really represents the public, for example; the way in which the interviewers, in the case of field interviewing, proceed, whether they are properly trained and supervised to avoid biases; the way in which the results of such polls are analyzed and interpreted and published.

I shall omit these questions except as they may be referred to in questioning later, in order that I can concentrate on this matter of the poll questions themselves.

Incidentally, all of those matters are receiving a great deal more attention now by the pollsters than they received prior to last November 2. I cannot refrain from adding that my own criticisms of the matter in question antedate November 2 by many months, and in some instances, by some years, so that I do not feel that I am being particularly uncharitable now in repeating criticisms that I expressed much earlier.

On the face of the matter, and perhaps this is so obvious that it needs no elaborate defense, it seems clear that any short list of 10 or 18 questions composed in language simple enough for at least many citizens to understand, cannot adequately reflect the actual complications and indirect implications and interrelations of the provisions in a law such as the Taft-Hartley Act.

The discussions before this committee, including the one that has taken place this morning, would seem to me to be ample evidence of how far short the ordinary citizen's thinking is likely to fall comprehending and dealing with the matters in question in the actual bill when he was confronted simply with a question like, for example, this first one in the Look magazine material by Dr. Robinson, which asked, "If you were in Congress, would you be for or against a law to require unions to give 60 days' notice before they can go on strike?"

Now, that is all it asks with reference to that entire matter. I can scarcely be assumed that that does properly portray to the respondent who is being questioned the actual issues that are involved in the detailed provisions of the law.

Mr. McConnell. Mr. Kornhauser, may I ask one question there just for information? Let us take that question. Could you word it in a way that could be fair? And if you could, would you tell us what that would be?

Mr. Kornhauser. I was about to say within the next few minutes that I believe that that is an impossible task. I believe that it is an improper type of question to attempt to use with the general public. Some of the other questions seem to me even better to illustrate the impossibility, justifiably, of reflecting what is in the law, with all the best intentions in the world.

For example, another of Dr. Robinson's questions was, "If you were in Congress, would you be for or against a law to forbid a company to have a union shop until a majority of all the workers vote in favor of it?"

A few words are added in definition of a union shop. But that question certainly does not direct the attention of the persons answering, although technically it may be in the question, to this problem, for example, of whether it is wise to require a majority of all eligible voters or a majority, as in ordinary election procedures, of those who are voting, then certainly a more or less subtle point of that kind which, however, may be highly important, does not get into the thinking of the person who is asked this over-simplified version of the question.

Similarly, there is no hint in such a question of the various detailed procedures and the possibilities of delay that are entailed by the actual specific provisions of the law.

As you gentlemen know far better than most of the rest of us, the difficulties in drawing good legislation arise not with respect to the general objectives in broad, vague terms, such as are stated in these questions, but the difficulties and the real problems lie in the framing of detailed provisions and specifications that will enable the objectives to be achieved without being more costly and doing more harm in the process than is warranted by the goals that are achieved. And that difficulty and that source of error are true in the questions in all of these questionnaires that I have referred to, and I should suppose also in the questions that I understand Mr. Fulton Lewis has used over the radio, the responses to which undoubtedly been brought to the attention of many of you in Congress.

Other questions in the lists are faulty in their overgeneralities, not only in their failure to reflect some of the details and technical matters of the essence of the case but in being so general that they prove, it would seem to me, entirely worthless as expressions of the attitude on specific matters that have to be considered in legislation.

For example, from the Revere Copper & Brass list, I take these two questions:

> Should the labor law protect both employers and unions against violations of contracts mutually agreed upon?

And:

> Should the labor law protect the employee against the use of violence, force, or intimidation?

I do not think I need to comment in detail on these questions. We can come back to some of them if any of you care to later.

Other poll questions use rather loaded language. That is, they are open to criticism in terms of the biased wording. For example, another question from this Revere Copper & Brass questionnaire:

> Should the union shop, under which a person is forced to join a union a short time after his employment, be unlawful?—

makes that same mistake.

Now, Americans are likely to react against anything that a person is forced to do, especially when, as here, no explanation or justification is offered as to who forces whom or why. The question would be a little nearer the law and less open to charges of bias if it mentioned that a majority of employees have entered into an agreement with the employer that requires employees to join the union within a specified time. There are various other employees that I could cite with such use of language as to bias responses.

But the more general point, if I may return to it for a moment, is, as I conceive it, the rather patent impossibility of summing up in a brief statement that will be understandable by the ordinary member of the public and will at the same time reflect the actual content of an intricate provision of such a law as this.

The second question that I mentioned has to do with the people's ability to answer. You see, even if it were possible now to get questions that accurately tell what is in the law, then I would still maintain that it is unthinkable that any large part of the public would be sufficiently informed and have sufficient experience, under the implications and interrelations of those provisions of the law to be able to answer in a way that indicates that they know what they answer or know what they mean.

Public opinion polls in general have failed sufficiently to recognize the fact that not every sort of question is appropriate for public opinion polling. Some questions do produce valuable responses while others can only be addressed to special subpublic, such as experts, leaders, or other groups who are particularly qualified through particular experience to be able to answer the question.

As to the general public, the kind of question that is most valuable is that which reflects broad, general social objectives, general goals that the people want to have achieved, leaving the means or the instrumentalities to the gentlemen who make the laws and leaving to their own leaders to help formulate the means of carrying out the object. The polls are also valuable as means of reflecting the feelings that people have about their own intimate problems, their own experiences as working people in this case, and what they feel needs to be done to better protect their interests.

But what I am adding is that there is an important place for expert views and views of leaders rather than depending upon public-opinion polls that try to get cross-sections of the general population.

I mentioned earlier that I had conducted a number of such polls of expert views, one of them on problems of labor relations including specific questioning about compulsory arbitration. That, I think, is rather interesting as an illustration of the point that I am making because at the time, 2 or 3 years ago—and this had been true through the war and in the post-war years, as you know—public opinion polls conducted by Dr. Gallup and Fortune Surveys and others were showing a vast majority of the public saying, "Yes, let us have a law to forbid strikes; let us have compulsory arbitration under governmental auspices."

It seems to me that what was reflected in that answer was the public's irritation, annoyance, and dislike of strikes, and its wanting to see something done about it. And when the question was asked, "should there be a law to forbid them," yes, that was a practical remedy, and hence people seized upon it as the thing they were for. Actually, I think they were voting in terms of a vague, general sentiment against the interference with production and the public inconvenience occasioned by strikes. That, I think, is rather characteristic of these questions that ask about specific matters which are not within the range of the respondent's information, and hence which he answers in terms of very vague, general, overall, and indefinite sentiments that do not mean what they seem to mean.

I say, at the time the public was recording its opinion strong for compulsory arbitration, this poll of experts' views by persons who had spent many years and in many instances their entire lives in the labor relations field, some of them associated with labor unions and some associated with industrial managements, many of them associated with Government and with universities in independent or semi-independent positions, all agreed overwhelmingly that compulsory arbitration was undesirable and ineffective.

It seems to me in all these more technical matters, we do have to reply upon the natural leaders of people, their politically elected representatives, and their labor union representatives, and their management personnel, to reflect the views that take into account the actual intricacies of the problem, the pros and cons, the longer-run effects of the proposed actions, rather than using the uninformed opinions of the public.

The errors that I am pointing to here lie not in the fact that people are expressing general sentiments. I think that is the kind of thing that opinion polls should get at. It lies rather in the fact that specific questions are used which pretend that people are answering the particular matter covered in the question when in fact they are rather expressing the vague, general impressions in respect to what they vaguely feel the question is touching upon.

Mr. BAILEY. Would you say at that point, Doctor, that there might be some prejudice?

Mr. KORNHAUSER. These vague general sentiments might well be called prejudices. I think it is another name for what I am referring to.

Doubts about the meaning of people's replies to all questions are augmented by certain research findings regarding what people have in mind in answering. In several instances, after people have answered the simple poll questions—not these particular ones I am referring to, but other ones that I think are strictly comparable, but with reference to other public issues—they have then been asked to explain what they had in mind, what the question meant to them, and what they thought they were saying. And in several of those studies, it has become apparent that people who gave in some instances the same answer had entirely opposite views on the matter in question, and that in other instances people who had similar views gave opposite answers.

One other piece of evidence that I would like to mention is that that pertains to the large areas of public misinformation and ignorance with respect to labor relations matters. Dr. Robinson himself, in this Look magazine study, reports that 54 percent of the people interviewed were unable to mention a single specific provision contained in the bill. That is, over half of the people knew nothing that was in the bill. And yet their opinion is taken on these various oversimplified questions as though those, then, do reflect their attitudes on these matters in the bill.

Other polling agencies have reported as many as two-thirds or even four-fifths of the people unable to answer certain poll questions on particular labor topics. That emphasizes the impossibility of obtaining a true cross-section of popular attitudes on the more difficult and technical questions. What happens, clearly, is that if one takes the answers only from those parts of the public that can answer, he gets the highly educated, or tends to get more strongly a reflection of the views of the highly educated persons, which goes along with the more prosperous persons, and hence gives a rather disorted picture of the public at large, through its failure to include the lower income and more poorly educated groups, who, I think we have ample evidence, are more likely to be concerned about preserving the interests of strong labor unionism.

The somewhat difficult wording of questions in some of these lists adds to this difficulty because it means that a rather high, or reasonably high, degree of literacy is required on the part of the persons who do and will respond.

Take such a question, for example, as this:

> Should labor laws protect the employer and the employees in a plant where there is no labor dispute from interference by a union which is seeking to coerce another employer with whom it is in dispute?

That is an attempt to get into reasonably simple language the notion of secondary boycotts. But it seems to me it places a pretty great burden upon the person who is not already familiar with what the whole issue involved is.

Yet people feel that they know that. I suspect often they feel that any strike is unjustified about which it is worth raising a question. And if the question is raised, it must have something bad about it, and they say, "I am against unions and strikes, anyhow." That is what we get, rather than a vote on specific matters.

All of this seems to add up to me the need for very heavily discounting the results, if not completely wiping them off the slate, from such polls materials as those that I have been referring to.

With your permission, I might try to summarize a few of the main points I make by reading a brief quotation from a letter that I recently wrote in answer to a request from one of the leading poll-takers in which he asked me to suggest questions for his agency to use in the next few months on the debate over the Taft-Hartley bill. He called it the "Bill."

I said in answer to him:

> The central point is that technical questions regarding specific measures of control, such as the provisions of the Taft-Hartley law, are not appropriate for public opinion polling. On such issues the public should be asked only broad questions regarding the social objectives and directions of change; attitudes toward different means must be judged by experts and leaders. In my judgment it is totally impossible to frame questions on the points in the Taft-Hartley law in a way that will be simple enough to be understood and answered by the ordinary voter and that will at the same time be adequate in the reflection of the actual import of the law. People's responses to necessarily oversimplified questions about the law are bound to be misleading. The responses will appear to be on the specific technical point at issue when in actuality they will be expressing general sentiments set off by what the respondent vaguely suppose the question to mean.
>
> The views of the ordinary individual concerning the specific sections of the Taft-Hartley law are vastly less important than the question of whom he trusts to represent his interests in these matters. Accordingly, the most soundly revealing questions for your polls would be the ones that inquire whether the respondent knows the stand that labor union leaders and the political friends of labor unionists have taken toward the law and whether the respondent is willing to accept their leadership in this connection.

In other words, I am saying that public opinion is not directly expressed in polls of this kind in a significant and effective way nearly so well as it is reflected in the willingness to follow and support given types of leaders, political leaders, labor union leaders, and community leadership or church leadership, or whatever sort the individual has come to trust in the particular area, as to the matter under consideration.

That completes my statement, Mr. Congressman.

Mr. Bailey. Mr. Irving, do you have any questions?

Mr. Irving. I do not have too many. I was going to say that Mr. Wilson, of General Electric, testified they had 750,000 of their questionnaires printed, at the expense of $40,000, I believe, and 200,000 of them were sent to their employees; that is, he stated they had 200,000 employees, approximately.

Would the poll have been, in your opinion, a little more accurate if it had been a little blind on its face, and not stating that it came from General Electric?

Mr. Kornhauser. I think the question answers it itself, and I would add that the people being reached are certainly not representative, even apart from any influence in the questionnaire itself, of the public, as a whole, or as of working people as a whole.

Mr. Irving. They might get adverse answers because of the fact some of their employees were strong union people who would resent the poll, and then they might get people who feared not to answer them as they thought they were desired to be answered? I mean it is not a good test, in your opinion?

Mr. Kornhauser. I think there are so many motivations inducing him to answer in the direction he does, and with the misunderstanding he may have as to the questions, that the results are completely worthless.

Mr. Irving. I know from my own experience that the average workingman, or union man, does not answer too many letters, or does not answer too many polls, and is not qualified or capable to answer too many questions, or his literacy is not of a high quality—and I am not criticizing in any way that particular thing, either—but I think experience in the field that you are talking about, practical experience, has something to do with it, as to your ability to answer these questions properly. I myself could not answer one on how to perform a tonsilectomy, or something like that, or how to examine a bank. I think accommodations, convenience, inconvenience, sentiments, emotions, and prejudices have a great deal to do with the answers, and I feel, as you say, that we should perhaps discount a great deal for that reason.

That is all, and I will yield the balance of my time to Mr. Jacobs.

Mr. Bailey. Mr. Jacobs?

Mr. Jacobs. Doctor, I am quite interested in your statement. I find that you and I are more or less kindred spirits. A gentleman by the name of Fulton Lewis—commonly known in most professions as "fulminating Fulton"—has been trying to take a good deal of my hide off, recently, because I questioned his poll. I have commented in the committee room that I am proud of my friends, but I am prouder of my enemies.

But to get down to the subject: It seems like you and I have been keeping paralleling information. I have the poll here of Dr. Robinson that appeared in Collier's, was it not?

Mr. Kornhauser. Look magazine.

Mr. Jacobs. That is right, Look.

For example, take question No. 2—we are considering loaded questions. Take question No. 2: We are asked whether or not we would favor a law that would give a company the right to sue the union if it breaks its contract. Do you not read in that an implication that prior to the enactment of the Taft-Hartley law that the company could not sue the union?

Mr. Kornhauser. I think the ordinary person would read that into it.

Mr. Jacobs. And, of course, with the background of agitation that went through the 1930's that unions should be incorporated so that they could be sued, and that having been spread before the public over a number of years, would more or less lend itself to that conception of that question?

Mr. Kornhauser. May I add that it would seem to me perhaps even more serious. There is no hint in such a simplified question of the matter of the union being made liable for the actions of subordinate officials, any shop steward, for example, and if a person knew the full facts there he might very well vote differently on even an obvious question like this.

Mr. Jacobs. But even forgetting the question of an agency which used to keep me up burning the midnight oil when I was going to college—and it still sends me back to the musty library—just leaving the broad aspect as to whether the union could not be sued, that implies that before the Taft-Hartley Act, the union could not be sued, does it not?

Mr. Kornhauser. I think so.

Mr. Jacobs. We had one witness who was an employer—and I rather got myself embarrassed as a result of my questions—he gave rather vigorous testimony that the Taft-Hartley law should be retained so that unions could be sued the same as an employer, for breaching a contract, and I asked him who told him it was possible to sue only after the Taft-Hartley law was passed, and he said his lawyer, and I told him if he would have his lawyer write me a letter I would be glad to give him the information about it, and it turned out his lawyer was sitting in back of him in the room, and he was not very happy, but he did not dispute the point when he came up to talk to me about it.

Take question No. 8 on Dr. Robinson's poll; that is about the union shop. Are you familiar with the fact that the poll did not stop at the printing stage, but that during the last campaign they followed out the suggestions of the Taft-Hartley law, section 8 (c), and went into the visual form of communication, and drew cartoons which the artist purported to say carried out the public's opinion as shown by Dr. Robinson's poll?

Mr. KORNHAUSER. I have not seen the cartoon, no.

Mr. JACOBS. There was a series of them. They were run in one of the local papers back in Indianapolis, Ind., in opposition to my candidacy. The cartoon, so we can have it in the record as best we can, shows before and after—it is one of the before-and-after deals, you know—like the advertisement or the booklet which guarantees you can be the life of the party—and up above is the employer sitting at the desk, and the gentleman applying for a job, and there is a very, very disconcerted look upon both faces, and it states, "We have a job for you"—the right-to-work idea—"but first you must apply for membership and be accepted by a labor union because we have a closed-shop contract."

That is the end of that scene.

The next scene is the afterscene. There is the employee standing at the same desk, and the same employer, but their faces are beaming with smiles; and the employer says, "You can start to work tomorrow, and if you like the job and your work is satisfactory you must join the union in 30 days because we have a union-shop contract."

And the picture gives a very, very happy feeling because the man, of course, got himself a job.

Do you think that that cartoon, and others similar to it, would probably carry the impression that with the provision of the Taft-Hartley law—and, incidentally, it is headed "The Taft-Hartley law—that very beautiful and neighborly combination that is shown at the bottom is definitely attributed to the Taft-Hartley law—do you think that might gain the impression of the average person that once that union election was held, and that the employer always granted the union security shop, and it was just a matter of election—do you think it might give that impression?

Mr. KORNHAUSER. I think it is quite reasonable to suppose it would.

Mr. JACOBS. I have had a labor union, a rather large one, suggest we retain that provision in the law, but add to it the provision that once the union security provision was won by the union that it automatically and by force of law becomes a part of the contract, which again illustrates a provision of today may lead to other provisions later on, as the gentleman who preceded you said. Those are not usually pointed out in the polls, either; is that correct?

Mr. KORNHAUSER. That is certainly correct.

Mr. Jacobs. Take General Electric's question No. 18, for example—I have not asked you, are you reasonably familiar with the Taft-Hartley law, or have you made any study of it?

Mr. Kornhauser. I certainly am no expert on it, and I am not trained in the law, but I am familiar with it as an ordinary intelligent citizen might be.

Mr. Jacobs. Do you recognize question 18 involves the interpretation of a number of provisions of the Taft-Hartley law, or are you sufficiently familiar with it?

Mr. Kornhauser. I recognize that it omits many of the technical matters that are of a good deal of importance in connection with what you are presumably asking about.

Mr. Jacobs. Do you recognize the last words there? "At the conclusion of a strike" is definitely a misrepresentation of the provisions of the Taft-Hartley law?

Mr. Kornhauser. Yes. May I add that that was called to my attention when I read the Congressional Record of your report as to your letter to Mr. C. E. Wilson?

Mr. Jacobs. I am glad my poor debunking efforts are getting around a little, from time to time.

Did you happen to read in the Congressional Record my report upon the result of the poll that Mr. Lewis induced by his fumbling and fulminating?

Mr. Kornhauser. Yes, I saw that.

Mr. Jacobs. In other words, by virtue of his inducing questions to be answered and, particularly question 14, which he plagiarized from the General Electric questionnaire, and only changed just a few words, 70 out of 91 people said they were opposed to laws that forbade violence. He described that in his broadcast, and said an avalanche of mail on that "had come into my office." I understand the gentleman is subsidized in his broadcasts, and I am not, so I cannot get a Nationwide broadcast to answer him; but nevertheless, I did not consider it an avalanche, nor did I put anything in the poll. I do not believe they thought the law should not forbid violence.

You have not had the opportunity to read the testimony of Mr. C. E. Wilson?

Mr. Kornhauser. No; I have not.

Mr. Jacobs. Since you have been making a study of polls, may I suggest—and I will get the information for you myself if you will call it to my attention, when it is printed—I suggest you get the testimony of Mr. Wilson in reference to his poll. It will disclose the following:

When I came to ask questions in regard to his questionnaire, the first simple question that was asked him was in regard to question 7, and he referred it immediately to his general counsel.

At that point, we stopped to get the record straight, and we found he had the following people around him to help him answer the questions: The general counsel of General Electric, the vice president in charge of labor relations, the attorney for labor relations, and Mr. Gerard Reilly, who is said to be one of the chief architects of the Taft-Hartley law, and a General Electric legislative representative, and three other unnamed experts.

The record will disclose that I had stated to Mr. Wilson and Mr. Boulware, the vice president in charge of labor relations, that I was going to propound to him the following day, when they visited me in my office, a certain question; and I stated the question and I propounded it to Mr. Boulware, and he conceded that I had propounded it 24 hours in advance, but he said he could not answer it, and referred it to counsel for his department, and counsel for his department could not answer it, or, at least, could not point out the section in the Taft-Hartley law which made the provisions that had been claimed.

I just merely make that as a suggestion that it might be a good addition to your study.

Mr. KORNHAUSER. Yes; I certainly shall want to see it.

Mr. JACOBS. I believe that is all.

Mr. IRVING. Mr. McConnell, do you have some questions of the witness?

Mr. McCONNELL. Doctor, I enjoyed your statement. I do not entirely agree with you, but I enjoyed it. I listened to the protestations of some of my colleagues on the other side, and I think they protested too much.

You are a psychologist, and I can say very frankly to you my observation of reactions is that they vary according to "whose ox is gored." I have known such polls to be contrary to my ideas, and when that occurs I try to create an atmosphere that they are not much good. If it is in my favor I try to play it up, and if it is not I play it down, so I think psychology enters into it.

Mr. KORNHAUSER. May I interject the remark it seems to me you are discussing the use of polls as propaganda. If they are recognized to be such I have no serious objection to each person using the polls to argue in the direction he wants to have proven, but what many of us who are in the attitude and opinion research field are trying to do is to assist, and to have an instrument here that can ascertain valuable information which is simply not to be taken or left, depending on whether it pleases or displeases.

Mr. McCONNELL. I believe many organizations have seriously endeavored to arrive at conclusions as to public opinion on various questions, and I think they have meant it seriously; but the way it has worked out in our political ramifications, and so on, it ends up with a particular poll being condemned or praised, according to how it affects our own opinions or our own particular group or cause.

In the very last paragraph in your statement you say—

> The views of the ordinary individual concerning the specific sections of the Taft-Hartley law are vastly less important than the question of whom he trusts to represent his interest in these matters. Accordingly, the most soundly revealing questions for your polls would be the ones that inquire whether the respondent knows the stand that labor union leaders and the political friends of labor unionism have taken toward the law, and whether the respondent is willing to accept their leadership in this connection.

I would say you are definitely freezing what the answers and opinions would be. I cannot imagine a poll that would be generally contrary to the special group interest concerning certain questions. Labor men would generally vote along the lines probably of their labor leaders, because they would trust them, and you would have a vice versa situation in connection with the other side of that question. In other words, I believe you have a loaded poll, you might say, either way. I cannot imagine a group of labor leaders who would answer the questions on the Taft-Hartley in a way which would be contrary to their position in their union, regardless of the right or wrong of such a view. I mean it may be an incorrect view, but that would be their view as they prefer to believe it, and as they see it, and it would run along those particular channels. I do not think you get a very revealing poll under such a paragraph as that.

Mr. KORNHAUSER. The only purpose, Congressman, that I have in mind in suggesting that sort of thing, is to find out how many people feel loyal to each type of leadership, the union leadership and various other forms of leadership, and it seems to me that is a legitimate and somewhat informative type.

Mr. MCCONNELL. Questionnaires are submitted to us as candidates for office, and on those questionnaires they will often say, "Do you favor H. R. bill so-and-so, for this or that?" And that bill will change considerably between the time the questionnaire has reached us and the time the final vote is taken, and it makes our answer meaningless. I do not know whether they should continue polls, except for specific purposes, as they are, in business companies, more like a market analysis or something of that sort. I do not know the—

Mr. JACOBS. Will the gentleman yield?

Mr. MCCONNELL. My view is that I think every man has a right to conduct a poll, and any kind of a poll he wants to conduct.

Mr. JACOBS. He certainly has. And the other fellow has a right to debunk it.

Mr. MCCONNELL. That is what happens; if it does not agree with our opinion, we debunk it.

Mr. WIER. Will you yield?

Mr. MCCONNELL. Yes.

Mr. WIER. I have been concerned because there are three types of questionnaires that have come to my office as the result of my being a member of this Labor Committee. One was from the General Electric, and one from Mr. Fulton Lewis, and then there is another one I have been getting. I got some consideration, Mr. McConnell, out of the General Electric questionnaires, because they were all signed. I do not want to indicate the number I received, but they were all signed and they came from my district, so I had a pretty good idea of who had taken interest enough to sign them and fill out the questionnaires.

But on the Fulton Lewis questionnaire there is no designation. I would like to know who is sending them out, whether it is the down-below, or middle, or top, and I have to have those checked individually. The others are signed, so I get an idea about who sends them. In other words, I get a reaction as to where the noes and yeses come from.

Mr. JACOBS. Will the gentleman yield?

Mr. MCCONNELL. Yes.

Mr. JACOBS. I will say this, that as a candidate I never failed to answer a communication that was addressed to me, or a question; but as a candidate I never answered "yes" or "no." I took the question and wrote my opinion on the subject and sent it back. I did that as an elected official and as a candidate, because I took a firm stand that I would not answer "yes" or "no," except as to the most simple questions. For example, on questions 1 and 2 on the General Electric questionnaire, I received such a questionnaire from labor, such a question as No. 1, and I expanded on it, and told them my views on the whole subject. I thought they were entitled to it.

Mr. KORNHAUSER. The diffiulty, it seems to me, in accepting the questionnaires that are sent in even when they are signed, is, first, you do not know through what range of the population they were distributed, and, if, for example, they had been given to only top-income groups, then naturally they will tend to be reacted to, and answered in a somewhat different way from what would have been true if they had been distributed throughout the population; and, in the second place, if they have been answered by representatives of the people the question is whether they know what they are answering, and if the answers mean anything. I think we have ample evidence to show that many replies to such questions do not mean what they seem to.

Mr. McCONNELL. I am absolutely opposed to any law or bill that would forbid polls. I think people have that right in this country, but I do believe they are received or accepted in the light of one's own personal opinion about something; I think that is the general human tendency. If a poll suits them, they will voice approval, and if it does not suit them, as my colleague here mentioned, then they will start to try to debunk it.

Mr. KORNHAUSER. I think that is true, but we had better set as our goal, it seems to me, in this matter, the type of acceptance or rejection that we have toward scientific evidence and conclusions in other fields. We may not like what a thorough physical, medical examination shows, but we are confident enough that we are likely to accept the judgment of the competent physician.

There are sound polling techniques, and there is good procedure that does get results that stand up under criticism, and it is not, it seems to me, taking what you like and rejecting what you do not like.

Mr. McCONNELL. I wonder what the reaction would have been if the General Electric polls had been in the opposite direction.

Mr. KORNHAUSER. I personally do not know what direction the replies have taken, but I can guess. I am criticizing it as a technical instrument, or a technical procedure. The doctor does not examine your lungs without a stethoscope. I think this is just a poor method, and that is the basis on which I am offering my criticisms, and not in terms of any results.

Mr. McCONNELL. Thank you, Doctor.

Mr. BAILEY. Mr. Smith?

Mr. SMITH. Your testimony sums up to me just a general indictment against the American public that they are too dumb to answer anything except in the broad field of social legislation.

Mr. KORNHAUSER. That certainly is far from my own way of summarizing what I think I have said.

Mr. SMITH. About the only poll you would agree to would be the Hooper rating, and you would call up a man on the telephone, and say, "What program are you listening to," and then you would want him to turn it up loud enough so you could listen and check it?

Mr. KORNHAUSER. On the contrary. I have conducted a good many polls myself, indicating I think people could get valuable results from the public, and I have gotten results I found enlightening; and many other people, I think, have found them useful. It is not my intention at all, as I tried to state at the outset, to damn all opinion polling. I am trying to make a distinction between sound, effective procedure and slipshod and biased procedure.

Mr. Smith. Will you tell me some people in this country that you poll? You said you cannot trust the masses and you cannot trust the higher brackets.

Mr. Kornhauser. I will repeat that I have conducted polls of the public as a whole, and I have great confidence in opinion polls of the public if the questions are ones within the experience and competence of those people. I similarly have conducted polls in the rank and file employees in companies, and have asked them questions with respect to their own feelings about their work and job relations. It is not that I distrust their attitude and opinions, except as to complex social questions where, it seems to me, perfectly clear that the ordinary persons—and I include college professors—cannot answer. I have asked some of my academic colleagues, and they are frank to confess they do not know enough about what is in the law to be able to answer the questions intelligently.

Mr. Smith. In a field of law or legislation do you think the average man can answer, in your definition, an intelligent poll?

Mr. Kornhauser. If you refer to the specific forms of legislation, and the specific elements and provisions in law, I would say the ordinary man is not the person to judge the matter at all.

Mr. Smith. My opening statement was that you have indicted the whole American public because they do not know anything about the technique, or anything about the law.

Mr. Kornhauser. About the technical aspects of the law, I think that is a position that can readily be defended.

Mr. Smith. What would you ask him?

Mr. Kornhauser. Questions about his objectives; whether he thinks, for example, labor unions do have too much power, and should be regulated.

Mr. Smith. You are going to send out a questionnaire and say, "Do you believe labor unions have too much power?"

Mr. Kornhauser. I, in general, would not do any polling by mailing a questionnaire. I think the only way to find out what a person thinks is through personal interview, and I would always have the response of free answers, where he can tell me in his own words at some length.

Mr. Smith. In other words, when you take a poll you want to cross-examine the witness?

Mr. Kornhauser. No; I would not cross-examine—if I may differ again—I say it is a matter of seeing what he really has in mind.

Mr. Smith. Then, after he tells you, you are going to put down the answer as to what he honestly thinks?

Mr. Kornhauser. It is done by first-rate polling agencies and surveying agencies, right along. I will mention, for example the Survey Research Center at the University of Michigan, which is doing a first-rate job on all sorts of complex questions along the lines I am testifying.

Mr. Smith. But experts must ask the question, and experts must classify them, and then say what the man said and what he meant?

Mr. Kornhauser. It is a technical job to do this, as it is to carry on any other kind of scientific research.

Mr. SMITH. In other words, the polls, then, are in the realm of scientific research, and do not belong down in the lower stratus of society?

Mr. KORNHAUSER. The supervision is a problem of scientific research, and the response comes from the general run of people.

Mr. SMITH. How do you suppose the old town halls in New England got along without all of that?

Mr. KORNHAUSER. There was sufficient discussion of each matter, I think, so they were able to crystallize their opinions; and, moreover, they were able to see which of the leaders in whom they had confidence locally, were on each side.

Mr. SMITH. You are placing great emphasis upon leaders here this morning, and people who believe in their leaders.

Mr. KORNHAUSER. Yes, sir.

Mr. SMITH. Where I come from they do not place must emphasis on the leaders; they do their own thinking—of course, under your definition, they do not do any thinking—but they do not want anybody telling them how to think on these matters; they express their own opinions.

Mr. KORNHAUSER. They derive their opinions on technical problems from what they read and hear.

Mr. SMITH. You have laid great stress here on the social sciences and social objectives.

Mr. KORNHAUSER. Yes, sir.

Mr. SMITH. Do you not think that is just as technical as labor legislation, or any other field?

Mr. KORNHAUSER. No; I should say the broad goals we have, and the broad kinds of society we want to see, is something that everyone has a feeling about.

Mr. SMITH. Security—social security, and old age, for instance?

Mr. KORNHAUSER. That is an example.

Mr. SMITH. Everybody believes in that, but the methods sometimes are not agreed upon?

Mr. KORNHAUSER. I agree completely.

Mr. SMITH. That is all.

Mr. MCCONNELL. Just one more thing: Having listened to the later discussion, I am convinced we should continue all the polls and let the chips fall where they may. That would be the easiest way to handle it, instead of getting into technical problems, and let us have a lot of polls, and continue the battle of polls in the future.

Mr. KORNHAUSER. Would you say the same thing about medical practice, Mr. Congressman?

Mr. JACOBS. Just one additional question: Is not the distinction between a poll, and the type of so-called polls, as we have from General Electric, that the General Electric is actually a sort of a straw vote, but a poll is one in which opinion is properly weighted scientifically to determine public opinion?

Mr. KORNHAUSER. Yes; I think that is true. These are not polls in a true sense of the word.

Mr. JACOBS. I might say, Mr. Chairman, in that regard, that in the last election there were two daily newspapers ran polls in my town, and one of them simply sent out cards to literally thousands and thousands of people throughout the city, and they showed me defeated by about 20 percent. The other newspaper took what they called a weighted poll, which was taken somewhere along the line—I could not understand it myself—the man who took the poll had to explain it to me, and I threw up my hands as to how he was doing it, and his percentages of it. It showed me elected and, gentlemen, I am here.

Mr. SMITH. That was a scientific poll.

Mr. BAILEY. Doctor, you will please submit your formal statement for inclusion in the record, and for members of the committee.

(The statement referred to is as follows:)

STATEMENT BY ARTHUR KORNHAUSER

PUBLIC OPINION POLL QUESTIONS BEARING ON CURRENT LABOR BILLS

I am glad to appear before the committee to be of any assistance I can in discussing questions within my special field of competence. I am a psychologist, formerly on the faculty of the University of Chicago and of Columbia University, and now at Wayne University in Detroit. My research and publications deal principally with the psychology of labor relations and with the study of attitudes and opinions in that area.

Specifically, I came here today to state my views regarding certain recent opinion polls that have been given wide publicity because of their presumed significant bearing on current labor legislation. I wish particularly to discuss two such uses of poll questions pertaining to the Taft-Hartley Act.

The first is a set of questions reported by Dr. Claude Robinson, president of Opinion Research Corp., in Look magazine. The original publication was in the issue of September 30, 1947; a later report occurs in the issue of June 8, 1948.

The second type of questioning is that utilized in recent lists of questions circulated to the public by General Electric Co. and by Revere Copper and Brass, Inc. Doubtless these sets of questions have come to your attention in recent weeks since the persons receiving them, or seeing them as newspaper advertisements, are urged to send them as ballots to their Congressmen.

I do not know how seriously you gentlemen take the views ostensibly revealed by such polls. But I believe it profoundly important that all of us, citizens and elected representatives alike, keep ourselves alerted to certain inherent defects and misleading implications in these procedures for determining "the public will."

There are two basic questions we may well ask ourselves in this connection:

(1) How adequately and fairly do the poll questions express the actual content of the law, or the proposed legislation?

(2) Does the ordinary citizen have the necessary information and understanding to know what his yes-no responses to the questions really mean?

You will note that I am omitting numerous other important questions of polling techniques and procedures—whether the questions are put to a representative sample of people; whether the interviewrs who ask the questions are properly selected, trained, and supervised; whether the results are analyzed and reported in a justifiable manner. These problems are now receiving a great deal of critical attention among opinion pollers—considerably more attention than was accorded them prior to last November 2. I omit them today in order to concentrate on the single matter of the poll questions themselves.

(1) On the face of the matter, one is entitled to entertain serious doubts whether a few simple poll questions can adequately represent what is in a complex piece of legislation like the Taft-Hartley law. Even before examining the specific questions, it appears unreasonable to suppose that a short question or two on union security, for example, or on free speech for employers, or on jurisdictional disputes or decertification procedures, could possibly put before the voter a correct and sufficiently complete idea of what the law provides and how it would work in practice.

A few examples from the three sets of questions mentioned above will illustrate that these doubts are not without substance.

Dr. Robinson boils the Taft-Hartley law down to 10 very brief questions and finds that a majority of working people are in favor of every single one of the 10 parts (both in 1947 and 1948). One of the questions reads as follows:

"If you were in Congress, would you be for or against a law to forbid a company to have a union shop until a majority of all the workers vote in favor of it. * * *?"

There can be no surprise that four out of five working people voted for this simplified statement of the law. I leave it to you who are familiar with the law to say whether the statement adequately presents the issue. It scarcely insures that respondents will notice that a majority of all eligible voters is required rather than the usual election procedure based on a majority of votes cast. It surely gives no indication of the various procedural requirements and potential delays that are introduced by the law itself.

It would appear quite possible for a voter thoughtfully to approve Dr. Robinson's deceptively simple version of the law on this point and nevertheless to be strongly opposed to the Taft-Hartley regulations on what is supposed by the same point. This is characteristic of a number of the poll questions under consideration. To the extent that it is the case, one must question whether the accumulated replies to such poll item add up to any useful and meaningful knowledge at all as regards people's views on the concrete provisions of the act.

Certain other questions are so general that they have no clear reference to actual or proposed legislation. For example, one of the General Electric questions reads as follows:

"Should labor laws protect the employee against unfair practices by unions and management?"

Since we are all against unfairness, an affirmative response is easy to give. But the problems arise over what are unfair practices, in what way are they to be prevented, and by what specific procedures are they to be dealt with when they occur. These essential matters are completely sidestepped in the question.

Other examples of very general, indefinite questions are the two that follow, from the Revere Copper & Brass list:

"Should the labor law protect both employers and unions against violations of contracts mutually agreed upon?"

"Should the labor law protect the employee against the use of violence, force, or intimidation?"

While assent can confidently be expected to these items, one wonders how useful the replies are in guiding concrete efforts to write a sound labor-relations law.

A few of the poll questions are also open to criticism because of biased wording. A single example will illustrate—a question taken from the Revere Copper & Brass questionnaire:

"Should the union shop, under which a person is forced to join a union a short time after his employment, be unlawful?"

Americans are likely to react against anything a person is "forced" to do—especially when, as here, no explanation or justification is offered as to who forces whom or why. The question would be a little nearer the law and less open to charges of bias if it mentioned that a majority of the employees have entered into an agreement with the employer and that under this agreement employees are required to join the union.

More important than these criticisms of particular questions, however, is the general proposition that simple poll questions cannot possibly present fully and fairly what is in the law. Questionnaires like the three considered here are deceptively innocent in their coverage of vital (and controversial) features of the law. As a consequence, it is my judgment that people's votes on such questions yield no reliable indication of what these persons desire or oppose in actual labor legislation.

(2) My second major critical question has to do with people's ability to respond to opinion polls on complex technical issues. Even if questions could be asked that adequately represented the content of the law, the replies would be of little value, in my judgment, and might prove more misleading than helpful. Even if we could overcome all the difficulties already discussed, that is, we still are confronted with the fact that these are intricate problems on which offhand opinions are worthless. The ordinary citizen lacks the information, experience, and training that are indispensable for seasoned judgments about effective means for accomplishing the desired goals.

As you gentlemen so well know, the baffling aspect of legislative and social-control problems lies not in deciding what broad objectives are desirable but in finding sound means that will accomplish what is desired without doing more harm or involving more cost in the process than is warranted by the good accomplished. It is precisely this difficult weighing of comparative values that is absent from the simplified poll questions.

Public-opinion polls in general have failed sufficiently to recognize the fact that not every sort of question can appropriately be put to cross-sections of the public. Certain types of questioning produce valuable responses, while other questions can profitably be addressed only to special subpublics—e. g., experts, leaders, or other groups possessing unusual competence on the matter in question.

In the sphere of labor relations, as elsewhere, we clearly need to know what the public's broad goals are, the general direction of their sympathies and condemnations, and, likewise, their opinions on particular issues that have become familiar through personal experience or widespread discussion. Other questions—and this includes the specific provisions of labor laws like the Taft-Hartley—are ones for the specialists and leaders. The problems are ones of technical means; pros and cons of specified conditions and regulations; consequences of changing intricately ramifying group relationships.

When questions on such topics are put to the average man, he responds according to vague general sentiments he holds toward whatever the question suggests to him; he does not weigh the concrete proposal against alternative means nor appraise its estimated effectiveness. Thus, for example, a few years ago opinion polls were reporting large majorities of the public in favor of antistrike laws and compulsory settlement of labor disputes. People dislike work stoppages and public inconvenience. Hence many respond in favor of any proffered remedy—the usual one being "a law."

At the very same time that public polls showed these results, a poll of expert views that I conducted showed a quite different picture. The "experts" or specialists were overwhelmingly against compulsory methods—and this view was held in common by the specially competent men associated with labor unions, industrial management, government, and universities.

We have noted the tendency of uninformed persons to answer specific questions on the basis of vague over-all impressions. Questions like those in the General Electric and Revere Copper & Brass lists, for example, that ask whether jurisdictional strikes and secondary boycotts should be prohibited will be answered "Yes" by some persons who do not understand the issues (the questions are not easy to grasp) but who have an indefinite feeling that any strike should be prohibited if the grounds for it are even worth calling into question. These respondents are expressing a general attitude toward unions and strikes (which is well worth ascertaining as such) but their responses are used as if they were specific endorsements of the particular legislative proposals. This source of error runs through great numbers of opinion poll questions.

The error lies in the use of specific question content to tap general attitudes. It is certainly unjustifiable to pretend that the respondents possess information on the particular matters and that they are reacting to these. Their replies seem to be votes on specific measures whereas many are in fact voting with no understanding of the definite proposal and the alternatives to it.

Doubts about the meaning of people's replies to poll questions are augmented by research findings regarding what people have in mind in answering. Several studies have demonstrated that questions on complex issues have extremely varied meanings to the different persons who answer them—so much so that individuals holding opposite views sometimes give the same yes or no reply while other persons with similar views give opposed answers.

Other evidence has shown the large areas of public ignorance with respect to labor-relations matters. Dr. Robinson himself reports in his Taft-Hartley inquiry that 54 percent of the people interviewed were unable to mention a single specific provision contained in the bill. Other polling agencies have reported as many as two-thirds and even four-fifths of the people unable to answer certain poll questions on particular labor topics. This emphasizes the impossibility of obtaining a true cross-section picture of popular attitudes on the more difficult and technical issues.

At the same time these facts point to the danger of accepting tabulations of those who do respond as if they constituted a sample of the entire public. Since the persons who answer come disproportionately from the higher educational levels, which means also from the more prosperous, the findings portray the views not of the whole population but more heavily of the groups less likely to favor strong labor unions.

In questionnaires like the General Electric and Revere Copper & Brass, which are answered voluntarily and mailed by respondents, this selection effect is bound to be pronounced. It is further increased by the fact that the questions use phraseology that demands a fairly high degree of literacy.

By way of summary, the central thoughts of this memorandum can be briefly caught up in the following quotation from a letter I recently sent to a leading polltaker in response to his request that I suggest questions for his agency to use "in the next few months on the debate over the Taft-Hartley bill":

"The essential point is that technical questions regarding specific measures of control, such as the provisions of the Taft-Hartley law, are not appropriate for public-opinion polling. On such issues the public should be asked only broad questions regarding the social objectives and directions of change; attitudes toward different means must be judged by experts and leaders. In my judgment it is totally impossible to frame questions on the points in the Taft-Hartley law in a way that will be simple enough to be understood and answered by the ordinary voter and that will at the same time be adequate in their reflection of the actual import of the law. People's responses to neecessarily oversimplified questions about the law are bound to be misleading. The responses will appear to be on the specific technical point at issue when in actuality they will be expressing general sentiments set off by what the respondent vaguely supposes the question to mean.

"The views of the ordinary individual concerning the specific sections of the Taft-Hartley law are vastly less important than the question of whom he trusts to represent his interests in these matters. Accordingly, the most soundly revealing questions for your polls would be ones that inquire whether the respondent knows the stand that labor union leaders and the political friends of labor unionism have taken toward the law and whether the respondent is willing to accept their leadership in this connection."

Mr. Bailey. We have several statements and communications which have been submitted for inclusion in the record.

The statements are submitted by Mr. Julian D. Conover, secretary of the American Mining Congress; Mr. Carl Brown, president of the Foreman's Association of America, in reply to the testimony and statement of Mr. William T. Gossett, vice president and general counsel, Ford Motor Co., before the Senate Committee on Labor and Public Welfare; Mr. Don Petty, general counsel, National Association of Broadcasters; Mr. Lester Washburn, international president, United Automobile Workers of America; Mr. Arthur J. Packard, on behalf of the American Hotel Association; Mr. Thomas Kennedy, vice president, United Mine Workers of America, before the Senate Committee on Labor and Public Welfare; Mr. W. Floyd Maxwell, executive director, Lithographers National Association; and a summary of the statement of Mr. Walter J. Munro, Commissioner of Conciliation, United States Department of Labor, before the Senate Committee on Labor and Public Welfare on February 16, 1949.

The communications are from the American Hospital Association, Magnetic Metals Co., of Camden, N. J., and the Illinois Association of Merchandise Warehousemen.

If there are no objections, we will accept these for inclusion in the record.

(The statements and communications above referred to will be found in the appendix at the close of today's testimony. See index for page numbers.)

Mr. Bailey. The subcommittee will stand in recess until 2 p. m.

(Whereupon, at 12:45 p. m. the subcommittee recessed until 2 p. m. of the same day.)

AFTERNOON SESSION

(Pursuant to the recess, the subcommittee reconvened at 2 p. m.)

Mr. IRVING (presiding). The next witness will be Gerald Morgan.

Before starting, Mr. Morgan, I see you have quite a lengthy statement here.

Mr. PERKINS. Let him summarize it, and we will put it in the record.

Mr. IRVING. I was going to say we will put it in the record. And if it is possible for you to summarize it and not read the whole thing, it may help some.

Mr. MORGAN. Yes, sir; I was not intending to read the whole thing by any means, because I certainly do not want to impose upon this subcommittee.

Mr. IRVING. Some do desire to read their statements.

Mr. MORGAN. With the committee's permission, I would like to read part of it and very briefly summarize the rest of it.

Mr. IRVING. Would you state your name, address, and occupation? Then we will proceed.

TESTIMONY OF GERALD D. MORGAN, ATTORNEY, FORMER ASSISTANT LEGISLATIVE COUNSEL, HOUSE OF REPRESENTATIVES, WASHINGTON, D. C.

Mr. MORGAN. My name is Gerald D. Morgan. I live in Bethesda, Md., and am a practicing attorney in Washington, D. C., a member of the firm of Morgan & Calhoun.

I am not appearing here in behalf of or at the request or suggestion of anyone but myself. The reasons for my appearance will be apparent from what I have to say.

I have had a fairly long and, I believe, unique experience in the field of labor law, having had a major part in the drafting of most of the important labor legislation that has been enacted since the Wagner Act became law, as well as most of the important proposed labor legislation during the same period that failed of enactment.

My experience in this regard started in the early part of the 11-year period January 1935, through December 1945, when I served in the office of the legislative counsel of the United States House of Representatives. For nine of those years I was assistant legislative counsel for the House. As such, when the services of the legislative counsel's office were requested, I had the responsibility, on behalf of that office, of assisting various committees of the House in drafting legislation, the responsibility of advising committees on legal problems that arose in connection with legislation under consideration, drafting amendments for offering on the floor of the House, preparing committee reports, conference reports, statements of managers of House conferees, and generally doing a great variety of other things that counsel for committees and the House on legislative matters might do. Among the committees for which I did these things was the Committee on Labor.

The legislation and proposed legislation that I have had a major part in drafting included the Fair Labor Standards Act of 1938; the Smith committee amendments to the Wagner Act proposed in 1940, as well as the amendment formulated by this committee as a substitute therefor; the War Labor Disputes Act; the various labor proposals preceding the War Labor Disputes Act that were considered by the Committee on Military Affairs, the Committee on Naval Affairs, and the House during the early part of the war period; the Case bill passed by both Houses in 1946 but vetoed by the President; and lastly the Taft-Hartley Act.

My work on the Case bill and on the Taft-Hartley Act was performed after I had left the legislative counsel's office. In both instances my assistance was requested by Members of the present minority of this House. I presume I was asked to help because of my prior experience in the field—it certainly could not have been for political reasons, because I am a Democrat, and I made this fact clear at the time the requests were made.

The legislative counsel's office has always been completely removed from politics and patronage. Thus, until after I resigned from the legislative counsel's office, I don't believe there was a single member of the House who knew my political affiliation.

In view of the statements that have been made and are still being made as to how the Taft-Hartley Act was drafted, I believe it would be of considerable value to have this record show for all to see just how it was drafted. I can tell you how it was drafted, because I was continuously and intimately connected with the bill from the time the first word was put down on paper—and even before that.

In the early part of 1947, I was requested by Mr. Hartley, then chairman of this committee, to serve as special counsel to the majority members of the committee in the drafting of the intended labor bill. Mr. Halleck, who at that time was majority leader of the House, had previously talked with me at some length about the same matter and had suggested that, pending conferences with Mr. Hartley, I get something started in the draft form for purposes of preliminary discussion. Pursuant to this suggestion, I had taken the Smith committee amendments to the Wagner Act that had passed the House in 1940 and the vetoed Case bill that had passed both Houses in 1946, combined the two into one document for working purposes, and had incorporated therein a number of additional ideas that Mr. Halleck thought would be appropriate for the preliminary discussions.

Mr. Hartley's request that I act as special counsel was made to me at the conclusion of the first of a series of extended conferences, among a small group of Members of this House. At these conferences the policy issues raised by the original document that I had drafted, as well as policy issues raised by various witnesses in the hearings then in progress on labor legislation, were taken up and discussed. As a result of these conferences, the original document was substantially revised and a preliminary working draft was prepared by me for Mr. Hartley to submit to the majority members of this committee for use by them in their deliberations with respect to labor legislation.

Mr. Hartley submitted this draft to the majority members as a vehicle for discussion shortly after the conclusion of the committee hearings. Thereupon the majority members of the committee met daily all day—and sometimes at night as well—for over 3 weeks considering not only the issues presented by this preliminary draft but many others as well. These meetings were attended by the majority members of the committee, myself, and no one else. As a result of the meetings, a tentative draft of a bill for introduction was prepared by me embodying the various policy decisions made by the majority members. This tentative draft was read and considered by the majority members word by word and line by line at further meetings and perfected further.

The tentative draft as finally agreed upon by the majority members of this committee was, before being introduced, submitted to the Republican steering committee and considered in detail by that group at a meeting at which I was present.

I may say, Mr. Chairman, off the record, that I am probably the only Democrat that ever got into a Republican steering committee meeting.

The steering committee recommended further changes in the draft, whereupon the majority members of this committee again met, considered the recommendations of the steering committee, and finally agreed to them.

Mr. Irving. May I interrupt to say that I hope that no other one will ever get in?

Mr. Perkins. I want to interrupt to say that this is the most interesting witness that I have heard yet.

Mr. Morgan. It was only after this long and careful process that the bill was finally introduced and referred to this committee as a whole for consideration. Although the full committee had but a short time to consider the bill by reason of the schedule of business in the House, the bill was read in the full committee in its entirety. I was present in the executive sessions of the full committee when it considered the bill. As the bill was read various amendments were adopted thereto, and on April 11, 1947, the bill as so amended was reported by the committee to the House.

From the time of the first discussions that I had with Mr. Halleck about the intended labor legislation, until the bill was reported by the committee, my work in connection with the bill was virtually continuous. And by "continuous," I mean morning, noon, and night.

During this period I not only needed, but I sought, expert technical assistance in connection with numerous legal, administrative, and practical problems that were involved in the various policies being considered. I sought this technical assistance almost exclusively from two men, both outstanding experts in the field of labor law—Gerard Reilly, formerly a member of the National Labor Relations Board, who during most of the period that I worked on the bill was acting as special counsel to the Senate Committee on Labor and Public Welfare, and Theodore Iserman, an attorney with an extensive labor-law practice, whose writings on labor-law problems had received wide circulation, not only within the legal profession itself but outside it as well, and who is presently, I understand, vice chairman of the labor-law section of the American Bar Association.

The technical assistance that I received from these two men was just that information on policies and practices of the National Labor Relations Board, on Board decisions and court decisions; advice with respect to the effects that a change made in this provision or that would have on other provisions of the act, and similar matters. Neither they nor I decided policy. All of the decisions of policy were made—and made in my presence—by elected representatives of the people who had been assigned by the House to the committee having the responsibility for labor legislation. They were made at meetings at which there were present those representatives, myself, and no one else. And every word in the bill was drafted by me to carry out those policies.

While the bill was formulated and sponsored by members of the majority party of this committee, it was not treated as a political measure either in the committee or in the House. It passed the House with a majority of the Members of both parties voting in favor of it. After the Hartley bill had passed the House and the Taft bill had passed the Senate, conferees for both Houses were appointed as a conference committee to adjust the differences between the two bills. With the consent of the conferees from both Houses, I was present at all of the meetings of the conference committee in the capacity of counsel to the House managers. The drafting of the final bill to carry out the policies decided by the conference committee was done jointly by Gerard Reilly, special counsel for the Senate committee; Thomas Shroyer, the general counsel for the Senate committee; Dwyer Shugrue, counsel for Senator Ives; and myself.

To complete the record, let me return for a moment to my relationship to the bill. When my services were requested by Mr. Hartley he initially asked me to go on the regular professional staff of the committee. Since it was not possible for me to do that because of my regular practice—which, incidentally, had no connection, direct or indirect, with any labor-relations matters—the question of how I was to be compensated for my services, and on what basis, was left entirely up in the air. It remained up in the air during the whole period that I worked on the bill, and during that period I received no compensation whatsoever for the work I was doing or the time that I was devoting to it. Several months after the bill became law, through the good offices of Mr. Halleck, I received compensation for my time from the Republican National Committee.

I have gone into considerable detail as to how the bill developed because I believe very deeply that the Taft-Hartley Act should be considered on its merits rather than be judged emotionally on the basis of a false assumption as to its origin. Because of my feeling in this respect I asked and secured the consent of Mr. Halleck and Mr. Hartley to make the foregoing statement with respect to it. I did not consider myself free to make it without their consent, because lawyers treat their dealings with clients as confidential.

The Taft-Hartley Act has merit—a great deal of merit—and I believe intensely that its repeal would constitute a tremendous blow to the cause of true liberalism. By true liberalism I mean liberalism that believes first and foremost in the dignity of human personality and in the freedom of the human spirit, that insists upon fairness in all things and to all persons, that scorns oppression of all kinds and from all sources, that demands restrictions upon all powers which can be used as instruments of oppression, and that constantly strives for the effectuation of social programs not as ends in themselves but merely as means of giving greater opportunity for the expression of individual dignity and greater freedom for the human spirit.

This kind of liberalism was what prompted countless people—including myself—to favor the enactment of the Wagner Act. Experience had demonstrated the helplessness of the individual in an industrial economy of tremendous production units in which the relationship between the employee and the boss could no longer be a friendly personal one, and in which many employers, both individually and collectively, sought, through the blacklist, labor spies, yellow-dog contracts, and other shameful devices and practices, to use a superior economic power to despoil the dignity of the individual and to prevent him from exercising a free choice in the matter of associating with his fellows for mutual aid and protection. The liberal resented these things, and for that reason strove for the enactment of legislation that would restore to the individual his right to freedom. For the same reason the liberal is still in favor of retaining the essential features of that legislation as part of our basic law.

The liberal is not, however, a person whose philosophy permits him to regard the National Labor Relations Board appointed to administer that legislation as an agency which has done no wrong—for he knows in his heart that it has. He knows that the Board completely lost sight of the liberal purpose of the Wagner Act and embarked upon a course of action that was the very antithesis of liberalism.

Unionism—a thing that true liberalism regards as a means to an end—seemed to be treated by the Board as an end in itself. Thus it was apparently considered liberal to force as many individuals as possible within the union orbit and under union control, irrespective of their individual choice in the matter. In the same manner it was evidently thought liberal to ignore or belittle abuses of power by unions and to close the eyes to coercion and intimidation of individuals by unions, for the union was the thing, and the union could do no wrong.

In its zeal to be for the union the National Labor Relations Board developed doctrines, practices, and procedures that had the effect of generating in the United States new and tremendous aggregations of power concentrated in the hands of a relatively few individuals—the leaders of organized labor. The true liberal fears unconfined power in the hands of anyone, because it can be used to the injury of the individual. When overwhelming evidence is presented that it has been so used, the true liberal does not close his eyes or his mind simply because the wielder of the power happens to be a labor union or a labor leader. It is not the course of such a power or the person who exercises it that is important. What is important is that power is being used to despoil the dignity and freedom of a human being.

So the Labor Board forgot—if it indeed ever knew—that it was not the fact that the Wagner Act would promote unionism that caused countless liberals to strive for its enactment; it was the fact that that act would prevent the use of economic power to oppress the human spirit. The same reason must prompt the true liberal to be for the essential features of the Taft-Hartley Act, if he will analyze exactly what the Taft-Hartley Act does.

Mr. Chairman, I have discussed at length in my prepared statement various provisions of the Taft-Hartley Act. First, the provisions that deal with so-called national-emergency strikes. I have gone at some length into the question of whether enjoining a strike results in any involuntary servitude. I also discussed some of the provisions of the act which deal with intimidation and coercion by unions.

I have discussed the closed shop, political contributions by unions. boycotts, and jurisdictional strikes. I have discussed the question of representation of employees and the so-called decertification petitions in particular.

I have discussed also various procedural provisions of the Taft-Hartley Act, the provisions which separated the so-called prosecuting and judicial functions. The provisions relating to the preventing of the trial examiner from conferring with the Board about the trial examiner's report are discussed; and the provisions abolishing the old review division.

I also discussed the provisions relating to union responsibility the so-called suability of unions, and at the conclusion of my statement I make some suggestions for changes in the present law, because I certainly do not think that the Taft-Hartley Act is perfect by any means. I have never seen any legislation that is.

I do wish to state in conclusion that merely as one American, speaking for no group and representing no interest except what I believe very deeply to be the interest of true liberalism in government, I urge you to consider the Taft-Hartley Act provision by provision on its merits, judge it according to liberal principles, and then determine whether it is not more consistent with those principles to retain the essential features of that act and to modify the act only where the application of those principles dictates that modification should be made, rather than repeal it outright.

Would the committee like to have me discuss some of the suggested changes that I would like to see incorporated in the act?

Mr. PERKINS. I think the best procedure would be to question him, Mr. Chairman, and let him file that statement. We would get along better that way.

Mr. IRVING. Do you want him to discuss the changes or bring it out in questions?

Mr. JACOBS. I do not see that it makes much difference, Mr. Chairman. The rule that we have here does not permit us to examine a witness who files a 45-page statement. I mean, it does not permit any adequate examination of the witness. So it could be done that way, as far as I am concerned.

Mr. IRVING. The rule is that each one has 10 minutes for questions; so it does not give us sufficient time, hardly, for that.

Mr. MCCONNELL. Mr. Chairman, I would like to suggest that he read the suggestions for changes in the law, about six and a fraction of these pages. That would not take long to do that, and he can skip this part which he has summarized here and go on through.

But here are the suggestions for changes in the law, which I think are pertinent. There are about six and a half pages.

Mr. IRVING. Very well.

Mr. MORGAN. First, I have attempted to show that labor's right to strike is not a right that we can or should permit to be exercised in an manner to attack the life of the community or to prostrate the public. The Taft-Hartley Act contains a fairly cumbersome procedure which to my mind does not go to the heart of the problem. First a board of inquiry is created. Then the board of inquiry reports to the President. Next the President—if he deems it necessary—requests the Attorney General to apply to the appropriate court for an injunction. If the injunction is issued, the board of inquiry is reconvened, and if the dispute is not settled at the end of 60 days, the board is to make a report to the President. Thereupon the National Labor Relations Board must take a secret ballot of the employees on the employer's last offer. At the end of 80 days, irrespective of whether the dispute has been settled, the injunction must be discharged, and thereafter the public is entirely without protection.

In the case of strikes which are causing or threatening to cause substantial injury to the national health or safety, I would suggest doing either one of two things:

First, give the President authority to seek an injunction against striking in such a matter as to cause such injury. The adoption of such a suggestion would not preclude separate strikes against individual employers, except possibly under very unusual circumstances. The injunction would be a permanent injunction—its effectiveness not being limited to any particular period of time; or

Second, outlaw industry-wide bargaining, in a manner similar to that proposed in the Hartley bill as passed by the House in 1947. Such a suggestion would prohibit—with certain exceptions to take care of the problem of employees of small employers—a union from representing for bargaining purposes the employees of more than one employer, and would also prevent unions from acting in concert with respect to their bargaining arrangements. It would not preclude affiliation of local unions with internationals, but would very substantially restrict the power of the international over the local. In addition to imposing these restrictions on unions acting in concert, the suggestion would also prohibit employers from combining or agreeing with one another with respect to their bargaining arrangements.

With respect to the free-speech provision, the "evidence" rule in the free-speech provision of the act presents a very difficult problem. It is undoubtedly true that this rule has the effect of excluding evidence of a kind that in other proceedings, both judicial and administrative, is treated as having some probative value. On the other hand, it is also true that the Board, in its zeal to advance union interests at all costs, had grossly abused its power to consider such evidence, through according it weight out of all proportion to its significance. The practical result was that if the employer or his agents said anything critical of the union of his employees, or even critical of unions generally, the employer thereafter discharged employees at his peril.

I might say, departing a minute from the prepared text, that the committee will probably recall that in 1940, I think it was, the American Federation of Labor was extremely interested in amending the Wagner Act to include in it a free-speech provision, because at that time, the American Federation of Labor considered that the Board was bent on swallowing up its craft unions by industrial unit determinations, and the American Federation of Labor evidently found that the employer could not even say a kind word for the American Federation of Labor without getting into trouble with the Board. So the American Federation of Labor, in 1940, did very strongly urge the inclusion of a so-called free-speech provision in the Wagner Act.

Getting back to the evidence rule, I would suggest that the committee determine whether it is not true that as a practical matter it is rarely, if ever, necessary to use speech that consists merely of views, argument, or opinion, and this does not include admissions, statements of fact, questioning of employees, and similar matters, as evidence of motive or intent in labor-relations cases, if it is not true that there is invariably other, and much stronger, evidence of such motive or intent. If it is true, and I think you will find it to be, inasmuch as the right to speak freely is a right that we in America wish to protect against all unnecessary encroachments, and inasmuch as the present evidence rule applies both in respect of employer conduct and union conduct, I would not at this time favor changing the rule. If, however, it is found to prejudice the just rights of unions or of employers, I certainly would favor it being either restricted in its application or eliminated entirely.

As further illustrative of the attitude of the Board toward the expression of views, argument, and opinion, the Board has held that the existing free-speech provisions does not apply to speech before or in connection with representation elections, and has set aside elections where the employer has made comments critical of the union. This seems to me improper.

Mr. Jacobs. May I interrupt at that point? Is it not true that the free-speech provision to which you are referring has no application whatever to representation elections, but only to unfair labor practices?

Mr. Morgan. I think that is correct, the way the law is written.

Mr. Jacobs. Then the point you are making here is hardly applicable to the provision.

Mr. Morgan. The Board has held that. I think the Board correctly held that, the way the act is presently written.

Mr. Jacobs. Because the section actually has no application to representation.

Mr. Morgan. That is correct.

Mr. Jacobs. All right. I am sorry for the interruption.

Mr. Morgan. Thus I would suggest that the free-speech provision be amended to make it applicable to views, arguments, and opinions expressed either by employers or unions or their agents in connection with representation elections.

I do not believe that it is either necessary or appropriate that fulfillment of the financial reporting requirement imposed on unions be made a condition to the exercise of a union's rights under the Wagner Act. It seems to me that this requirement should more properly be made wholly independent of the Wagner Act, and also that union members should have the right to inspect the reports filed with the Secretary of Labor by his union.

I believe that the discretionary power which now exists under section 10 (j) of the amended Wagner Act to seek temporary injunctions against either employers or unions or both pending decision by the Board on the merits of the case, should be retained. But I do not believe that there should be a separate provision imposing a duty to apply for temporary injunctions against labor unions when they do particular things. Thus I would suggest repealing section 10 (l) of the amended Wagner Act.

I have previously indicated that under the Taft-Hartley Act, the refusal by the general counsel to process a charge or issue a complaint is—if such refusal is arbitrary, capricious, or even incorrect—tantamount to a denial of relief under the act. I have also urged that this fact is no argument for revesting the prosecuting functions in the judicial body, the Board.

I would suggest that the act be amended so as to give parties the right, if they wish, to issue their own complaints under the act and prosecute those complaints before the Board. This suggestion is a suggestion for an additional remedial procedure—not one to take the place of the existing procedure. Thus if parties were dissatisfied with the action of the general counsel, they would have a right to initiate and conduct their own cases.

I do not believe that prohibiting the closed shop is sufficient to give individual union members adequate protection against arbitrary action by the union. There are countless individuals who want to be union people, and be known as such. It is no answer to them to say that if the union expels them for reasons other than failure to pay dues they can nevertheless still keep their jobs. They do not want to be expelled—they want to be good union men, and stay in the union.

For this reason, I suggest that there be added to the Taft-Hartley Act the essential features of the so-called bill of rights that was contained in section 8 (c) of the Labor Act under the Hartley bill, but that was dropped out by the conference committee on the bill. I also suggest that there be added to the Taft-Hartley Act a provision making it an unfair labor practice for an international union to restrain or coerce any of its locals in respect of their bargaining arrangements or otherwise.

The definition of collective bargaining in the Taft-Hartley Act, requiring 60-day notices and so forth, seems to me to be cumbersome and unnecessary, as well as a trap for the unwary. Moreover, it seems to me that its provisions depriving individual employees of rights under the act, are unduly harsh. For these reasons I would suggest the elimination of this definition, and the substitution therefor of the provisions of section 108 of the President's bill, H. R. 2032.

I think that concludes my statement, Mr. Chairman.

Mr. Irving. I am not going to ask any questions, Mr. Morgan. I might make this observation, that there are still a whole lot of people in this country who have not been dignified, as you mention, in this act. Maybe if it goes along further, that will be accomplished. But certainly it has not been so far.

Mr. Perkins?

Mr. Perkins. Yes.

Mr. Irving. I will yield my time to you and Mr. Jacobs.

Mr. Perkins. I want to make the observation that I have been wondering ever since we started these hearings, up until I heard this witness, just who prepared the act. I am glad to have this information, along with the other counsel who assisted you in the preparation of the act.

I notice from your statement that you applied approximately 24 hours a day in drafting the act for a period of several months, and that you received no compensation until several months after the bill became law. You further stated that when you were paid compensation, you were paid by the Republican National Committee, and that you had had no contract with Representative Halleck or Mr. Hartley concerning what your compensation would be. Inasmuch as you applied yourself so diligently, and you have disclosed the fact to the committee, would you mind telling the committee just how much compensation you received from the Republican National Committee for this difficult task that you have detailed to the committee?

Mr. Morgan. No, sir; I would not. I received $7,500.

Mr. Perkins. That is from the Republican National Committee?

Mr. Morgan. Yes, sir.

Mr. PERKINS. And also, how long did it take you to earn that money, if you do not mind telling the committee?

Mr. MORGAN. I started work on the bill in January 1947, and my work on the bill went through the conference committee on the bill; so it was a period of about 6 months. I did not mean to imply in answering your question the way I did that I spent 24 hours a day. There were periods during my work on the bill when it was morning, noon, and night. There were other periods when there would be a day, 2 days, or 3 days when I would be engaged in other matters.

Mr. PERKINS. You were looking to Mr. Halleck and Mr. Hartley as paymasters for your services, were you not?

Mr. MORGAN. Yes, sir.

Mr. PERKINS. And from your conversations with those two gentlemen while you were drafting the act, you knew that you would well be paid for your services, even though you did not ask them directly?

Mr. MORGAN. Hr. Halleck told me that he would see that I got paid for my services. He said, "I do not know whether I can get you paid by the National Congress or whether I can get you paid by the Republican National Committee, or whether we will have to take up a collection. But you will be paid for your services."

Mr. PERKINS. Did they pay that fee at one time, the Republican National Committee, or did they pay it by installments?

Mr. MORGAN. They paid it by installments.

Mr. PERKINS. You do tell the committee that you received only $7,500 from the Republican National Committee; am I correct in that statement?

Mr. MORGAN. That is correct.

Mr. PERKINS. And you further tell this committee that you did more work on the drafting of the Taft-Hartley Act than any other person? That is the way I interpreted your statement.

Mr. MORGAN. No; I would not say that. Mr. Reilly did a great deal of it. He did all of the work on the Senate side. My work was confined to the House side and the conference committee. I did not do any work on the Senate side.

Mr. PERKINS. When did Mr. Halleck first contact you and inform you that he wanted you to work on it?

Mr. MORGAN. It was in the early part of January 1947.

Mr. PERKINS. Had you been contacted previously to that date by anyone?

Mr. MORGAN. No, sir.

Mr. PERKINS. To serve in that capacity?

Mr. MORGAN. No, sir.

Mr. PERKINS. You tell the committee that you got permission from Mr. Halleck inasmuch as you tell the committee that the client relationship existed during the time of your employment, before giving your testimony in this case?

Mr. MORGAN. That is correct.

Mr. PERKINS. And it was perfectly agreeable to Representative Halleck, of course, for you to give this testimony?

Mr. MORGAN. Yes, sir. He thought it would be a good idea to get this testimony.

Mr. PERKINS. He thought it would be a good idea for you to give this testimony?

Mr. Morgan. Yes, sir.

Mr. Perkins. In other words, I presume he thought that it would be a good idea for the author of the act to come in before the committee and defend the act?

Mr. Morgan. I do not claim to be the author of the act, sir. I was merely a technician.

Mr. Perkins. I mean, the technician of the act. I will change my word from "author" to "technician." Then he thought it would be a good idea for the technician in the draftmanship of the act to defend the act before the committee? Did he make that recommendation to you?

Mr. Morgan. No, he did not.

Mr. Perkins. What prompted you to come here and make this statement, Mr. Morgan, if it was not for the purpose of defending the act?

Mr. Morgan. It was for the purpose of defending the act.

Mr. Perkins. The Taft-Hartley Act?

Mr. Morgan. The defending of what I consider to be the Taft-Hartley Act.

Mr. Perkins. Have you altogether severed your employment with the Republican National Committee at this time?

Mr. Morgan. Yes, sir.

Mr. Perkins. When did they last pay you an installment for your services? What month? That is, an installment on your fee?

Mr. Morgan. It was either January or March of 1948.

Mr. Perkins. 1948?

Mr. Morgan. Yes.

Mr. Perkins. Are you now employed by the National Association of Manufacturers, I mean, to represent them, in any litigation?

Mr. Morgan. No, sir; and I never have been.

Mr. Perkins. You never have been?

Mr. Morgan. No.

Mr. Irving. You have about 1 minute, Mr. Perkins.

Mr. Perkins. That is all.

Mr. Jacobs. Mr. Morgan, I was rather perplexed and amazed when I found out that you, a Democrat, had gotten into that Republican circle, that inner circle. But as you testified further, I found out you were their private lawyer, and it more or less clarified itself in my mind. I suppose that would be a pretty fair characterization of it, would it not?

Mr. Morgan. As I say, I consider the work I did on the Taft-Hartley Act was purely as a technician. It is exactly the same sort of work that I did here when I worked for 11 years for the House of Representatives, in drafting for committees; in other words, to try to find out——

Mr. Jacobs. Now, that is not the question. The question is whether or not you considered yourself a lawyer hired by the Republican National Committee.

Mr. Morgan. No, sir. I considered myself a lawyer employed by the majority members of this committee and by the majority leader.

Mr. Jacobs. Then if you considered yourself a public lawyer hired on the pay roll, why did you consider yourself under obligation from an ethical viewpoint to go back and ask Mr. Hartley and Mr. Halleck whether or not it would be all right to disclose the conversations?

Mr. Morgan. I do not quite understand. Will you repeat that?

Mr. Jacobs. As a lawyer you know that you are ethically obligated not to disclose what is communicated between yourself and your client, do you not?

Mr. Morgan. That is right.

Mr. Jacobs. All right. Now, you acted as a lawyer in this case?

Mr. Morgan. That is correct.

Mr. Jacobs. And when you got ready to ask for permission to disregard the ethical seal of secrecy, you did not come to this committee and ask permission, did you?

Mr. Morgan. No, I had not. I thought——

Mr. Jacobs. All right. You went to Mr. Halleck, who was supposed to be a representative of all the people, did you not?

Mr. Morgan. That is correct.

Mr. Jacobs. And you went to Mr. Hartley, who, when he employed you, was at least in a position of being a representative of all the people; is that right?

Mr. Morgan. He was chairman of this committee.

Mr. Jacobs. He is not any more, is he?

Mr. Morgan. No.

Mr. Jacobs. You never came to this committee and asked its consent to disclose what had transpired, did you?

Mr. Morgan. Maybe——

Mr. Jacobs. Now, did you or did you not?

Mr. Morgan. No; I did not.

Mr. Jacobs. All right. Then, as a matter of fact, a lawyer usually goes to his client and asks for permission to disclose confidential matters, does he not? That is his duty, is it not?

Mr. Morgan. Well——

Mr. Jacobs. Well, is it or is it not?

Mr. Morgan. It is, certainly.

Mr. Jacobs. All right. Then when you got ready to be relieved from the ethical obligation of maintaining secrecy, you went to Mr. Halleck and Mr. Hartley; is that right? That is what you said in your statement; am I correct?

Mr. Morgan. That is correct.

Mr. Jacobs. All right. Now, then, you state, as I understand it, that you had not at that time been employed by anyone in labor relations; is that correct?

Mr. Morgan. That is correct.

Mr. Jacobs. And have you ever been since?

Mr. Morgan. No.

Mr. Jacobs. Has your firm ever been?

Mr. Morgan. No.

Mr. Jacobs. Do you represent any clients who have labor problems?

Mr. Morgan. I think so, yes.

Mr. Jacobs. You do. You revealed to us that a man by the name of Iserman assisted in the drafting of this legislation. You referred to him as a labor relations expert. Do you know who his principal client is?

Mr. Morgan. I know who one of his principal clients is.

Mr. Jacobs. Tell us.

Mr. Morgan. I know that his firm is general counsel for the Chrysler Corporation.

Mr. JACOBS. Chrysler?

Mr. MORGAN. Yes.

Mr. JACOBS. And you referred to Mr. Gerard Reilly. You know he is a legislative representative for General Motors, do you not?

Mr. MORGAN. I know that he is now; yes, sir.

Mr. JACOBS. And General Electric?

Mr. MORGAN. Yes, sir; I know that.

Mr. JACOBS. And the printing industry?

Mr. MORGAN. That is correct.

Mr. JACOBS. Did the minority ever call anyone in who represented labor and have him in the room and consult with him in regard to any of the provisions of this act?

Mr. MORGAN. I do not know whether they did or not.

Mr. JACOBS. In your presence, they did not?

Mr. MORGAN. Not in my presence.

Mr. JACOBS. Then you never heard of anybody who did?

Mr. MORGAN. They never called in anybody who represented anyone else in my presence, either.

Mr. JACOBS. Not even Mr. Iserman?

Mr. MORGAN. No, sir.

Mr. JACOBS. Was he there when you were there?

Mr. MORGAN. No, sir.

Mr. JACOBS. But you do know that he did assist in the—well, it seems to be a sort of question of not letting thy right hand know what thy left hand doeth; is that right? You were not there when these other men were there, and they were not there when you were there?

Mr. MORGAN. I have no knowledge of it. He was never there when I was there.

Mr. JACOBS. But did you not say in your statement that he participated in drafting the bill?

Mr. MORGAN. I said that he helped me.

Mr. JACOBS. He helped you?

Mr. MORGAN. Yes, sir.

Mr. JACOBS. Who told you to consult with him? How did you happen to consult with him?

Mr. MORGAN. I happened to consult with Mr. Iserman because in the first suggestions that Mr. Halleck had made to me, a great many of them were fairly similar to the suggestions that had been made by Mr. Iserman in a little book that he had written called Industrial Peace and the Wagner Act. When he was down here testifying——

Mr. JACOBS. Particularly, I wonder, did anyone direct you to get in touch with Mr. Iserman, or did you do that on your own?

Mr. MORGAN. No one directed me to get in touch with Mr. Iserman, no. I did that on my own.

Mr. JACOBS. You did that on your own. All right. Now, as I understand you, you are here, as you say, to defend the essential features of the Taft-Hartley law.

Mr. MORGAN. Yes, sir.

Mr. JACOBS. And I take it that you are reasonably familiar with the law.

Mr. MORGAN. Yes, sir.

Mr. JACOBS. Is there any particular provision in the Taft-Hartley law that you could claim to be the author of?

Mr. MORGAN. No, sir.

Mr. Jacobs. That you feel your influence caused to be incorporated?

Mr. Morgan. No, sir.

Mr. Jacobs. Take particularly section 8 (b) (4) (D). That is the one on jurisdictional disputes in the crafts. You would not have been the author of that?

Mr. Morgan. No, sir.

Mr. Jacobs. And section 10 (k), which provides for the Board to issue awards in connection with such disputes?

Mr. Morgan. No. Both of those came from the Senate bill.

Mr. Jacobs. I was going to say, whoever was the author of that, should have gotten more than $7,500 for it. They would be otherwise cheated.

Particularly referring to those two provisions, Mr. Morgan, I asked this question of a labor relations expert of General Electric the other night and gave him 24 hours to look it up. I could not give you 24 hours, because I did not see you 24 hours ago. But I want to ask you whether or not you could tell me any provision in the Taft-Hartley law that gives the union a right to enforce an award that is made by the Board under section 10 (k).

Mr. Morgan. There is not.

Mr. Jacobs. There is none. Thank you very much. I had an awful time getting that answer from General Electric. But there certainly is a method to enforce the award against the labor union, is there not?

Mr. Morgan. You mean, through the——

Mr. Jacobs. Through the injunction.

Mr. Morgan. Through the injunction; that is correct.

Mr. Jacobs. In fact, it is the last sentence in section 10 (1), is it not?

Mr. Morgan. That is correct. When I say there is none, possibly I ought to expand on that a little. After the Board had issued one of those awards, a strike by a union to compel the employer to accede to that award is not a strike that is proscribed by any of the provisions of section 8 (b).

Mr. Jacobs. You mean that when the union strikes against the award of the Board, it is not an unfair labor practice?

Mr. Morgan. If it strikes in favor of the award.

Mr. Jacobs. What if it strikes against the award?

Mr. Morgan. That is an unfair labor practice.

Mr. Jacobs. But there is no provision where the Board is empowered to go in and procure an injunction to enforce the award against the employer, is there?

Mr. Morgan. That is correct. There is not.

Mr. Jacobs. And if you are correct, which I will assume for the sake of this examination you are, what the Taft-Hartley law actually does is this: It says, when we make our award, we will put Uncle Sam on the union if it does not obey the award, but if the employer does not obey the award, we will just cut the union loose out in the cold world and let it forage the best way it can. That is what it amounts to, is it not?

Mr. Morgan. That is about the substance of it.

Mr. Jacobs. I may have embellished that a little bit, but that is just about the substance of it. Are you defending that particular feature of the Taft-Hartley law?

Mr. Morgan. No, sir; I am not.

Mr. Jacobs. There is nothing in your recommendations to correct it, is there?

Mr. Morgan. No. And what is in here is by no means exclusive. When you get in to discussing all of the various provisions of that act, you get in a document that thick [indicating]. And I think I imposed a great deal on the committee in getting one even this thick [indicating].

Mr. Jacobs. I do not know whether you imposed or not. I would like to have a day to go into your ideas on this thing, a whole day. I believe we could develop quite a number of things that might be helpful. You, for example, say that you think that the general counsel should be separate from the Board. Have you read the Hoover Commission report on that?

Mr. Morgan. No, sir; I have not.

Mr. Jacobs. It was in the Post the other day.

Mr. Morgan. No, sir; I have not.

Mr. Jacobs. Getting back now to what you say about the emergency strikes, did you recommend that type of procedure to the Board when you were representing the majority, as counsel?

Mr. Morgan. No, sir.

Mr. Jacobs. Do you agree with it at all? Do you think it is good procedure? I notice you made some recommendations.

Mr. Morgan. The existing procedure?

Mr. Jacobs. Yes.

Mr. Morgan. No, sir; I do not think it is.

Mr. Jacobs. Do you consider it rather a dangerous procedure, as to what it might lead to?

Mr. Morgan. No. I think it is just cumbersome, and I do not think that it helps to get the parties together, because during the very period when they should be trying to get together, they are having to go to all these meetings of boards of inquiry.

Mr. Jacobs. It starts getting some law into it?

Mr. Morgan. That is about what it does.

Mr. Jacobs. There may be a good deal of sense in what you say. But I am just wondering what they are going to do when they come to the 80 days and the strike is not settled.

Mr. Morgan. In my suggestion, there would not be any 80 days at all. I would start off with the basic assumption that the right to strike is not a right which can be exercised or ought to be exercised in a manner as to prostrate the public. Now, if you start off with that basic assumption, which is the basic assumption that I start off from, then it does not seem to me that any particular period of time is necessary. You just enjoin striking in that matter. Now, that is not——

Mr. Jacobs. Let me ask you at that point, what would you do under these circumstances? Prices are falling. We understand now that we are going into a lower level of economy. And if prices fall far enough, there will be some employers who will be trying to lower wages. That would be natural, would it not?

Mr. Morgan. Yes, sir.

Mr. Jacobs. What would you say about a situation where there was a contract between the union and the employer for $1 an hour and the employer comes to the conclusion that he wanted to pay only 6 bits an hour, and the men say, "No; we won't take it." Would you enjoin the employer from cutting the wages to 75 cents?

Mr. MORGAN. No; I would not. And the reason I would not——

Mr. JACOBS. I think you have answered the question.

Mr. MORGAN. The reason I would not is this: Because a situation of that sort never produces a national emergency strike. It is only these strikes that affect entire industries.

Mr. JACOBS. Let us take a national industry. Let us take the coal industry. Let us say it is the coal industry. Now, they are working for $1 an hour, and the employer offers 75 cents an hour, and they say, "No, we are not going to do it· We are not going to work for that."

Now, you enjoin them. What is going to be the wage under this injunction?

Mr. MORGAN. I would enjoin them from striking in such a manner as to prostrate the public. That would not prevent the United Mine Workers, if I am a coal operator, from striking me now and striking Mr. Smith some other time. They can harrass the employers for all they are worth, for all I care. All I want to see is that they do not strike in such a manner that the public is going to be prostrated. Now, they can exercise their right to strike and achieve——

Mr. JACOBS (interposing). In other words, you would reduce the strike to where it would not affect the public interest?

Mr. MORGAN. That is correct.

Mr. JACOBS. All right. Now, then, I want to get back to this——

Mr. MORGAN. I do not want to interfere with their right to strike.

Mr. JACOBS. We will get back to this free speech thing. You apparently make, or attempt to make, a case that the rule was applied too liberally in the admission and consideration of evidence under the old law. What do you think of the last sentence in section 10 (b)? Wasn't this the adoption of the rules of evidence as approved by the Supreme Court of the United States? Did you not think that would be sufficient protection without adopting a completely exclusionary rule whereby nothing the employer said could be used against him unless it was an actual threat expressed? In other words, what I am getting at is this——

Mr. MORGAN. I do not know whether it was ever thought of at the time. I d onot recall now ever having thought of it particularly.

Mr. JACOBS. Do you not think that the last section in section 10 (b) was adopted for the purpose of adopting the judicial code of evidence?

Mr. MORGAN. Oh, yes. There is no question about that, so far as practicable.

Mr. JACOBS. You admit in your statement—which I appreciate—and you admitted it forthrightly—that 8 (c) is actually an exclusionary evidentiary rule?

Mr. MORGAN. 8 (c).

Mr. JACOBS. It is 8 (c)?

Mr. MORGAN. Yes.

Mr. JACOBS. You admit that very candidly?

Mr. MORGAN. There is no questioin about it.

Mr. JACOBS. Do you not think it would be better to strike out the four words "or be evidence of," or do you think it necessary in view of the judicial code of evidence as adopted, or have you thought about it?

Mr. MORGAN. I have thought about it a great deal since, I will tell you. I have thought about that evidentiary rule in the free speech a great deal, and here is the difficulty, as I see it——

Mr. JACOBS. I would like you to answer my question first, and if you want to enlarge upon it we will grant you the privilege of doing so.

Mr. MORGAN. May I answer it this way, then: I would not be in favor of striking out the evidentiary rule if the committee determines that evidence of motive, or that motive or intent can invariably be proved by other evidence. And that was what I suggested that the committee do, to see whether——

Mr. JACOBS. I understand that point. You do not need to explain that to me. I was away ahead of you on that. But why is it you say that in this particular type of case that the triers of fact should be deprived of what is considered valuable and probative evidence in every other tribunal that has to determine questions of fact?

Mr. MORGAN. Perhaps the difficulty I have is the feeling that the National Labor Relations Board has been something more than a trier of facts, and the National Labor Relations Board has been an advocate for one side. I think the fact—and you undoubtedly saw in the newspaper the other day that the board of examination——

Mr. JACOBS. Yes, I saw that; and I have heard an awful lot about it, too. Who was the man at the head of that board of examination who disqualified all of the trial examiners?

Mr. MORGAN. I do not know.

Mr. JACOBS. He is a lawyer. Do you know who he represents?

Mr. MORGAN. No, sir.

Mr. JACOBS. I do not want to use my time going into it, but I might suggest you investigate that a little bit. There is more than meets the eye on that deal.

I want to ask you one more question. I expect my time is about up.

Mr. IRVING. You have 5 more minutes.

Mr. JACOBS. Five more minutes? Thank you.

Do you not think that the adoption of the rules of evidence that are used in court would have been adequate, without adopting an exclusionary rule? What is your opinion, as a lawyer, as to that?

Mr. MORGAN. I do not believe it would have.

Mr. JACOBS. In other words, do you think the courts are wrong; do you think the Supreme Court is wrong about the rule of evidence it has adopted?

Mr. MORGAN. No, but the rule of evidence, as I understand, as applied to evidence of this character, when you introduce statements and opinions of that sort to prove a person's motive or intent, the admissibility of that kind of evidence is always within the discretion of the trial judge, and the appellate courts rarely, if ever, disturb that discretion.

If the trial judge thinks that the statement is too remote, he will exclude it.

Mr. JACOBS. We are not a court, are we?

Mr. MORGAN. No; I think the difficulty——

Mr. JACOBS. But you think we should exercise that discretion in advance, and say the Board will always exclude it? I guess that is your point.

Mr. MORGAN. I do not think you should if that kind of evidence is necessary to prove motive.

Mr. Jacobs. May I ask you one question: I would just like you to answer me this. I have one more question I would like to ask you at the end, and this is the second from the last I want to ask. Take as much time as you need, outside of one more question.

Tell me of better evidence to disclose a man's motive and intent than that which he says himself, his own words; tell me a better item of evidence?

Mr. Morgan. It depends in large measure upon what he says.

Mr. Jacobs. I mean upon the subject that we are trying. Can you think of any higher and/or more cogent evidence of what a man's thinking and his motive is than what he himself says?

Mr. Morgan. I do not think the fact that I would come up here and testify before this committee on certain practices that I——

Mr. Jacobs. I just want you, as a lawyer—and I will understand what you mean—to give me another class of evidence that is more likely to disclose what a man is thinking and what his motive is.

Mr. Morgan. I will agree with you wholeheartedly if the matter is relevant to the matter in issue.

Mr. Jacobs. If it is relevant to the issue?

Mr. Morgan. Yes, sir.

Mr. Jacobs. I want to ask you this question: Under section 8 (b) (4) (A), (B), and (C), and 10 (l) provides a mandatory injunction for a strike if it happens to fall under those provisions?

Mr. Morgan. Yes, sir.

Mr. Jacobs. You were with this committee all the time, or most of the time, when it was drafting this legislation, and the question I want to ask you is whether or not it was ever considered that they would provide a mandatory injunction to force an employer not to commit the unfair labor practice of firing a man for joining the union, and leaving him without a job, and leaving him without means of a livelihood; was that taken up at any time?

Mr. Morgan. I do not think the question either way was ever taken up in the House.

The mandatory injunction question came from the Senate——

Mr. Jacobs. So far as you know the answer would be "No"?

Mr. Morgan. That is correct.

Mr. Jacobs. That is all.

Mr. Irving. Mr. Wier?

Mr. Wier. I have not gotten your connection with the Government, here.

First, I will ask you: Were you ever an employee of the National Labor Relations Board?

Mr. Morgan. No, sir.

Mr. Wier. I gathered from your statement here that you have been very close to it in all of its labor-relations legislation?

Mr. Morgan. No. My work in connection with labor legislation was done for the House legislative council's office, for the most part.

Mr. Wier. Then you were not in the administration of the Wagner Act at all?

Mr. Morgan. No.

Mr. Wier. In spite of the fact that people might be led to believe that you were.

You made some statement here a minute ago about those that you associated with in the preparation of the Taft-Hartley Act. You mentioned the name of Mr. Reilly. You said that you had gone to him, or somebody had sent him to you, to prepare this material which Mr. Halleck and others were particularly concerned with?

Mr. MORGAN. I went to him.

Mr. WIER. You went to Reilly?

Mr. MORGAN. Yes. I do not consider myself a labor-relations expert, by any means.

Mr. WIER. So you enrolled the assistance of Mr. Reilly in preparing the material Mr. Halleck and Mr. Hartley wanted?

Mr. MORGAN. Yes, sir.

Mr. WIER. You and Reilly—did you meet here with the committee, or were you holding your meetings some place else?

Mr. MORGAN. We would hold them at various places. Not here; no.

Mr. WIER. You did not hold them in the House building here?

Mr. MORGAN. Sometimes over on the Senate side; that is where it would usually be.

Mr. WIER. During the course of the drawing and preparing the architectural work of the Taft-Hartley—you and Reilly and Hartley—did you at any time sit in with any other groups in the preparation and the acceptance of material for this act?

Mr. MORGAN. No, sir.

Mr. WIER. You never sat in any meetings in this building in which the representatives of the National Manufacturers Association participated, with advice?

Mr. MORGAN. No, sir.

Mr. WIER. Or were you accepting the advice of Reilly in that field?

Mr. MORGAN. It depends on what you mean by "advice," Mr. Wier. I was accepting Reilly's advice on matters of National Labor Relations Board practices and policies, and Board decisions. I mean, it is just something he had lived with, and it was something that I had not lived with.

Mr. WIER. And at no time during your preparation of this material for Mr. Hartley and Mr. Halleck, at no time did you ever see any of the agents or representatives of the National Manufacturers Association?

Mr. MORGAN. Yes, sir; I did once. That was at one time when I talked with Mr. Smethurst, who is the counsel for the National Association of Manufacturers. He evidently did not know what took place beforehand, but I guess Mr. Hartley asked me to talk with him, and he had some questions about an antitrust provision that had appeared in the Case bill. I have no very definite recollection of just what the thing was all about at this particular time, but it was a provision that had appeared in the Case bill.

Mr. WIER. That meeting was not in the Capitol, though?

Mr. MORGAN. Yes, sir, it was.

Mr. WIER. Up in the committee room?

Mr. MORGAN. It was either here or up on the fifth floor.

Mr. WIER. On the fifth floor, upstairs?

Mr. MORGAN. Yes, sir.

Mr. WIER. Is that the only meeting that you participated in——

Mr. MORGAN. That is correct, and that provision is not in the Taft-Hartley Act at the present time.

Mr. WIER. I am not concerned with the provision; I am concerned with the context.

Mr. Morgan. That is the only time.

Mr. Wier. During the time you were presumed to be on the pay roll of Mr. Hartley and Mr. Halleck, and during which time your pay was not specifically understood between the parties, were you on the pay roll, or in the employment, of any other individual or corporation?

Mr. Morgan. I had some clients.

Mr. Wier. I do not mean in your private practice downtown; I am talking about corporations and individuals in connection with——

Mr. Morgan. No, sir, and I would never work on a bill under such circumstances.

Mr. Wier. What did you mean by "other clients"? I am not talking about private business; I am talking about legislation on the Hill.

Mr. Morgan. No, sir.

Mr. Wier. You had no other income or employment on the Hill here except that which you expected to get from Mr. Halleck and Mr. Hartley?

Mr. Morgan. That is correct. There may be one exception to that, and I will tell you what it may be: I had a regular client, and I represented him in Washington, and I had a great deal, or almost all of their work, and all of my work for them was before the United States Maritime Commission. Some time in 1947 the Merchant Marine Committee had a bill affecting the ocean service to Alaska. I appeared before the committee on that bill, and I also proposed to the committee an amendment to that bill, and wrote a letter to Senator White, who was then chairman of the——

Mr. Wier. I know about that. I am not concerned about that.

Mr. Morgan. That is the only activity.

Mr. Wier. Let me ask you, Mr. Morgan: After you and Mr. Reilly and Mr. Hartley had laid the groundwork for the so-called Taft-Hartley Act and got it in shape for its presentation to the Labor and Education Committee here, do you feel satisfied that the majority of the provisions and your thinking and your recommendations were the items in the bill that were finally passed, or did the committee change your bill materially?

Mr. Morgan. I do not recall ever having made any recommendations one way or the other.

Mr. Wier. That is what you were employed to do, was it not?

Mr. Morgan. No, sir; it was not.

Mr. Wier. I am talking about your recommendations to Mr. Hartley. That is what he employed you for?

Mr. Morgan. I had absolutely nothing to do with the recommendations.

Mr. Wier. Who made the recommendations for the material in the Taft-Hartley bill?

Mr. Morgan. As I said, the original recommendations, the things that were to go in, were outlined to me by Mr. Halleck at the first meetings that were held, as I said before. The bill, the original bill, preliminary bill, was submitted to the majority members of the committee at the conference——

Mr. Wier. I just want to stay here; I do not want to go to the conference.

Mr. Morgan. I mean the conferences on the original document I prepared for Mr. Halleck.

Mr. Wier. What I am trying to get at, you came in here today, and in your brief here you make suggestions of quite a few changes; and what I am trying to get at is did the House subsequently pass the legislation that you and Mr. Reilly and others prepared for the committee? Was it, in substance, about what you prepared?

Mr. Morgan. No; I do not think it was at all. When the majority members of the committee went over that original document, we just about had to throw the thing in the wastebasket and start over again.

Mr. Wier. How about the second draft of the bill? Did that meet with their approval, in the main?

Mr. Morgan. Whose approval?

Mr. Wier. The committee's.

Mr. Morgan. It formally met with their approval; yes, sir.

Mr. Wier. I want to ask you some questions on one or two points. I do not have much more time, but as long as you feel you had a large part in the drawing up of this Taft-Hartley bill, and because of your practical and law experience in labor legislation, I would like to ask you one or two more questions.

It comes to mind immediately that, in the Taft-Hartley bill—I will use the example of the west coast fruit strike, where thousands of people were involved in the strike—and your committee or the Congress preferred to leave them out, but left them subject to injunction. Do you have any reasoning on that?

Mr. Morgan. No, sir.

Mr. Wier. The agricultural worker and the big institutions, why should they not have been protected by the Taft-Hartley Act?

Mr. Morgan. The agricultural exemption had not been changed at all in the Taft-Hartley Act.

Mr. Wier. They were subject to the provisions of the injunctive process of the Taft-Hartley Act, which later developed—as you know, perhaps—but they were not entitled to the protection of representation.

Mr. Morgan. I am not familiar with that.

Mr. Wier. Then, apparently——

Mr. Irving. Your time is up, Mr. Wier.

Mr. Bailey?

Mr. Bailey. I have no questions.

Mr. Irving. Mr. Kelley?

Mr. Kelley. No questions.

Mr. Irving. Mr. McConnell?

Mr. McConnell. Mr. Morgan, I am very glad that you have come down here today to tell the background of the writing of the Taft-Hartley bill in the House. There has been so much misinformation spread over this country about the NAM and various other groups writing the bill, that it is about time that we learned the truth of how it was put together; and for that reason I am glad you are here.

You came into the employ of the Government during the New Deal administration, and no Republican brought you in; and by your own efforts——

Mr. Morgan. Nor did any Democrat.

Mr. McConnell. Yes; and by your own efforts, and this is very important, and by your character and the way you handled yourself, you won the respect of both parties of Congress, and I can say that because I have talked to many men high up in the Democratic and

Republican Parties who have praised you, and they all have expressed their appreciation of your intelligence, of your sincerity, and of your character, and I am glad you came here and made that statement, because it verifies what I participated in, and what I know about the facts, as I remember them in the writing of the Hartley bill in the House.

Mr. WIER. Will you yield for just one question?

Mr. McCONNELL. Yes.

Mr. WIER. I just asked him the question, and he said to me that he had not been an employee of the Government or the Labor Department.

Mr. McCONNELL. He was a legislative draftsman on the Hill.

Mr. WIER. Previous to the Eightieth Congress?

Mr. McCONNELL. Yes; previous to the Eightieth Congress. I was informed that we were seeking a legislative draftsman to put together the provisions of a labor-management relations bill, who would understand how to phrase it in intelligent and in understandable and in legal language, and the unanimous opinion was that Jerry Morgan was the man to do it, and that is why he was employed to do the particular work. The very fact of the size of the fee shows to me you are a man of high principle. If you had said $25,000 I would not have been surprised, knowing the charges for various types of work of that nature in the country, and I think that alone speaks for the type of man that you are.

A question was asked of you about taking your suggestions as to the provisions of the Taft-Hartley, or of the Hartley Act, because that is the part we were mainly involved in on this side of the House.

I do not recall you making a single suggestion that had anything to do with policy, or the present various provisions of that act, except how to word them in a legal manner, and to set them up correctly in the phrasing of a bill; and I think you have brought that out. So any efforts to bring up any mysterious or hidden tie-ups on your part in this thing are really, to me, aside from the point, because your only job was to draft the legislation as we put it together, and I can remember the agonizing hours we thought it out in the committee. Every major provision was voted on step by step, and in that committee were several lawyers, and they were not taking anybody's advice about anything. As you remember, they wanted their own ideas put forth.

But, as to who contributed the general ideas of the Hartley bill, I would say they came from all over the United States. There was a great deal of agitation due to the unrest at that time, and many of them were culled out and fought over, and bit by bit the bill was put together, and no one sent the bill down to us, either from the manufacturing group or from the administration, because we were not in charge of the executive branch of the Government.

I would like to refer to something you have brought out in your statement here, speaking of the national emergency strikes. Speaking of the protection of the public, and that is very vital in the national emergency strike matters, and I will admit I have not found anyone yet who knows the solution to the matter, we fought over that for a long while as to how to handle national emergency strikes, because it is serious when the lives of people are affected. Certain concerns can close down, and it makes little difference, but when national emergency strikes occur, the loss to the country, not only in human lives, but in other ways, can be very large, and it brings a question to us that is very paramount, and that is to see if we can find some way to handle such type of strikes. You have spoken here, and I am reading from page 16; I do not know whether it is the same statement as the others:

> All of the cases up to this present moment, beginning with Mr. Justice Harlan's decision on circuit in 1894 in the case of *Arthur* v. *Oakes* (63 Fed. 310) have recognized the continuing validity of the distinction between individual action by employees—which is protected by the thirteenth amendment of the Constitution—and group action which has no such constitutional protection.

Would you mind enlarging on that a little?

Mr. MORGAN. The theory of the law is that there are very significant distinctions between individual action and group action.

I think all of our antitrust laws are founded on that distinction. The whole development of the antitrust laws shows that when numbers get together to combine to do a particular thing, or produce a particular result, you do not have any constitutional protection.

Even in the old days of the Supreme Court, when the Supreme Court was kind of mossback about these things, pardon the expression, in those days, if Congress tried to prevent an individual businessman from fixing a price, or tried to control the price that he would fix, the Court that held that Congress did not have any authority to do that, that he had freedom to conduct his business under the fifth amendment to the Constitution.

But when a group combined to do the same thing, there was no constitutional protection to that group. I suppose the theory is they could produce results that would be very harmful to society as a whole, and that is the same distinction that has been made in the labor cases, that when individual employees exercise their own individual judgments about things—whether they want to work or do not want to work; whether it is for a good reason or a bad reason—they ought to have a right to do that; but when employees combine themselves into a group and put themselves under the discipline of the group to produce a particular result, they are not then exercising their individual rights or their individual freedom. They have subordinated that to the will of the group, and that is the distinction that the courts have attempted to make in these cases. I think it is a valid distinction.

In my statement I mentioned the consideration in 1926 of the Railway Labor Act. In the Railway Labor bill there was a provision to the effect that nothing in this act shall compel any employee to perform any labor service without his consent or make the quitting by an employee an illegal act.

The Senate committee report, which I quote in my statement on that particular provision, and I might read this:

> As to paragraph 8 of section 9—

which is the so-called "quits" paragraph—

> it was urged that it should be clarified so as certainly to apply only to the use of legal process against an individual employee and so as not to apply to combinations or conspiracies between several employees to interrupt interstate commerce. It was frankly stated by the advocates of the bill, both those representing the carriers and those representing the employees, that the purpose of the paragraph was to deal merely with individual employees, to express only the constitutional right of individuals against involuntary servitude, and is not intended to deal with combinations, conspiracies, or group action. This constructure has been made abundantly clear by an amendment to the bill by which the word "individual" has been inserted before the word "employee" wherever the latter word appears in the paragraph.

That particular provision of the Railway Labor Act has been carried in virtually every labor bill dealing with labor matters since that time, and it is in the Taft-Hartley Act at the present time, word for word I believe, as it appears in the Railway Labor Act.

That particular provision was also considered by the Supreme Court in one of the first cases under the Railway Labor Act. As a matter of fact, it was the first case that recognized the right of association as a legally enforceable right.

Mr. IRVING. Your time is up.

Mr. SMITH. I will yield 5 minutes.

Mr. McCONNELL. There is one other point I wish to bring up, Mr. Morgan.

In H. R. 2032, page 17. Do you have it there?

You say here in your statement—that is, page 17, line 22—you say here in your statement:

> The President's bill seems to recognize—

and by "President's bill" I suppose you mean H. R. 2032?

Mr. MORGAN. Yes, sir.

Mr. McCONNELL (reading):

> The President's bill seems to recognize that the public has some interest in labor disputes, but have you considered the President's bill in connection with the term "slave labor"? I call your attention to section 302 (c) of his bill, which directs that the employees "shall continue or resume work." It is this duty under the President's bill, the duty to continue or resume work—

Mr. IRVING. Will you refer to that as the Lesinski bill instead of the President's bill?

Mr. McCONNELL. If he wants to change it. Mr. Lesinski has introduced the bill, and you speak of it here in your statement as the President's bill.

Mr. MORGAN. Yes.

Mr. McCONNELL (reading):

> It is this duty under the President's bill—the duty to continue or resume work—which the President says he has an inherent right to enforce by injunctive, and even perhaps by military, processes. The duty to continue work and the duty not to strike are, as I have attempted to point out, two entirely different things. Enforcing a duty to continue or resume work really does constitute involuntary servitude; preventing a strike or directing its termination has nothing to do with it.

Will you elaborate on that more in particular?

Mr. MORGAN. If an injunction says, "It is hereby ordered that the employees shall continue work," there is no factor or group action or conspiracy, if you want to call it that, I do not think it is conspiracy, it seems to be involved. The order directs the employees to continue work.

When you enjoin a strike you do not direct the employees to go back to work; you direct them to cease, in effect, agreeing with one another to subject their individuality to the discipline of the group. After you have done that, and have directed the employees to stop the conspiracy, so to speak, they can quit or not quit, as they see fit. They can exercise their individual right to quit. There is nothing in the Taft-Hartley Act which prevents that, and there is nothing that could prevent that.

Mr. McCONNELL. In other words, you see in that particular provision of the Lesinski bill a real slave-labor danger?

Mr. MORGAN. Here is the difficulty: There is a provision in the Lesinski bill on page 21, section 404:

> Nothing in this act shall be construed to require an individual employee to render labor or service without his consent.

That is the provision that is word for word like the provision that is in the Taft-Hartley Act and in the Railway Labor Act, but the difficulty with that is that it says nothing in this act. The trouble is that the President claims that he has an inherent power apart from this act. All you would be doing would be enforcing outside of this act a duty which appears in this act, but it would not be anything in this act that would prevent——

Mr. MCCONNELL. In other words, there is nothing in the act that would cause slave labor; it would be something outside of the act——

Mr. MORGAN. It would be something outside of the act by reason of a duty that is imposed in the act.

Mr. MCCONNELL. That is all.

Mr. IRVING. Mr. Smith?

Mr. SMITH. Mr. Morgan, I want to reiterate what Mr. McConnell said about your activity in writing the Taft-Hartley labor law, and the Hartley bill. I have a very distinct recollection of seeing you standing down at the end of that table, with the whole table covered with papers and amendments, and things of that sort, that people wanted to get into the act, and I felt at that time that you were doing a magnificent job of trying to get all of those ideas down into shape. You stated you came here to testify as one American citizen for two purposes, as I get it: The first was you wanted to say how the Taft-Hartley Act was written, and your part in it, and, second, as to what you felt would be needed for legislation.

Now, the direct question: Do you believe that the passing of the Lesinski bill, H. R. 2032, would be a step backward, as far as labor relations are in this country, as the bill is now written?

Mr. MORGAN. I have not approached this in my statement from the standpoint of labor relations. What I have approached it in terms of is some sort of philosophy of government, and I have called it a philosophy of what I deeply believe to be the philosophy of true liberalism, and I am talking about all old-fashioned liberalism, if you want to call it that. I have tried to measure the various provisions of the Taft-Hartley Act by that yardstick, and by doing so I very sincerely believe that it would be a step backward if the Lesinski bill were adopted in its present form.

Mr. SMITH. That is all, Mr. Chairman.

Mr. IRVING. Mr. Werdel?

Mr. MORGAN. But that is only the opinion of one person.

Mr. WERDEL. Mr. Morgan, how long were you a legislative draftsman?

Mr. MORGAN. Eleven years.

Mr. WERDEL. And when did you discontinue your services—that was in the House side?

Mr. MORGAN. That was in the House side; yes, sir.

Mr. WERDEL. And when did you discontinue your services?

Mr. MORGAN. December 31, 1945.

Mr. WERDEL. Then you were in private practice until January 1947?

Mr. MORGAN. Yes; and I still am.

Mr. WERDEL. But in January 1947 you were hired by the committee, and still maintained your private practice?

Mr. MORGAN. I was not hired by the committee.

Mr. WERDEL. You went into this engagement of drafting the bill?

Mr. BREHM. It was unanimous.

Mr. MORGAN. I am sure they did.

Mr. WERDEL. You were here present, working?

Mr. MORGAN. Oh, yes.

Mr. WERDEL. And during the period that you were working on the bill I believe you stated, with the exception of one instance, that you did not talk to employer groups in regard to their requests?

Mr. MORGAN. That is correct.[1]

Mr. WERDEL. Did you have any instructions from Mr. Halleck in that regard?

Mr. MORGAN. No; I did not.

Mr. WERDEL. I mean as to whether or not to talk to groups?

Mr. MORGAN. No; I did not.

Mr. WERDEL. Do you know whether it entered into Mr. Halleck's mind when you were employed, the fact that you were from the legislative council and were respected by all parties on the committee?

Mr. MORGAN. I am sure he did. I think that is the only reason he ever got me.

Mr. WERDEL. That is the point I want to bring out. That was one of the motivating factors in hiring you; is that not correct?

Mr. MORGAN. I am sure it was. Of course, I cannot say, of my own knowledge.

Mr. WIER. Will you yield?

Mr. WERDEL. Yes.

Mr. WIER. You have me confused now, because the question was just asked of you if the committee knew you were working for the committee and, I think, the gentleman over there said "Yes, it was unanimous;" is that correct?

Mr. BREHM. I am not on the committee. I was just talking to Mr. Werdel as a private man.

Mr. WIER. If that is the case, Mr. Werdel, I am wondering why the committee did not pay him?

Mr. WERDEL. I do not know any more about that than you do. I am just as inquisitive about this as you are.

Mr. BREHM. With your consent, I could make a statement. I am not on the subcommittee, but I will say the gentleman was approved by everybody.

Mr. WERDEL. As I understand your remarks and your suggestions at the end of your written statement, they are prepared by you as a draftsman and not as a labor expert; is that correct?

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[1] Under date of March 21, 1949, in a letter to Chairman Kelley, Mr. Morgan stated: "In reviewing the transcript of my testimony * * * I must have misunderstood Mr. Werdel's question, for while I did not at any time talk with employer groups on my own responsibility, on numerous occasions I conferred with employer representatives and others concerning their proposals when I was requested so to do by Members of the House, and for the sole purpose of advising the Members in question with respect thereto. In every case I reported directly to the House Member concerned—and to him alone—as to what was desired by the particular individual he had asked me to confer with, what in my opinion was the practical effect of what was proposed, and how it could be accomplished by amendment if the Member himself wished to suggest an amendment. I desire to emphasize that nothing was ever put into the bill by me as a result of any such conference."

Mr. MORGAN. My recommendations at the end were not prepared as a draftsman. As a draftsman I never made any recommendations. When we were down in the legislative council's office we were draftsmen, and that was all we were. We drafted anything any committee wanted, whether we thought it was good or bad, and that was the function that I performed in connection with this bill. The recommendations that I make here are recommendations of policy. I am not making those as a draftsman. I am making those as recommendations that I personally feel, as a result of having been all through the thing.

Mr. WERDEL. That is what I am getting at. You were the draftsman of the Hartley bill?

Mr. MORGAN. That is correct.

Mr. WERDEL. And that is not the present Taft-Hartley Act?

Mr. MORGAN. That is correct.

Mr. WERDEL. And the act that was passed came from the Senate through conference?

Mr. MORGAN. Substantially that is correct.

Mr. WERDEL. And the recommendations that you make are made by you in the light of the conferences that you sat through in the drafting of the Hartley Act and the conferences on the Senate bill and are not necessarily predicated upon experiences in labor law that you have had since the drafting of it; is that correct?

Mr. MORGAN. That is correct.

Mr. WERDEL. That is all.

Mr. MORGAN. I have had no experience in labor law since the drafting of the Taft-Hartley.

Mr. WERDEL. But you have kept yourself acquainted with some of the regulations?

Mr. MORGAN. Generally speaking, yes, sir; as a matter of interest.

Mr. WERDEL. I will give the balance of my time to Dr. Brehm to make a statement to help clear up this employment.

Mr. BREHM. Thank you, Mr. Werdel.

I will say this publicly, that there was not one bit of opposition to Jerry Morgan, by a Democrat or Republican, at the time he was serving here.

Mr. KELLEY. As I recall, the Democrats did not have anything to say about it.

Mr. BREHM. They always have quite a bit to say, regardless of what it is.

Mr. IRVING. I am a little bit confused here. I understood the witness to testify that all the meetings were with the majority group at all times, and I took that to be with the Republican members of the committee.

Mr. MORGAN. May I answer that, Mr. Chairman?

Mr. IRVING. Yes.

Mr. MORGAN. Before the bill was ever introduced the bill was formulated by the majority members of the committee. Of course, you doubtless realize that where you have one party in control of a legislative branch of the Government, and another one in control of the executive branch of the Government, that the party in control of the legislative branch has to form its legislative program in a different sort of way, and that was what happened to that particular bill. The bill, before it was ever introduced, was formulated by the majority of the members of the committee, and by the Republican steering committee. The bill was considered by the Committee of the Whole.

Mr. JACOBS. Will you yield, Mr. Chairman?

Mr. IRVING. I would like to finish. In your statement you say all your work in formulating the bill was with the majority side; is that not the statement? Is that the way your statement reads?

Mr. MORGAN. Until after the bill had been introduced and referred to the Committee of the Whole, and after that I was with the committee itself, the whole committee, when it considered the bill in executive session. I think I so stated in my statement.

Mr. BREHM. That is what I had in mind. When we started in writing the bill, Jerry Morgan sat here as a counsel, and was acceptable to every member of the committee.

Mr. JACOBS. How long was the bill before the full committee? Either one of you can answer it.

Mr. BREHM. If I am not mistaken, it was here Thursday, Friday, Saturday, and Monday—I do not know; that is the best way to answer that, without looking it up.

Mr. KELLEY. Will you yield?

Mr. IRVING. Yes.

Mr. KELLEY. As I recall, it was Thursday and Friday.

Mr. BREHM. I think the bill was brought in, and we intended doing the same thing which you fellows did regarding the minimum-wage bill. We had the votes, but we were bigger hearted than you fellows, so we waited a few days.

Mr. IRVING. What was the end result?

Mr. BREHM. The end result was we all got together and wrote a bill.

Mr. IRVING. Mr. Nixon, do you have any questions?

Mr. NIXON. I was at another committee meeting and was not here, but I did read Mr. Morgan's statements previously.

My comment, I think, relates to the procedure which Mr. Morgan referred to, that the Republican majority in the committee during the last session necessarily had to follow in writing this bill. I think the new members of this committee on the Democratic side will probably be interested in that procedure, because they, this year, are not confronted with the same problem that we were confronted with 2 years ago.

As the Democratic majority this year well knows, when you want a bill written you go down to the Government Department, which is also Democratic, and they write the bill for you, just as your fair labor standards bill, as you know, was written by the Government Department. You called in their people and although they are paid by the Government they do the work for you. If the Republican majority had called upon the Government to write its bill it would have been a completely useless act. We would have been told, "We are not interested"——

Mr. BAILEY. He said in all of his 11 years' experience as a draftsman they wrote what people asked them to write.

Mr. NIXON. Of course, that is understandable. Of course, this is your first time, as mine was——

Mr. BAILEY. You are wrong about that.

Mr. NIXON. The first time on the committee. Mr. Morgan was referring to the Legislative Reference Service—I mean to the Legislative Counsel's office of the Congress, and it is true that that service is available to both majority and minority.

Mr. BAILEY. You will agree, then, you expressed some little misgivings about trusting the Government, will you not?

Mr. NIXON. My point was that as far as the administrative agencies of the Government are concerned, when the administrative agency of the Government is under the control of one party, and the legislative branch of the Government is under the control of the other, the administrative agencies of the Government are not going to assist the majority in the legislative branch of the Government. I am not being critical, but just giving the facts. So, necessarily, the Republican majority during the last session had to get expert help for the purpose of drafting the legislation, and I want to ask Mr. Morgan if he thinks that is a direct analysis of the situation with which the Republican majority was confronted at the time we asked him to step in and do the work which was done by him on the bill?

Mr. MORGAN. I do not think there is any question about it.

Mr. WIER. He finally got his money from the National Republican Party. When you people won control of the Labor and Education Committee, at that time why was not Mr. Morgan placed upon your pay roll as counselor or adviser?

Mr. BREHM. We did not want the taxpayers to pay for the services of the Republican Party. We had our own money.

Mr. WIER. That is understandable, too.

Mr. NIXON. I have the floor, and I want to ask another question, which I think the gentleman will be interested in.

Mr. Morgan has indicated the Republicans paid for the expert help. I would be very happy myself, being a taxpayer, as is every person sitting on this committee, if the Democratic majority of this committee would have the Democratic National Committee pay to the various administrative agencies which assisted the gentlemen in writing their bill, pay back into the Treasury compensation for the amount of time the men have expended in behalf of the legislation. As I say, I only raised the point because we must understand the difference in the problems with which we were confronted. And you gentlemen are having your work done with the taxpayers' money, by the administrative agencies of the Government. If we were in power we would be doing the same thing—I must say that—but I say also that when we were not in power, although we were in control of the House during the last session, we had no other alternative but to get expert help where we could get it. I will say frankly, because I worked with Mr. Morgan on this legislation and on other legislation on which he has been employed on a retainer basis by Members of the Congress and, I think, we were very fortunate to have a man of his caliber to do the work that was to be done. I have no apologies for the work he did on behalf of the committee. We may disagree as to the provisions of the bill as a matter of policy, but the work that was done was excellent. There was no question, and I think Mr. Morgan deserves the highest commendation for the work he did.

Mr. JACOBS. Would you yield some of your time, Dr. Brehm?

Mr. BREHM. I do not have any time.

Mr. JACOBS. I ask unanimous consent to ask one question.

Mr. IRVING. All the time has expired, and I would like to thank you, Mr. Morgan, for your appearance here. I think everybody appreciates it.

Mr. MORGAN. Mr. Chairman, I appreciate very much the opportunity of appearing before you.

Mr. JACOBS. Mr. Chairman, was there an objection to my request for unanimous consent?

Mr. IRVING. There were several objections. They want to proceed with the hearings.

The prepared statement of Mr. Morgan, except that part which he has already given, will, without objection, be included in the record.

(The remainder of Mr. Morgan's statement is as follows:)

I should like to discuss with you what I consider to be some of the essential features of that act, to ask you to analyze them in terms of principles of real liberalism, and then to decide whether it is the liberal thing to do to repeal them. And I should also like to discuss those provisions of the act which in my judgment require amendment—for the Taft-Hartley Act is by no means perfect, I know of no legislation that is.

At the outset, it is important to emphasize that the Taft-Hartley Act did not repeal the Wagner Act, rather it added to it. Every protection afforded employees under the Wagner Act in the matter of self-organization and collective bargaining and in the matter of unfair labor practices by employers was retained by the Taft-Hartley Act, and in many particulars that protection was extended and strengthened. So we still have all of the essential features of the Wagner Act in force today.

PROTECTION OF THE PUBLIC

One of the essential features of the Taft-Hartley Act is the series of provisions for the investigation of labor disputes that may cause or are causing substantial injury to the national health or safety, and for giving to the President authority to postpone strikes growing out of such disputes.

Mr. Justice Holmes, in an unpublished dissenting opinion in the case of *Hitchman Coal and Coke Co.* v. *Mitchell* (245 U. S. 229; 38 S. Ct. 65), quoted by Holmes in a letter written by him under date of October 26, 1919, to Sir Frederick Pollock, said:

"I have no doubt when the power of either capital or labor is asserted in such a way as to attack the life of the community, those who seek their private interests at such cost are public enemies and should be dealt with as such."

It seems very clear to me that true liberals would regard the individuals comprising our community that we call the general public as having a vital interest in labor disputes that is entitled to protection, that true liberals would demand that the wielders of the tremendous new power of organized labor be not permitted to use that power in such a way as to paralyze the community, jeopardize its health, and imperil its internal and external security.

It is difficult for me to see how it is being liberal to deny to the President authority to prevent this power from being used to attack the life of the community, or how granting the President such authority is akin to imposing slavery upon workers. The name "slave labor" that has been applied to the Taft-Hartley Act by those who not only can do but actually have done these things does not contribute to intelligent appraisal of the act in terms of principle. "Slave labor" is an emotional epithet that I suspect was devised to avoid the necessity of intelligent appraisal.

Slavery means working under legal compulsion. The Taft-Hartley Act not only does not authorize such compulsion, but it in specific terms (sec. 502) prohibits it. Union leaders argue that preventing union members from striking, or that directing them to terminate a strike, is the same as making them work under legal compulsion against their will, and hence slavery. This argument is not new. It has been made by union leaders for at least 50 years, and has never been accepted as valid by the courts.

Preventing strikes no more constitutes involuntary servitude than punishing conspiracies transgresses rights of free speech. The legal philosophy in Anglo-Saxon countries has always recognized significant distinctions between individual action and group action. All of our antitrust laws are founded upon such a distinction; and it is important to remember that the group action doctrines as applied to business, that were developed under the antitrust laws were developed during a period when action by a single individual entrepreneur to the same end was treated as constitutionally protected from legislative regulation.

The distinction between individual and group action as applied to labor problems was indeed recognized by an important segment of organized labor itself, the Railway brotherhoods, in its representations to Congress in connection with the consideration in 1926 of the bill that became the Railway Labor Act. Let me read to you a portion of the Senate committee report on that bill:

"As to paragraph 8 of section 9, it was urged that it should be clarified so as certainly to apply only to the use of legal process against an individual employee and so as not to apply to combinations or conspiracies between several employees to interrupt interstate commerce. It was frankly stated by the advocates of the bill, both those representing the carriers *and those representing the employees*, that the purpose of the paragraph was to deal merely *with individual employees, to express only the constitutional right of individuals* against involuntary servitude, and is *not intended to deal with combinations, conspiracies, or group action*. This construction has been made abundantly clear by an amendment to the bill by which the word 'individual' has been inserted before the word 'employee' wherever the latter word appears in the paragraph." [Italics supplied.]

The provision of the Railway Labor Act discussed in this committee report was also considered by the Supreme Court in the case of *Texas and New Orleans Railroad Co.* v. *Brotherhood of Railway and Steamship Clerks* (281 U. S. 548; 50 S. Ct. 427), a case that was hailed by unions as the first case recognizing freedom of association as a legally enforceable right. The Court in that case said (p. 566):

"The provision of section 10 is to be read in connection with the qualification in subdivision eighth of section 9 that nothing in the act shall be construed to require an individual employee to render labor without his consent, or as making the quitting of service by an individual employee an illegal act, and that no court shall issue any process to compel the performance by an individual employee of labor without his consent. The purpose of this limitation was manifestly to protect the individual liberty of employees and not to affect proceedings in case of combinations or group action. The denial of legal process in the one case is significant with respect to its expected, appropriate use in the other."

One wonders whether even unions themselves believe what they say when they charge that any restriction on the right to strike constitutes slavery. For all unions seem to be in favor of the President's bill. That bill restricts a union's right to strike, but it does so only where the exercise of that right would unjustifiably interfere—not with rights of the public—but with rights of other unions, that is in the case of jurisdictional strikes and boycotts in aid of jurisdictional strikes.

All of the cases up to this present moment, beginning with Mr. Justice Harlan's decision on circuit in 1894 in the case of *Arthur* v. *Oakes* (63 Fed. 310), have recognized the continuing validity of the distinction between individual action by employees, which is protected by the thirteenth amendment of the Constitution, and group action which has no such constitutional protection. *In Re Lennon* (1897 (166 U. S. 548; 17 S. Ct. 658). *Dorchy* v. *Kansas* (1926) (272 U. S. 306; 47 S. Ct. 86). *Texas and New Orleans Railroad Co.* v. *Brotherhood of Railway and Steamship Clerks*, supra. *United States* v. *Petrillo* (1948) (332 U. S. 1; 67 S. Ct. 751). *U. S.* v. *United Mine Workers of America* (D. C. D. C., 1948) (77 F. Supp. 563). *LeBaron* v. *Printing Specialties and Paper Converters Union* (D C. Cal., 1948) (75 F. Supp. 678).

In *Dorchy* v. *Kansas*, supra, the opinion of the Court was delivered by a revered liberal, Mr. Justice Brandeis, who said (p. 311): "Neither the common law, nor the fourteenth amendment, confers the absolute right to strike."

See also the portion of the Texas and New Orleans Railroad Co. case quoted above. In the France Packing Co. case, supra, involving the legality of a strike under the War Labor Disputes Act, the Court said (p. 753):

"The contention that a limitation of the right to strike under the specified narrow conditions of section 8 partakes of involuntary servitude is not substantiated by the cases. To the contrary, there is a wide distinction between a worker quitting his job, for any reason or no reason, on the one hand, and a cessation of production by workers who seek to win a point from management, on the other hand.

* * * * * * *

"In brief, the restricted limitation of the right to strike, in this act, refers to circumstances involving a continuing master and servant relationship. There is no involvement here with the distinct—and unquestioned—right of the worker to quit his job or the right of the employer to discharge him for cause. In this situation we fail to see any true constitutional question in this case."

And in the LeBaron case, supra, involving the Taft-Hartley Act itself, the court in its opinion (p. 681) stated:

"We find no support whatever, under the record before us or within the provisions of the act that are involved in this matter, for a finding or conclusion that the thirteenth amendment has been transgressed."

The distinction between group action and individual action that has been consistently made by the courts is written into the Taft-Hartley Act itself. Section 502 of the act, derived from section 9 of the Railway Labor Act, specifically and unqualifiedly recognizes the right of an individual as an individual to quit work at any time and for any reason he sees fit, be it a good reason or a bad one.

Workers who strike, however, do not quit and do not intend to quit. One of the principal purposes of the strike device is, through simultaneous concerted action of all workers, to foreclose the opportunity that the employer might otherwise have of replacing those on strike. It is the right of an individual as such to refuse to work or to quit, that is protected by the Constitutional guaranty of freedom from involuntary servitude. The thirteenth amendment has no application to combinations. Thus a worker who, along with his fellows, is enjoined from striking, can—under the Taft-Hartley Act—as an individual quit any time he chooses, and neither the President, the courts, nor any other officer or agency of Government can prevent him from freely exercising that right.

While the right to strike is not a right having any constitutional status, it is a right whose exercise we have over the years come to treat as a traditional and legitimate means whereby workers, through simultaneous concerted action, can bring economic force to bear on their employer to meet their terms. The right to strike, like all rights, however—even those that are enshrined in the Constitution—is a relative right. Mr. Justice Holmes succinctly stated the relative nature of all rights when he remarked that the right of free speech did not give one the privilege of crying "Fire" in a crowded theater. Similarly the right to strike—which all sincere liberals desire to protect against any and all selfish encroachments—does not give anyone the privilege of exercising it in a manner to prostrate the public.

The President's bill seems to recognize that the public has some interest in labor disputes, but have you considered the President's bill in connection with the term "slave labor"? I call your attention to section 302 (c) of his bill, which directs that the employees "shall continue or resume work." It is this duty under the President's bill—the duty to continue or resume work—which the President says he has an inherent right to enforce by injunctive, and even perhaps by military, processes. The duty to continue work and the duty not to strike are, as I have attempted to point out, two entirely different things. Enforcing a duty to continue or resume work really does constitute involuntary servitude—preventing a strike or directing its termination has nothing to do with it.

I am not contending that the national emergency provisions of the Taft-Hartley Act are not cumbersome or that they do not require amendment—because I think they do. I do contend that it is the essence of true liberalism to treat the public as entitled to protection against irresponsible exercise of power by anyone or any group, including unions, and that the provisions of the President's bill are either entirely worthless in giving this protection, if it should ultimately be determined that the President does not have the inherent power he claims, or are so drastic in compelling involuntary labor—if he does have inherent power to enforce the duties imposed by his bill—that such provisions should not even be seriously considered by this committee.

INTIMIDATION AND COERCION BY UNIONS

(*a*) *In General.*—Another essential feature of the Taft-Hartley Act is the series of provisions dealing with intimidating and coercive practices that unions use (1) to prevent individuals from exercising their right to work and from exercising their right to refrain from engaging in union activities, or (2) to cause economic injury to innocent bystanders unless such bystanders enlist in support of the union purpose, or (3) to compel employers to violate the law, or (4) to recruit support for political candidates or political doctrines, and for other miscellaneous purposes.

All of you at one time or another have seen intimidation and coercion by unions. The records of the hearings before this committee and its subcommittees both in 1947 and 1948, as well as numerous transcripts of proceedings before the National Labor Relations Board, are replete with testimony and documentary evidence of the existence of such intimidation and coercion and the forms which it takes. The National Labor Relations Board's recent decision in United Furniture Workers of America, Local 309, CIO and Smith Cabinet Manufacturing Co., Salem, Ind., is merely illustrative. In that case the Board found, and I quote:

"We find, as did the trial examiner, that the following conduct attributable to the respondents or their agents constituted restraint and coercion within the meaning of section 8 (b) (1) (A) : (1) the carrying of sticks by the pickets on the picket line ; (2) the open piling of bricks for use by the pickets : (3) the blocking of plant entrance by (A) railroad ties, (B) automobiles, (C) raised gutter plates, and (D) tacks ; (4) the threat of violence to the nonstriking employees over the loud speaker ; (5) the threat of bodily harm to employees Homer Williams, Ruby Winslow, Dorothy Strange, and Wiley Williams ; (6) the intimidation of and threats of violence to nonstriking employees including specifically Walter Hilton, Milt Trinkle, Ralph Dobbins, Mabel Asher, and Mirel Mount ; (7) the warning given nonstriking employee Albert Holt that 'when we get in with the union you old fellows won't have a job' ; (8) the placing of pickets in such a manner as to prevent nonstriking employees from performing their work during the boxcar incidents ; (9) the goon squad mass assaults upon various nonstriking employees and the overturning of the automoile belonging to employee Hyde ; (10) the assaults committed upon nonstriking employees * * * ; (11) the damage to the automobile[1] of White during the aforesaid assault ; (12) the barring from the plant of Superintendent Simpson and Foreman McKinney by force and intimidation ; (13) the assaults upon Superintendent Simpson ; (14) the attempt to upset Foreman McKinney's automobile as he sought to enter the plant and the damage thereto as McKinney later drove past the plant."

It is no answer in the case of occurrences such as these, to say that union coercion should be dealt with, if at all, under State and local criminal laws. It is elementary that there are many forms of very effective coercion that do not constitute crimes under State and local laws. Moreover, the report of the Joint Committee on Labor-Management Relations submitted to the Senate and House of Representatives pursuant to section 401 of the Taft-Hartley Act specifically found (p. 79) :

"We have observed one factor running throughout these hearings—the inadequacy of local and State laws, or of their enforcement, to protect the right to work during a strike. In some instances the picketing amounted to outright plant seizure. Supervisors and top management were denied access to the plants as well as rank and file workers. In one incident, cited below, the strikers invaded the plant and forcibly ejected employees who had continued at work."

The minority report filed does not in any way dispute this finding.

It does not seem to me to be consistent with liberalism to belittle these things or close the eyes to them, as seems to be done by the President's bill. Mr. Louis D. Brandeis in 1904 stated the views of a true liberal about such things:

"You may compromise a matter of wages, you may compromise a matter of hours—if the margin of profit will permit. No man can say with certainty that his opinion is the right one on such a question. But you may not compromise on a question of morals, or where there is lawlessness or even arbitrariness. Industrial liberty, like civil liberty, must rest upon the solid foundation of law. Disregard the law in either, however good your motives, and you have anarchy. The plea of trades-unions for immunity, be it from injunction or from liability for damages, is as fallacious as the plea of the lynchers. If lawless methods are pursued by trades-unions, whether it be by violence, by intimidation, or by the more peaceful infringement of legal rights, that lawlessness must be put down at once and at any cost." (Address at the annual banquet of the Boston Typothetae, Boston, Mass., on April 21, 1904.)

When unions argue that coercive and intimidating practices on their part should be dealt with exclusively under local law, we all know—and we might as well admit it—that they do so because they wish to remain reasonably free to engage in them.

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[1] The car of another nonstriking employee was blown up in the yard of his home, according to the trial examiner.

Unions also argue that if intimidation and coercion on their part is prevented by Federal law, unions wil be subjected to a "double penalty"—once under Federal law and once under State law. As to the many forms of coercion that do not constitute crimes under State law, it is obvious that this argument is wholly lacking in substance. As to coercion of the kind that can be prosecuted criminally under State law, the argument doesn't prove anything.

An employer who coerces employees to stay out of the union by threatening them with physical violence commits a crime under State law, but he also makes himself subject to the remedial processes of the National Labor Relations Board. It is both necessary and proper that such be the case. The right of freedom of association embodied in the Wagner Act is a right provided by Federal law. The State criminal laws were neither enacted, nor are they enforced, with a view to protecting any such right. Many practical considerations are involved in the administration of State criminal laws that are wholly inappropriate in the determination of whether particular acts have the effect of intimidating or coercing individuals in the exercise of a right to associate or to refrain therefrom, or in the exercise of a right to work.

Moreover, it is not at all unusual to have particular acts punishable even criminally under both State and Federal law, and it has been consistently held by the courts that no question of double jeopardy is involved in such situations. Similarly it is not at all unusual to have particular acts that are criminal under State law subject to administrative or other civil proceedings under Federal law. The State laws in such cases are exclusively penal—the Federal proceedings merely remedial. So it is with the intimidation and coercion provisions of the Taft-Hartley Act. There is no penalty under that act against a union for engaging in coercive practices—the act merely provides a procedure whereby the National Labor Relations Board can direct the union to cease such coercive practices. If unions really believe they are being penalized when they are told by the Board to stop such practices, it is very apparent that their argument is founded on a shocking premise—namely that intimidation and coercion by unions should be treated as an ordinary and legitimate part of union activities.

The Taft-Hartley Act was formulated on the opposite premise. It followed the precedent of the Norris-LaGuardia Act by specifically recognizing, as does the Norris-LaGuardia Act, the right of individuals, if they wish, to refrain from engaging in concerted activities. The Taft-Hartley Act does more, however, than merely recognize the right. It contains provisions to protect individuals from intimidation and coercion when they wish to exercise it. I do not know of any responsible American who could be called liberal who would deny that individuals have this right. If they do have it, why should it not be protected against assaults upon it by powerful groups—be they union groups, employer groups, or otherwise?

(b) *The closed shop.*—Another provision of the Taft-Hartley Act that was designed to deal with coercion of individuals by unions is the provision outlawing the closed shop. Under the act, however, an individual can still be compelled to join the union and pay his dues to keep his job. The only important difference between the closed shop permitted under the old law and the union shop permitted under the Taft-Hartley Act is that under the Taft-Hartley Act a union cannot by expelling an individual from the union for reasons other than his failure to pay his dues compel the employer to discharge him.

The importance of this provision of the Taft-Hartley Act to individual freedom cannot be overemphasized. A case that came to the attention of the Board shortly after the act became law is illustrative:

A union in New York—Local 65, Wholesale and Retail Workers, CIO—having numerous closed-shop contracts with employers, levied an assessment against its members to raise funds to oppose the bill. Many of the members of the union objected to the assessment and announced their refusal to pay it. Thereupon the union ordered the expulsion of the recalcitrants and directed the employers to discharge them, as the employers were required to do under the closed-shop contracts with the union.

The fact that the assessment was made for the purpose of opposing the bill is not important. No truly liberal-minded person ever objects to opposition to his views because he believes, with Mr. Justice Holmes, that "the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market." What is important is that individuals were being coerced with loss of jobs, or by threats thereof, to support doctrines with which they chose not to agree. Such is the result—and all too frequently the purpose—of the closed-union shop. It is the yellow-dog contract in reverse. It is the tyranny of the union over individuals instead of the tyranny of the employer.

The historical justification for the closed shop device was that nonunion employees could and would undercut the union standards. This argument can no longer be used, however, for under the Wagner Act the union representing the majority speaks and acts for all, and the employer is prohibited from treating separately with employees who are not members of the union.

It is impossible for a truly liberal-minded person to justify the closed shop on principle. What arguments there are that are made in its favor are arguments of expediency. Why should any private group—union or otherwise—have the power to pass sentence of economic death over an individual in America merely for exercising his right to decline to join the group or, as happened in New York, merely for exercising his right to favor the provisions of the Taft-Hartley Act? To me the closed shop is simply the blacklist in reverse.

Many employers like the closed shop because it saves them a lot of bother in recruiting workers, but the fact that employers like it and unions want it doesn't make the closed shop right. Employers and unions should not have the privilege of combining to determine the economic destiny of someone else.

If the size of minorities is important—and I don't believe it is to the true liberal—it might be appropriate to point out that it has been reliably estimated that in the representation elections conducted during the first 10 years under the Wagner Act, at least 3,000,000 American workers voted against the unions that were ultimately chosen to represent them. Should these 3,000,000 individuals in America be subject to being forced into the unions they did not want? Moreover in the union shop elections conducted in the first year under the Taft-Hartley Act—and these were held for the most part where there was already a closed or union shop contract in existence—some 141,000 individuals voted against even the union shop. Are the wishes of these 141,000 individuals to be disregarded? Has not each one of them some right to individuality of thought and action?

One of our great Americans, the late Mr. Justice Brandeis, universally revered as a champion of liberalism, had some things to say about the closed shop. Some of them are gathered together in the opinion of Mr. Justice Frankfurter in the case of *American Federation of Labor* v. *American Sash & Door Co.* (69 S. Ct. 258, 264):

"The objections—legal, economic, and social—against the closed shop are so strong, and the ideas of the closed shop so antagonistic to the American spirit, that the insistence upon it has been a serious obstacle to union progress." (Letter of September 6, 1910, to Lawrence F. Abbott.)

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"But the American people should not and will not accept unionism if it involves the closed shop. They will not consent to the exchange of the tyranny of the employer for the tyranny of the employees." (Letter of February 26, 1912, to Lincoln Steffens.)

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"It is not true that the 'success of a labor union' necessarily means a 'perfect monopoly'. The union, in order to attain and preserve for its members industrial liberty, must be strong and stable. It need not include every member of the trade. Indeed, it is desirable for both the employer and the union that it should not. Absolute power leads to excesses and to weakness; neither our character nor our intelligence can long bear the strain of unrestricted power. The union attains success when it reaches the ideal condition, and the ideal condition for a union is to be strong and stable, and yet to have in the trade outside its own ranks an appreciable number of men who are nonunionists. In any free community the diversity of character, of beliefs, of taste—indeed mere selfishness—will insure such a supply, if the enjoyment of this privilege of individualism is protected by law. Such a nucleus of unorganized labor will check oppression by the union as the union checks oppression by the employer." (Contribution to a discussion entitled "Peace with Liberty and Justice" in 2 National Civic Federation Review, No. 2, pp. 1, 16, May 15, 1905.)"

In contrast to these views of a great American liberal I am setting out below the contentions made by the American Federation of Labor in the recent closed-shop cases in the Supreme Court, as summarized by Mr. Justice Black (*Lincoln Fed. Labor Union* v. *Northwestern Iron and Metal Co.*, 69 S. Ct. 251, 254), and ask you what liberalism you find in those contentions.

"Their contention is that these State laws indirectly infringe their constitutional rights of speech, assembly, and petition. * * * Justification for such an expansive construction of the right to speak, assemble, and petition is then rested in part on appellant's assertion '*that the right of a nonunionist to work is in no way equivalent to or the parallel of the right to work as a union member; that there exists no constitutional right to work as a nonunionist on the one hand while the right to maintain employment free from discrimination because of union membership is constitutionally protected.*' * * * We deem it unnecessary to elaborate the numerous reasons for our rejection of this contention of appellants. Nor need we appraise or analyze with particularity the rather startling ideas suggested to support some of the premises on which appellants' conclusions rest." [Italics supplied.]

(*c*) *Boycotts and jurisdictional strikes.*—The Taft-Hartley Act also makes union coercion in the form of secondary boycotts, strikes by unions to compel employers to disregard and violate Board certifications, and jurisdictional strikes by unions unfair labor practices. In the case of boycotts and strikes to compel violations of Board certifications, the act also makes the union liable in damages to innocent third parties injured thereby. And it also directs the Board, through the General Counsel, to apply to the appropriate court for an injunction restraining boycotts and strikes to compel violations of Board certifications, where the preliminary investigation of the charge produces reasonable cause to believe the charge is true. This provision requiring the General Counsel to apply for an injunction I will discuss later.

The President's bill recognizes that some boycotts and jurisdictional strikes are indefensible. Under that bill the boycotts that are treated as unfair-labor practices on the part of labor organizations are those conducted to compel an employer to bargain with a particular labor organization if (1) another labor organization has been certified by the Board, or (2) the employer is required by an order of the Board to bargain with another labor organization, or (3) the employer is currently recognizing another labor organization and has executed a collective bargaining agreement with it; and those conducted in furtherance of a very limited kind of jurisdictional dispute.

One thing that is immediately apparent from the President's bill is the premise on which it seems to have been drafted. This premise is that labor organizations are entitled to protection from other labor organizations, but that individuals who do not wish to be members of labor organizations, innocent bystanders, and members of the general public are not entitled to any protection at all.

You are doubtless all familiar with cases involving small retail stores run by a family consisting of a man, his wife, and perhaps one or two boys. The family has no desire whatsoever to join any labor organization, but it is not uncommon in a situation of this sort for unions having control of delivery and other facilities necessary to keep the shop going to conduct crippling boycotts to force such a family to pay tribute to the union.

Can a boycott of this sort be defended? The argument that unions make to the effect that boycotts are necessary and desirable to protect union standards against sweatshop conditions may have had some validity in the days before minimum-wage legislation, strict regulation of industrial home work, prohibition of child labor, and other laws prescribing minimum labor standards. But what sweatshop conditions exist in such a store that justify extortion under threat of business ruin?

There are many other forms of boycotts that are indefensible and yet are not touched by the President's bill. The President's bill on jurisdictional disputes over assignment of work tasks is wholly inadequate. It seems to be based on the premise that strikes and boycotts in furtherance of interunion and intraunion quarrels of this sort are justifiable until the National Labor Relations Board can get around to a compulsory arbitration proceeding and issue an award assigning the work to one union or another. It is during the period prior to the settlement of such disputes that the injury is done by the jurisdictional strike or boycott. Under the President's bill (sec. 106 (a)) employers are evidently supposed to maintain a neutral position until the dispute is settled. The only way in which an employer can maintain a neutral position in the face of a jurisdictional strike is to close down his plant or stop all work until the matter is settled. Does this solution of the problem of jurisdictional strikes seem fair?

(*d*) *Union political contributions and expenditures.*—The provision of the Taft-Hartley Act which prohibits political contributions or expenditures by unions is another provision designed to protect the rights of individuals and minorities by preventing union leaders from using a member's money to support candidates or doctrines with which the member may not agree. Does this deny to that member his political freedom, or does it actually protect it? A union as a legal entity separate and distinct from its individual members has no political rights. It is political rights of individuals that we should concern ourselves about.

Bloc voting has never come to America, for in America individuals are free to think and speak and vote as they wish. The liberal prays that it never will come to America, for if it should its doing so would mean the destruction of liberalism in government. If bloc voting is to be feared as a danger to the cause of liberalism, why should we countenance bloc contributions and bloc expenditures for political purposes and disregard the freedom of the individual?

REPRESENTATION OF EMPLOYEES

Another essential feature of the Taft-Hartley Act designed to protect individuals is a provision recognizing the right of employees to get rid of a representative that they don't like. The Wagner Act, in section 9 (c), provided that "whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate" and certify the representatives that have been selected. Despite this provision, the Board consistently refused to grant to employees the right to vote on the question of getting rid of a union that they did not like as their representative. The Board would only recognize their right to shift from one union to another. Do you think that this practice of the Board was consistent with any philosophy that could be called liberal?

If a union once wins a representation election, must employees be required to keep that union as their representative forever unless some other union comes along? What excuse is there for not giving employees the right to get rid of such a representative if they wish to do so? Yet the old Board consistently refused to entertain employee petitions for elections to decertify a representative.

Unions say that giving employees the right to vote to decertify a representative can be used by antilabor employers to "bust" the unions. Such an argument conveniently ignores the fact that such practices by an employer would constitute unfair labor practices subject to the remedial processes of the Board. If the provisions prescribing unfair labor practices on the part of employers are not sufficient to protect employees in their right to engage in union activities if they wish to, for heaven's sake, let's make them sufficient; but don't in the name of liberalism or otherwise deny to employees the right in a secret ballot to make a free choice. If the employer seeks to use the decertification procedure as a means of trying to "bust" a union, the Board can and would refuse to hold the election, or can and would set it aside if it had already been held, just as it has uniformly done in the past under analogous circumstances.

There are other provisions of the act also dealing with the representation of employees, such as the provision recognizing the rights of employees in craft units to be separated from larger industrial units if they wish to have their own representative for collective bargaining. The treatment of professional employees in a similar manner is another example. All of such provisions have the effect of giving greater freedom to the individual, which is the very essence of liberalism.

FREE SPEECH

The Taft-Hartley Act specifically provides that both employers and unions and their respective representatives may freely express and disseminate views, argument, and opinion about any matter without by doing so being guilty of an unfair labor practice, if the expression does not threaten reprisal or force or promise a benefit. The act also provides that such expressions of views, argument, or opinion may not be used as evidence of any unfair labor practice. This latter provision is discussed later in some detail.

One would think that in the United States it would be unnecessary to write into law one of the basic guaranties of the Constitution. The need for doing so, however, stemmed from doctrines adopted by the National Labor Relations Board. The sequence of these doctrines illustrates the necessity for this provision of the act.

In the first few years of the Wagner Act the Board devised a doctrine pursuant to which, if it found the "totality" of the employer's conduct to be antiunion, it would hold whatever the employer said that was critical of the union (even though what he said was not coercive or threatening by itself) to be coercive as a matter of law, and would issue a cease-and-desist order against the speech itself and thus seal the employer's lips for the future. This doctrine was abandoned by the Board after the Supreme Court warned the Board that both employers as well as unions had a right of free speech in labor controversies. The Board thereupon developed another doctrine—that speech by the employer critical of the union would be treated as coercive if made to employees during working hours, or would be treated as coercive if the employer had done something else, even severable from and unrelated to the speech, which the Board found to be an unfair labor practice. Moreover, speech by the employer or the employer's agents that was critical of the union would be uniformly seized upon by the Board to show that employees who had been discharged were in fact discharged for union activities.

The consistent practice of the Board from the beginning of imposing limitations on the employer's right to speak had very practical effects in day-to-day labor-management relations. The unions could say anything they wanted to (including in many cases vilification of the employer himself), but the employer dared not say a word in reply. In 1940 the American Federation of Labor endorsed a free-speech amendment to the Wagner Act, because even they found, in their struggle at that time to maintain the identity of their crafts in the face of industrial-unit determinations being made by the Board, that employers dared not even say a kind word for the American Federation of Labor.

The very practical effects that these changing, but always restrictive, doctrines of the Board had on day-to-day labor-management relations—the "totality of the Board's conduct" in this respect, if you will—made it necessary to write a free-speech guaranty into the act itself so as to compel the Board to abandon those doctrines. Otherwise the employer spoke at his peril—the peril of a cease-and-desist order and perhaps even of an order directing reinstatement of employees and imposing a substantial liability on the employer for back pay. Does this seem fair?

Do you really believe that the National Labor Relations Board or any other agency should have the power, and encourageemnt from the Congress that it be exercised, to close people's lips by issuing and enforcing cease-and-desist orders against what they say? Do you think repealing a denial of such a power, with all the implications involved in such a repeal, is the liberal thing to do?

DUE PROCESS

The Taft-Hartley Act contains a number of provisions directed to the same end—that proceedings before the Board be conducted in accordance with due process of law.

(1) I had always supposed that one of the cornerstones of liberalism was insistence upon compliance with the fundamental requirements of due process and fair play. Does it seem fair to you to have an administrative agency act as investigator, prosecutor, judge, and jury in the same case, and then, insofar as its findings of fact are concerned, be in effect its own supreme court? Why is it not fair to deny to the judge the power of investigating and prosecuting cases that he himself must decide, as is done in the Taft-Hartley Act?

It is undoubtedly true that the prosecuting official—the general counsel—under the Taft-Hartley Act can refuse to issue a complaint, and he may even do so arbitrarily. It is also true that such a refusal is tantamount to a denial of the means of redress established by Congress for unfair labor practices. But these are not arguments against separating the prosecuting and judicial functions. They are arguments against the present scope of the prosecuting powers.

The majority members of this committee in 1947 seriously considered a proposal by one of the members that the parties conduct their own proceedings before the Board: Issue and serve their own complaints and prosecute them before the Board, etc., as is done in judicial proceedings. The desirability of imposing a duty on the general counsel to issue and serve complaints filed with him alleging violations of the act, and doing away with the preliminary step of the charge now provided by law, was also seriously discussed. Such suggestions, however, have nothing to do with limiting the judicial body to judicial functions. Why is it proposed to revest the judicial body with prosecuting functions? Do you really think doing so would be more consistent with the Anglo-American concept of due process and fair play?

(2) What is your opinion as to the fairness of a procedure which has the trial examiner hear the evidence, observe the witnesses, and make findings of fact which, before they are ever seen or considered by the judge, are changed by the trial examiner's supervisor, who has not heard the evidence, observed the witnesses, or even read the record? After you have had your hearing before the

judge on your objections to the trial examiner's report, what is your view as to the fairness of the trial examiner conferring with the judge in your absence and arguing in support of his position? These things were part and parcel of the practice and procedure of the National Labor Relations Board before the enactment of the Taft-Hartley Act. Their continuance was specifically prohibited by that act. What reason is there for returning to the old system?

(3) The Taft-Hartley Act abolished the Review Section of the old General Counsel's Office in the National Labor Relations Board. Are you familiar with the functions that were performed by this section? After a trial examiner had prepared his report in a case, discussed the evidence, and made findings of fact and conclusions of law, the Review Section would rereview the transcript of the hearings, review the findings and conclusions of the trial examiner, and prepare a memorandum on the case for the Board.

The preparation of this memorandum would be initially assigned to one of the attorneys in the Review Section. He would go over the transcript and the trial examiner's report, and draft a proposed memorandum thereon. He would not have heard the evidence or observed the witnesses. This proposed memorandum would then be reviewed, and perhaps changed, by the review attorney's supervisor in the Review Section, who had not even read the transcript, and then delivered to each member of the Board. The same memorandum went to each member, but was not available to the parties. It was this memorandum that was generally used by the Board members to inform themselves on the case. If you were a party to a proceeding before the Board, what would you think of the fairness of having your case brought to the Board in this fashion? Does such a procedure impress you as being fair?

After the Board members had been thus informed about a case and had voted as to how the case should be decided, it was the practice to assign to the Review Section, rather than to one of the Board members as would be done in the case of a judicial body, the duty of preparing a draft opinion. Thus, unless there was a dissent by one of the members which one of the other members saw fit to answer, both the decision and the form in which the decision appeared were virtually a product of the corporate personality of the Review Section.

Under the Taft-Hartley Act the Review Section was abolished, and in lieu thereof each member of the Board is provided with legal assistants of his own to assist him, and him alone, in reviewing transcripts and drafting opinions for him, just as judges have their own law assistants to give them such help.

Is it wrong to require the Board to function in a judicial fashion in the same manner that our courts do? What reason is there for reinstating the Review Section?

UNION RESPONSIBILITY

The Taft-Hartley Act makes both unions and employers answerable in damages in the Federal courts for breaches of collective-bargaining agreements affecting commerce. It also makes unions liable in damages to innocent third parties caught in the middle of a union boycott or a jurisdictional strike.

There is no valid reason that has ever been communicated to me for exempting labor unions from a responsibility that all others in our economy assume when they make a contract; viz, the responsibility of complying with it or being liable in damages for its breach. Do you think it is fair for the laws of the United States, through the device of compulsory collective bargaining, to in effect compel the making of collective labor agreements and then to in effect exempt one of the parties from all liability for violation of his own undertakings? Why do some of you want to do this? I have read and heard "expediency" arguments in support of exempting labor unions from suit—arguments, for example, that suits against unions would soon exhaust union treasuries and thus destroy the union, or that unions would be harassed by suits brought by antilabor employers bent only on destroying the union. But the experience under the Taft-Hartley Act has shown these arguments to be invalid. Unions have not been flooded with suits. And to date there has not been one cent in damages collected against either unions or employers under this provision of the act. Unions are stronger today than they ever were. Moreover, to the extent that the arguments imply that unions would be "soaked" in a manner or to an extent not warranted by the circumstances, the argument implies lack of both competence and integrity in the American judicial system.

Unions argue that it is wrong, by outlawing the closed shop, to deny them the means of disciplining their members, while at the same time making them responsible for fulfilling their contracts. There are several answers to this argument. I will mention but two. First, the law does not prescribe what obligations a union shall assume in its contract. If a union or any other person negotiating a contract cannot comply with a particular obligation that is proposed, it is better not to assume that obligation. Second, insofar as wildcat strikes, work stoppages, slow-downs, job actions, and other disruptive activities and practices of union members are concerned, unions ordinarily not only fail to denounce them, but they even try to prevent the employer from disciplining those who engage in them. Unions can very easily disclaim responsibility for these disruptive practices if they will permit the employer, without retaliating against him, to discharge the participants.

OTHER ESSENTIAL FEATURES

The provisions of the Taft-Hartley Act that I have discussed above are some of the essential features of that act. There are others equally as important, such, for example, as the mutual duty to bargain, the independence of the Mediation and Conciliation Service, the barring of stale charges, the power of the Board to secure temporary injunctions either gainst employers or against unions, or both, in order to assure maintenance of the status quo pending decision by the Board on the merits. There is not sufficient time here to discuss all of them.

SUGGESTIONS FOR CHANGES IN LAW

By discussing what I consider to be some of the essential features of the Taft-Hartley Act, I do not wish in any way to imply that I believe the act does not require amendment, because I think it does. Some changes are indicated from the experience that we have had under it. Others seem to me to be necessary to better balance the scales between labor and management, between labor, management, and the public, and between unions and their members. I should like to discuss very briefly what I think those changes should be.

(*a*) *National emergencies.*—I have attempted to show that labor's right to strike is not a right that we can or should permit to be exercised in a manner to attack the life of the community or to prostrate the public. The Taft-Hartley Act contains a fairly cumbersome procedure which to my mind does not go to the heart of the problem. First, a board of inquiry is created. Then the board of inquiry reports to the President. Next the President—if he deems it necessary—requests the Attorney General to apply to the appropriate court for an injunction. If the injunction is issued, the board of inquiry is reconvened, and if the dispute is not settled at the end of 60 days, the board is to make a report to the President. Thereupon the National Labor Relations Board must take a secret ballot of the employees on the employer's last offer. At the end of 80 days, irrespective of whether the dispute has been settled, the injunction must be discharged, and thereafter the public is entirely without protection.

In the case of strikes which are causing or threatening to cause substantial injury to the national health or safety, I would suggest doing either one of two things:

(1) Give the President authority to seek an injunction against striking in such a manner as to cause such injury. The adoption of such a suggestion would not preclude separate strikes against individual employers, except possibly under very unusual circumstances. The injunction would be a permanent injunction, its effectiveness not being limited to any particular period of time; or

(2) Outlaw industry-wide bargaining in a manner similar to that proposed in the Hartley bill as passed by the House in 1947. Such a suggestion would prohibit (with certain exceptions to take care of the problem of employees of small employers) a union from representing for bargaining purposes the employees of more than one employer, and would also prevent unions from acting in concert with respect to their bargaining arrangements. It would not preclude affiliation of local unions with internationals, but would very substantially restrict the power of the international over the local. In addition to imposing these restrictions on unions acting in concert, the suggestion would also prohibit employers from combining or agreeing with one another with respect to their bargaining arrangements.

(*b*) *Amendment of free-speech provision.*—The evidence rule in the free-speech provision of the act presents a very difficult problem. It is undoubtedly true that this rule has the effect of excluding evidence of a kind that in other proceedings, both judicial and administrative, is treated as having some probative value. On the other hand, it is also true that the Board, in its zeal to advance union interests at all costs, had grossly abused its power to consider such evidence, through according it weight out of all proportion to its significance. The practical result was that if the employer or his agents said anything critical of the union of his employees, or even critical of unions generally, the employer thereafter discharged employees at his peril.

I would suggest that the committee determine whether it is not true that as a practical matter it is rarely, if ever, necessary to use speech that consists merely of views, argument, or opinion (and this does not include admissions, statements of fact, questioning of employees, and similar matters) as evidence of motive or intent in labor-relations cases, if it is not true that there is invariably other and much stronger evidence of such motive or intent. If it is true—and I think you will find it to be—inasmuch as the right to speak freely is a right that we in America wish to protect against all unnecessary encroachments, and inasmuch as the present evidence rule applies both in respect of employer conduct and union conduct, I would not at this time favor changing the rule. If, however, it is found to prejudice the just rights of unions or of employers, I certainly would favor its being either restricted in its application or eliminated entirely.

As further illustrative of the attitude of the Board toward the expression of views, argument, and opinion, the Board has held that the existing free-speech provision does not apply to speech before or in connection with representation elections and has set aside elections where the employer has made comments critical of the union. This seems to me improper, and so I would suggest that the free-speech provision be amended to make it applicable to views, arguments, and opinions expressed either by employers or unions or their agents in connection with representation elections.

(*c*) *Union financial reports.*—I do not believe that it is either necessary or appropriate that fulfillment of the financial reporting requirement imposed on unions be made a condition to the exercise of a union's rights under the Wagner Act. It seems to me that this requirement should more properly be made wholly independent of the Wagner Act, and also that union members should have the right to inspect the reports filed with the Secretary of Labor by his union.

(*d*) *Mandatory application for injunctions.*—I believe that the discretionary power which now exists under section 10 (k) of the amended Wagner Act to seek temporary injunctions against either employers or unions or both pending decision by the Board on the merits of the case, should be retained. But I do not believe there should be a separate provision imposing a duty to apply for temporary injunctions against labor unions when they do particular things. Thus I would suggest repealing section 10 (l) of the amended Wagner Act.

(*e*) *Prosecution of cases before board.*—I have previously indicated that under the Taft-Hartley Act, the refusal by the general counsel to process a charge or issue a complaint is, if such refusal is arbitrary, capricious, or even incorrect, tantamount to a denial of relief under the act. I have also urged that this fact is no argument for revesting the prosecuting functions in the judicial body, the Board.

I would suggest that the act be amended so as to give parties the right, if they wish, to issue their own complaints under the act and prosecute those complaints before the Board. This suggestion is a suggestion for an additonal remedial procedure, not one to take the place of the existing procedure. Thus if parties were dissatisfied with the action of the general counsel, they would have a right to initiate and conduct their own cases.

(*f*) *Additional protection to individuals.*—I do not believe that prohibiting the closed shop is sufficient to give individual union members adequate protection against arbitrary action by the union. There are countless individuals who want to be union people and be known as such. It is no answer to them to say that if the union expels them for reasons other than failure to pay dues they can nevertheless still keep their jobs. They don't want to be expelled, they want to be good union men and stay in the union.

For this reason, I suggest that there be added to the Taft-Hartley Act the essential features of the bill of rights that was contained in section 8 (c) of the Labor Act under the Hartley bill, but that was dropped out by the conference committee on the bill. I also suggest that there be added to the Taft-Hartley Act a provision making it an unfair labor practice for an international union to restrain or coerce any of its locals in respect of their bargaining arrangements or otherwise.

(*g*) *Definition of collective bargaining.*—The definition of collective bargaining in the Taft-Hartley Act, requiring 60-day notices, etc., seems to me to be cumbersome and unnecessary, as well as a trap for the unwary. Morever it seems to me that its provisions depriving individual employees of rights under the act are unduly harsh. For these reasons I would suggest the elimination of this definition and the substitution therefor of the provisions of section 108 of the President's bill (H. R. 2032).

CONCLUSION

It has been my purpose to tell you exactly how the Taft-Hartley Act was drafted, to discuss some of its provisions in terms of what I consider to be the philosophy of true liberalism, and to suggest various changes in the act that seem to me to be necessary or desirable. As merely one American, speaking for no group and representing no interest except what I believe very deeply to be the interest of true liberalism in government in America, I urge you to consider the Taft-Hartley Act, provision by provision, on its merits, judge it according to liberal principles, and then determine whether it is not more consistent with those principles to retain the essential features of the act, and to modify the act only where the application of these principles dictates that modification should be made, rather than repeal it outright.

Mr. SMITH. Mr. Chairman, I have a request from the National Farm Labor Bureau, a large farm organization in the country, wanting time to appear before the committee holding hearings on this act, and I talked to the clerk and he said he thought all the time had expired, and I wanted your ruling on it.

Mr. KELLEY. He stated correctly. All the time has been taken. The committee adopted a rule in the beginning that we would have 10 full legislative days, and I might say they have been full, in order to take care of the witnesses we had scheduled.

There have been three farm groups already testify before this committee. Why does he not file a statement? We will accept that.

Mr. SMITH. I am simply passing it on to you at their request.

Mr. KELLEY. That is the answer.

Mr. SMITH. They will not be given time?

Mr. KELLEY. There is no time.

Mr. IRVING. Will the witness state his name, and proceed?

TESTIMONY OF HON. ANTHONY F. TAURIELLO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. TAURIELLO. My name is Anthony F. Tauriello, and I represent the Forty-third Congressional District of New York.

At the outset, permit me to thank you for affording me the privilege of appearing here and making this brief verbal statement. I have no prepared statement.

I have served on the Erie County Board of Supervisors for two terms, and on the Buffalo Common Council for two and a half terms, being a member of that legislative body up to January of this year, at which time I resigned to assume my duties here in the Congress.

Some of the things I may say to you this afternoon, I am sure you have heard repeatedly during your hearings. I feel that you gentlemen, who are sitting here with so much patience and listening to the witnesses as they come in, certainly want to know how some Members of Congress feel insofar as the Taft-Hartley law is concerned.

Last year when I sought the office I presently hold, I ran on the Democratic platform which embodied the repeal of the Taft-Hartley Act. While I am not a constitutional lawyer nor a labor expert, I feel that I am qualified to present the opinion of the greater part of the district it is my privilege to represent.

My district is made up of a cosmopolitan people, laborers, white-collar workers, wealthy people, and very poor people.

The man whom I defeated last November, and who preceded me here, voted for the Taft-Hartley Act, and voted to override the President's veto. In 1946 he was elected by an overwhelming majority of 33,000 votes. Last fall I defeated my predecessor by almost 7,000 votes, so that I feel that in appearing before you this afternoon and urging you to repeal the Taft-Hartley Act, I am representing the will of the people in my congressional district, a district which is normally Republican, at least, a majority.

As I say, I ran on the Democratic platform, and I supported the President and his policies. Because of that I feel I am representing the will of the people of my district.

Personally, I am partial to labor. I came from a laboring family—came up the hard way, like most of you gentlemen, and worked on construction jobs and in steel plants. While earning my livelihood to go to school, I experienced some of the conditions which labor encountered, during the years prior to the passage of the Wagner Act.

We are all familiar with the events that prompted the passage of the Wagner Act, which virtually emancipated the laboring man in this Nation. When this act became public law it spelled out for the first time in this country's history the rights of labor to organize, to bargain collectively, and to enjoy freedoms of expression within industry and at the conferences of its elected representatives with management's representatives without fear of reprisal.

The best testimony I can give you here today, gentlemen, is to relate some of the remarks that were made by members of the House, and of the Senate, in 1947, when this bill was being debated.

On February 15, 1947, Representative Klein had this to say, on the floor of the House:

> The bill was actually written with the help of the National Association of Manufacturers and the United States Chamber of Commerce. Some of the most valuable assistance came from William Ingalls, who represents Allis-Chalmers Co., Fruehauf Trailer Co., J. I. Case Co., the Falk Co., and the Inland Steel Co. Theodore R. Iserman put aside his rich Chrysler law practice for two full weeks to help out the House Labor Committee.

There has been much said about the National Association of Manufacturers drawing up this bill, and I say where there is smoke there must be fire. This bill was strictly a punitive measure to punish labor; an attempt to take away all of the gains it had made under the Wagner Act.

Representative Karsten of Missouri said this on the floor of the House:

> The authors of this bill are clearly not interested in pushing the American economy uphill to higher living standards. They are bent upon establishing monopoly control over the roller-coaster, and taking the American people for a dangerous ride.

Senator George D. Aiken, a very eminent member of the Senate and very liberal and progressive in his views, on May 12, 1947, said:

> Mr. President, the leaders of industry, who gave the committee members all kinds of advice, were for the most part vindictive, and it was clear to me, at least, from their attitude that their principal desire was to destroy labor organizations completely. * * * We have been subjected to the most intensive, expensive, ambitious propaganda campaign that any Congress has ever been subjected to.

Quoting from Senator Morse on June 7, 1947:

> I supported the Senate committee bill which was a fair, reasonable, constructive and enforceable bill, and I opposed the amendments that were made on the floor of the Senate because they seemed to me to strike serious blows at the rights of labor and to impair the efficient administration of the law. The amendments which have been made in conference not only infinitely aggravate every serious vice of the Senate amendments, but they add such restrictive and administratively unfeasible provisions of their own that, even if I believed the bill we passed were sound and helpful, I would be compelled to vote against the conference bill because of the inevitably disastrous effects I am sure it will have on industrial peace.

To further quote from Senator Morse—and, gentlemen, how prophetically accurate it later proved:

> If you pass a piece of labor legislation as unfair as the Taft-Hartley bill, you will hear about it at the ballot boxes, because millions of independent voters, yes, and Republican voters, will not in 1948 support a party which passes such a bill.

So, gentlemen, I say to you, when men such as Senators Morse and Aiken and Representative Klein, who attended all legislative consideration of the Taft-Hartley bill, come to the conclusion that the Taft-Hartley Act is a vicious piece of labor legislation and would do great harm, not only to the workingmen of this country, but to the entire economy of the Nation, then I, as an individual and as a member of the House of Representatives, feel that the Labor-Management Act of 1947 should be repealed in its entirety.

I compare the Taft-Hartley Act, if I may use this inelegant comparison, to an apple with a rotten core. No matter how much you may polish it outside, the core is still rotten, and the whole apple within a short space of time will decay.

Ex-Congressman Hartley wrote a book, and I just want to quote two paragraphs from that book, which I feel are clinching arguments insofar as the repeal of the Taft-Hartley law is concerned.

I am quoting from his book entitled "Our New National Labor Policy," wherein, on page 193, he said:

> Once we accept the concept of the Taft-Hartley Act as a model to begin an interim period leading to complete elimination of the governmental labor relations agencies, we can apply that concept to other areas of government activities. I am well aware of the political difficulties of eliminating the New Deal social legislation. It cannot be repealed at a single stroke.

On page 194, quoting once again from that book, he said:

> The Taft-Hartley Act is but a step toward that goal, but it is certainly the first definite step this Nation has taken since the merry-go-round began in 1933.

That is conclusive evidence to me that the Taft-Hartley Act was placed on the statute books of this country for the sole purpose of taking away from labor all of its gains, the results of many years of strife and endeavor. And I, as a Member of Congress, want to assure you gentlemen that when the bill comes on the floor for the repeal of that Act, I will support it 100 percent.

Mr. Chairman, with your permission, may I submit for the record two resolutions adopted by the Buffalo Common Council last week? The common council of Buffalo is composed of eight Democrats and seven Republicans. They adopted two resolutions memorializing Congress that the Taft-Hartley Act be repealed in toto, and these resolutions were adopted unanimously. The eight Democrats and the seven Republicans voted affirmatively on the two resolutions.

Mr. IRVING. Without objection, it is so ordered.

(The resolutions referred to are as follows:)

RESOLUTION No. 151

(By Messrs. Rybka and Young)

RE: IMMEDIATE REPEAL OF THE TAFT-HARTLEY LAW

Whereas there has been enacted by the Eightieth Congress of the United States a labor bill known as the Taft-Hartley law; and

Whereas since the passage of this law, labor organizations have been oppressed and collective bargaining has been made more difficult to promote the advancement of the American labor movement; and

Whereas the Taft-Hartley law creates an inferior class of citizens, and inferior category and a debased position politically for the men and women who toil by hand or brain for their daily subsistence; and

Whereas the Taft-Hartley Act, in its entirety, is an insult to the working people of the United States, a brand upon their integrity and decency, a handicap to all fair-minded employers; and

Whereas the Taft-Hartley Act invades the constitutional guaranties of free speech, free press, and freedom of contract; and

Whereas the Taft-Hartley Act breathes suspicion and repression in every line and in no instance aids or assists the process of peaceful colective bargaining; and

Whereas one of the main issues in the last presidential campaign was the repeal of the Taft-Hartley law and such issue was supported by an overwhelming majority vote for candidates to political office who were on record for the immediate repeal of this vicious and obnoxious law; and

Whereas the Eighty-first Congress has conducted hearings on a substitute labor bill known as the Thomas bill and such hearings have resulted in needless repetitious testimony, consequently, delaying action on the repeal of this law; and

Whereas thousands of collective bargaining contracts, presently expiring and will expire in the very near future, and labor organizations and employers cannot negotiate with any degree of confidence as to the provisions that may be contained in a new labor bill, thus creating an air of uncertainty and endangering harmonious labor relations between labor and management which may result in unavoidable work stoppages; and

Whereas the citizens of the United States of America have, by their vote last November, delivered a mandate to the new Congress for immediate repeal of the Taft-Hartley law: Therefore be it

Resolved, That the Common Council of the City of Buffalo assert its disapproval of the Taft-Hartley law; and be it further

Resolved, That the Common Council of the City of Buffalo go on record for the immediate and unqualified repeal of the Taft-Hartley law and that the President of the United States, Harry S. Truman, the majority leaders of the House and Senate, the Members of Congress from the western New York area, and the United States Senators from New York State, be so notified as soon as possible after the passage of this resolution so that they may act accordingly.

Adopted.

Ayes—15. Noes—None.

RESOLUTION No. 152

(By Messrs. Young and Rybka)

REPEAL OF TAFT-HARTLEY LAW

Whereas hearings are now completed in the Senate Labor and Education Committee of the United States Congress concerning the repeal of the Taft-Hartley law; and

whereas Buffalo has the best reputation in peaceful labor-management relations down through the years; and

Whereas there is no necessity for this kind of punitive legislation other than to cause disruption of these harmonious relations in our community; and

Whereas evidence has shown itself, particularly in the case of the Goldblatt Department Store against the CIO Wholesale Retail Department Store Union whose employees were members of that union; and

Whereas unquestionably a majority of these employees were members of this union and under normal conditions the company would have bargained collectively with these employees, except for the obstructions involved in the Taft-Hartley law; and

Whereas through the obstructions contained in this law, the company was able to deprive these employees of their jobs by intimidation and coercion; and

Whereas this case has been before the National Labor Relations Board since August 1948 and not even a preliminary hearing has been held, proving how this law has obstructed normal procedures in collective bargaining. Such procedures that have been accepted in the Buffalo area down through the years such as consent elections or recognition of unions by card checks of majority shown to be members of a particular union; and

Whereas this company being alien to the city of Buffalo and its good neighborliness attitude in labor-management relations, used all of the methods given employers under this law to destroy collective bargaining through the method of injunction and damage suits to the leaders of this union; and

Whereas the Taft-Hartley law protected this company in its antilabor attitude to the point where it closed up its business and left town without ever sitting down to bargain collectively with the union: Therefore be it

Resolved, That in view of the foregoing, we the members of the Common Council of the City of Buffalo call upon the Congress of the United States and the Congressmen from this area to do everything within their power to repeal the Taft-Hartley law and reestablish the National Labor Relations Act so that firms such as Goldblatt Bros. Department Store will not be in a position to use the laws of our land to defeat the objectives of the working people who are entitled to collectively bargain regarding wages, hours and working conditions.

Adopted.

Ayes—15. Noes—None.

Mr. Irving. Do you wish to submit that other statement?

Mr. Tauriello. No; I made my statement verbally, Mr. Chairman.

Mr. Irving. Do you have anything further to add?

Mr. Tauriello. No; I have not. I think I have covered it insofar as I am concerned, and as a Member of the House of Representatives, I want to thank you for fitting me in in this testimony. I greatly appreciate it.

Mr. Irving. Just a moment, Congressman. Someone may have some questions.

Mr. Bailey, do you have any questions?

Mr. Bailey. No; I have no questions. I think his statement was forthright and clear-cut.

Mr. Irving. Mr. Kelley?

Mr. Kelley. I reserve my time.

Mr. Irving. Mr. Werdel?

Mr. Werdel. Mr. Tauriello, I do not think there is anybody on the committee on either side that does not think that we need collective bargaining today. I think perhaps where I disagree with you is at this point. First, I would like to know the specific reason why you think the core of the apple is rotten. I do not see where in the last 2 years the prophecy that the Taft-Hartley Act will destroy organized labor is borne out. But that is all argumentative, I realize.

I am wondering how we can justify a complete destruction of the Taft-Hartley Act or any other act which apparently is passed after experience under previous legislation without putting ourselves right back into the field of resentful attitudes on the part of various people in our community, whether it is local or national. In other words, when we entered upon this picture of the Wagner Act, to be sure, labor probably needed some assistance. And there was the terrific feeling that grew up. Whether we can put our finger on specific instances is beside the point. The fact that so many people talk about it is probably evidence of the fact that there was a lot of feeling when the Taft-Hartley Act was passed.

Now, beyond any manner of doubt, there are good provisions in the Taft-Hartley Act, and I think it behooves us as Members of Congress to talk about the good and the bad rather than recite the fact that some of us did for political purposes run on a platform for the complete repeal of a piece of legislation which if we do repeal it outright is going to cause more serious discussion in our country.

What I am driving at is this. I think that where I disagree with you is that you do not even agree that we as Congressmen should sit down and talk about the good and the bad in this piece of legislation and publicize that, instead of saying, "We may have a little majority here today. We are going to bang this thing through," and then ask for trouble tomorrow.

I do not agree with you there. I do not think there was a mandate in this last election for the outright repeal of the Taft-Hartley Act. I think there is always a mandate to do something for the workingman. Some of them may have had legitimate objections to certain sections of this act. It may be that it can be demonstrated that proper union organization functioning reasonably and as we admit it should function has objections to the Taft-Hartley Act. But certainly there are provisions in the Taft-Hartley Act that are for the preservation of individual rights and public rights. And I think it is incumbent upon both you and me to think about those and express ourselves on them so that we can tone down some of the feeling that is building up.

Mr. TAURIELLO. May I answer you in this way, Congressman? When I ran for the office of Representative, I ran on the Democratic platform and supported the President for the outright repeal of the Taft-Hartley Act. I feel that the fact that I was able to overcome the overwhelming majority that my predecessor won by in 1946, and again stating to you that the Forty-third Congressional District is overwhelmingly Republican, I feel that it was a mandate on the part of the people of my district, that whomever they elected to Congress should come here and support the President for the outright repeal of the Taft-Hartley Act.

When I ran on that particular platform, I did not support that plank purely for political reasons or to garner and attract votes to myself. My feelings toward labor—and I am prejudiced, I will admit—are deep-seated. If there were a decision to be made, and the scales were balanced, business on one side and labor on the other, I would cast my vote with labor. I have always done that in the 15 years that I served on legislative bodies, and I will always continue to vote that way. During all of those years, I always fought to advance the cause of labor, to protect its gains, and to defend it at any time.

That is the reason I feel the way I do about the Taft-Hartley Act. If there is any good in it, the good is so heavily offset by a vast maze of encumbering provisions and limitations that our national labor movement will never recover a sound, balanced position in this country's economy. Definite relief is indicated, and it is my fondest hope that this committee can set such a vehicle of law into motion.

Mr. WERDEL. What kind of law would you revert to, then?

Mr. TAURIELLO. I would revert back to the Wagner Act.

Mr. WERDEL. And, if an employer cannot pay a wage, you think by law we can force him to pay it?

Mr. TAURIELLO. Those things will all be adjusted in their natural course. There will always be an adjustment. And labor, let me tell you, Mr. Congressman, since there has been, if we may call it, a slight recession, has been the first to tell its employer, "If you cannot afford to give us a raise, we are willing to go along with you."

We had a case in Philadelphia. I think it was a bakers' union or a milk drivers' union. I think labor had been more than fair in the past few months.

Mr. WERDEL. I will agree with you that some branches of labor are fair. But I also think that you should agree that, when we gave the powers that these men have as we gave them under the Wagner Act, the time comes when we have to pass some reasonable legislation to control them. In the old days, when England could not fight Spain and when we could not handle the high seas, we commissioned people to go out and confiscate people's property on the high seas. We had again to turn around and pass legislation to prohibit it and run them down all over the world.

Now, somewhere along the line we are going to have to pass a reasonable labor bill, and you and I are going to have to talk about it as a reasonable bill to meet all the requirements of all the parties concerned. That is the only point I am making.

That is all.

Mr. IRVING. Thank you, Mr. Congressman, for appearing. We appreciate your coming.

Mr. TAURIELLO. Thank you, gentlemen.

Mr. IRVING. The next witness is Frank Reel.

TESTIMONY OF A. FRANK REEL, NATIONAL ASSISTANT EXECUTIVE SECRETARY, AMERICAN FEDERATION OF RADIO ARTISTS

Mr. REEL. Mr. Chairman and gentlemen——

Mr. IRVING. Will you kindly state your name?

Mr. REEL. Yes, sir. My name is A. Frank Reel. I am national assistant executive secretary of the American Federation of Radio Artists.

Mr. IRVING. You may proceed.

Mr. REEL. Thank you, sir.

I have a prepared statement, I might say, that I have brought copies of; and, in the interest of saving time, I am going to run through this statement, but I may short-cut here and there in order to leave more time for questioning on the part of the members of the committee.

Mr. Chairman and gentlemen, President Truman in his veto message of June 20, 1947, vetoing the Taft-Hartley bill, stated one of his objections as follows:

> In weakening the protections afforded to the right to organize, contrary to the basic purpose of the National Labor Relations Act, the bill would injure the smaller unions far more than the larger ones. Those least able to protect themselves would be the principal victims of the bill.

Nineteen months' experience under the Taft-Hartley law has proved that President Truman was correct.

The American Federation of Radio Artists, which I shall hereafter refer to in its colloquial term of AFRA, is one of those smaller unions. It is the American Federation of Labor affiliate which represents the performers on the radio through the United States—mainly actors, singers, announcers, and some sound-effects men. The great bulk of its membership is in the so-called centers of network organization, New York, Los Angeles, and to a lesser extent, Chicago. Approximately one-third of its membership exists in some 70 other cities, and is made up of employees of radio stations, most of whom are full-time staff employees. The organization has approximately 30,000 members; but, due to the transient nature of the free-lance performers' work, its active paid-up membership is closer to 10,000.

In numbers, therefore, you can see that AFRA is a comparatively small union. It is an extremely democratic union, being run by the members through their annually elected local boards and their annually elected national board, and through an annual convention. It enjoys splendid employer-employee relationships throughout the country, and has a reputation for fair dealing. Like many other of the so-called white-collar unions, it exists within and, in a real sense, by reason of the National Labor Relations Act. It has conformed from the beginning to all of the requirements of the Taft-Hartley law, and has scrupulously adhered to the Wagner law since the union's inception in the late 1930's.

I appear before you as national assistant executive secretary of AFRA to point out to you some of the injustices we have suffered because of the Taft-Hartley law. I have been national assistant executive secretary since June 1947, and, prior to that time, I practiced labor law in the city of Boston for 15 years, except for 4 years in the Army, representing many labor unions in New England. Although I shall confine my prepared remarks to the AFRA situation, I trust that you will feel free to question me, bearing in mind my labor-law background.

Now, first of all, I know you have had many excellent witnesses who have covered the more dramatic aspects of the Taft-Hartley law. I intend to confine myself to two or three of the lesser publicized but equally unfair provisions, particularly insofar as they affect AFRA. Thus, for example, there apparently has been considerable discussion before your committee and the Senate committee of the provisions of the Taft-Hartley law having to do with strikes involving the national health or safety, the provision of the law having to do with the place in the administrative structure for the Federal Mediation and Conciliation Service, the provisions of the law having to do with political expenditures by unions, the patently unfair provision of the law that prevents economic strikers from voting at a certification election, and the much-talked-of provision having to do with anti-communist affidavits. To date, none of these clauses have been of immediate concern to AFRA, although the provision having to do with prevention of a striker's voting might become important at any time.

Speaking personally, I have been amused to read that most of the industry representatives who have urged retention of the Taft-Hartley law have expressed a willingness to file non-Communist affidavits themselves as a condition precedent to taking advantage of the Board procedure, but I have looked in vain for any suggestion that they would comply with the companion requirement, so that the employer would file annual statements showing salaries of its corporate officers, the manner in which corporate officers and directors are chosen, the details of democratic or lack of democratic representation of stockholders, a statement of all receipts and disbursements and assets and liabilities, and similar statements for all subsidiaries or holding companies involved in the corporate structure.

Before discussing some specific booby traps in the Taft-Hartley law that have made it especially injurious to the smaller unions, I should like to state that the general effect of the law has been to make the employer-employee relationship more difficult than it ever has been, to encourage strikes, and to disrupt collective bargaining. As a matter of fact, I am appearing before this committee as the result of a letter that I wrote to your chairman, which incorporated a copy of a similar letter that I sent to the chairman of the Senate Labor and Public Welfare Committee.

On February 18, 1949, the New York Times reported that Mr. Charles E. Wilson, president of the General Electric Co., and his labor-relations aide, Vice President L. R. Boulware, appeared before the Senate committee on the previous day in support of retention of the Taft-Hartley law. The newspaper report stated that these men claimed that the Taft-Hartley law had brought about a balance between labor and management. Mr. Charles E. Wilson was quoted as saying, "There is a spirit of unity, or we are now on the road to get it, as a result of the improved relationship in the last year."

Upon reading that report, I was moved to tell the Senate committee that, if it wished to find an example of how false that statement on the part of the General Electric executives is, they need look no further than Mr. Wilson's own shop, and Mr. Boulware's own department in Schenectady. And because I understood that Mr. Wilson may appear before your committee, and that Mr. Gerard Reilly did appear before your committee on March 12, stating that, among others, he represented the General Electric Co., I felt that you, too, are entitled to this statement of fact about General Electric Co.'s "spirit of unity" and "improved relationship" since the passage of the Taft-Hartley law.

For many years AFRA has represented the staff announcers at General Electric's own radio station in Schenectady, WGY. For many years AFRA has enjoyed very pleasant and peaceful relations with the General Electric Co.

Starting in 1940, a series of collective-bargaining agreements between AFRA and General Electric covering the WGY announcers have been executed and regularly renewed. Those contracts had a union-shop provision which allowed the employer to hire anybody it chose, and which simply required that membership in the union after 30 days of employment was a condition precedent to continued employment. Those contracts also provided that, even if an announcer was suspended or expelled by AFRA, the company could retain him for as long as necessary for the company to fulfill all obligations or commitments made by the company prior to notice from the union that the member was suspended or expelled. These contracts further provided that AFRA agreed that it would not impose unreasonable entrance fees, dues, or assessments.

All this was encompassed in the so-called union-shop clause that is part of all AFRA agreements, and that practically all employers in this industry agree is fair. General Electric apparently thought it was fair—until the Taft-Hartley law was passed.

Negotiations were undertaken for a new contract in the fall of 1948. As usual, the AFRA representatives negotiated with the managers of station WGY. As they had many times in the past, they came to an agreement on the essential terms of the contract, which, of course, included the union shop as above described, which had, in fact, existed at WGY for many years. The agreement reached was subject to check by the legal department of General Electric.

Much to our astonishment, this year the new agreement was not approved by the industrial-relations department of General Electric solely because it contained a renewal of the union-shop clause. I personally made three trips to Schenectady to try to find out what the trouble was. I had one conference with a Mr. Burnison, and two conferences with a Mr. Pfeif, both of whom are in Mr. Boulware's division. On all three occasions these men stated in front of witnesses that there had never been any trouble with AFRA over the union shop; that there had never been a case of any man refusing to join the union or indicating that he was averse to joining the union. They also admitted that relations with AFRA had always been very friendly.

At the last conference, in response to my question as to why the General Electric Co. was now insisting upon upsetting this hitherto splendid relationship, Mr. Pfeif stated that the change in attitude resulted from the existence of the Taft-Hartley law.

Not only has AFRA always complied fully with the Taft-Hartley law, but this clause followed the language of the law. We had the union-authorization election at WGY on January 14. AFRA won that election by a vote of 9 to 1, with all members of the unit voting; not a bare majority of those eligible to vote, as required by the Taft-Hartley law, but 90 percent of those eligible to vote voted for the union-shop clause. Mr. Pfeif insisted that these elections meant nothing to the General Electric Co. He also refused our offer to arbitrate and gave as his reason the fact that he was sure we would win the arbitration.

For these fine gentlemen to tell you that the Taft-Hartley law has improved labor relations is the sheerest hypocrisy, in view of the fact that they have used this law as an excuse to destroy what have been decent labor relations with this union for many years.

The vicious and uncalled-for action of the General Electric Co. in the WGY case has had no result other than to make possible the calling of a strike which, although originally involving only 10 announcers in this unit, might well result in a disastrous tie-up of the entire General Electric plant or plants. We recognize that such a strike would do no one any good, except that it would dramatically show the American people just exactly how the Taft-Hartley law has wrecked decent labor relations.

Now, gentlemen, for a few of the hidden defects or booby traps in the Taft-Hartley law that have been used by employers to wreck unions:

Section 9 (c) (1) of the act states that whenever a petition for representation has been filed, the Board shall investigate it and, if there is reasonable cause to believe that a question of representation affecting commerce exists, it shall provide for a hearing. The section then says that if the Board finds after such a hearing that there is a question of representation, it shall then direct an election by secret ballot. This looks innocent enough and seems simply to restate the old Wagner law. But there is a very significant difference, because the new law requires the Board to have a hearing and election after the hearing, whereas formerly the Board was given a wide latitude that allowed a cross-check of union membership applications against a pay roll and, more important, that allowed the Board to develop its previous administrative practices of so-called prehearing elections. Today, if an employer wishes to stall a union, all he has to do is insist upon his right to a hearing before a hearing officer, followed by a decision made by the NLRB itself, here in Washington. He need give no reason and he need have no valid purpose. Under the Wagner Act, as it was administered by the old NLRB, if an employer insisted upon a hearing, either without reason or utilizing a patently false excuse, the regional director could order an election to be held immediately, and then, at a later date, a hearing would be conducted to decide whatever issues regarding unit or interstate commerce might exist. In other words, under the Wagner law, the employer could not stall, simply for the sake of stalling.

Let us see exactly how this has worked in one or two typical cases. Here is one: The announcers in three radio stations in a city in Texas joined AFRA early in 1948. The three radio stations got together and hired one lawyer to represent them. He repulsed all attempts to arrive at a consent election, simply taking the position that the employers would not consent to anything. Accordingly, a hearing officer was appointed by the regional office of the NLRB after a number of weeks delay, and finally on May 17, 1948, a hearing was held on the case of these three radio stations. At the hearings AFRA presented the evidence in support of its petitions for representation, and the employers' attorney made it clear on the record that the companies admitted they were engaged in interstate commerce, and that AFRA and the employers were in complete agreement as to what the proper bargaining unit in each station should be. In other words, there was absolutely no issue for the NLRB to decide. The employers were simply standing on their rights under the Taft-Hartley law to get a hearing and a decision by the NLRB in Washington, although there was nothing to be heard and nothing to be decided. The record was sent to Washington for consideration by the National Labor Relations Board. Immediately after the hearing, I wrote to the Board telling them the facts and stating:

> It is clear from the record that the employers and their counsel are using, or rather abusing, processes of the NLRB, solely to obtain an unjustifiable delay of the representation elections to which the employees are entitled.
>
> It is apparent that the employers are counting upon a nonpriority, leisurely approach to their cases, which they hope will enable them to deny their employees rights guaranteed to them by the law, because of the accepted information that the NLRB is overwhelmed with work and, in routine course, cannot be expected to get around to this matter for several weeks or months.
>
> This appears to us to be a challenge to the NLRB, as much as to ourselves. We urgently request you to meet the challenge by acting immediately to direct representation at the radio stations involved.

After 1 month had gone by another letter was sent by AFRA to the NLRB, again asking for speedy action. That was pressure, if you please, but we were in a hurry.

Our letters apparently had some effect, because we got the fastest action we ever had from the NLRB. We got a decision on July 19, 1948, which was only 2 months after the hearing, and 3 months after we had filed our petitions.

The elections were finally held at these three stations on July 30, 1948, but despite the unusual speed on the part of the NLRB, too much time had gone by—the employers had been able to control the situation and AFRA lost all three elections.

Bear in mind that these announcers all joined AFRA without solicitation. AFRA is in no position to afford the cost of organizing that is required for proselytizing, and we can only take care of those who literally beg us to come in and represent them, but in this case the employer had been able, through sheer, unadulterated, undisguised stalling tactics to get a 4-month delay, during which time personnel changed, announcers were talked to, and their natural impatience was capitalized on. Had the old Wagner law procedure been in force, there would have been a prehearing election—that is, the election would have been held in May, and not on the last day of July, and the employer could have had his completely unnecessary hearing and decision later.

Some employers do not realize that under the Taft-Hartley law they can stall simply by saying that they want a Board decision, without giving any reason. Most often they cook up excuses for hearings and decisions. We have actually had owners of large and powerful radio stations that are affiliates of national networks claim that they are not engaged in interstate commerce, in order to gain the time that it takes for the NLRB in Washington to say in each case that of course they are engaged in interstate commerce. Most often the employer creates a dispute about what the appropriate unit should be, even though there may be no real basis for any dispute. As a result, in order to get a consent election and avoid this delay, AFRA has had to agree to some of the most fantastically contrived units that can be imagined. We have even had to include company-minded supervisors.

What happens during the delay can best be shown by a recent case involving a station in Delaware. We notified this station that we represented their announcers by letter dated September 24, 1948. Within 1 or 2 days after that, we filed a petition for certification. It took 3 weeks to get a conference with the employer conducted by an NLRB representative, at which we sought a consent election. The company asked for a unit that was more than twice as large as the small group of four announcers for whom we petitioned, the company wanting to add persons who quite clearly were in a supervisory capacity and persons whom we felt should not properly be in the unit. Because of the disparity, no consent was forthcoming, and the matter went to a hearing before a NLRB hearing officer on December 9, 1948. That is more than 3 months ago, and we have still had no decision from the NLRB.

Meanwhile, one of our four men has been fired—we claim, of course, for union activity, but at any rate he has been replaced by one full-time man and two part-time men. Knowing this employer's expressed attitude, it is a safe bet that these three men will never vote for the union, so that even if we won a decision on our unit, we could never win this election. Not only that, but the announcers at the station cannot wait forever for amelioration of their shocking working conditions, and so they have already been meeting individually with the owner and he has indicated in no uncertain terms, incidentally, that he can get along with his men if they will only forget about that blankety-blank union.

Had the old Wagner law been in force, I dare say there would have been a prehearing election here. That is, there would have been an election last December, and after the election, assuming the union won, the employer would have had all of his rights to claim and try to prove that the unit was improper. To say that the union has the right to go to the NLRB and file a complaint against this employer for unfair practices because of his individual bargaining and because of the discharge, is to state an irrelevant truth—irrelevant because the processing of a complaint case from beginning to end takes at the very least 2 years, and the employer welcomes that further respite from the union's activities. One of the most important changes that would result from the reenactment of the Wagner law is the restoration of the prehearing election—the only way to avoid the deliberate stall.

Now, second, in his message of June 20, 1947, vetoing the Taft-Hartley law, President Truman predicted that its passage would—

> invite conflict between the NLRB and its general counsel, since the general counsel would decide, without any right of appeal by employers and employees, whether charges were to be heard by the Board. * * *

Not only has this prophecy come to pass, but the dictatorial authority given to the general counsel has been one of the painful thorns in the union's side. Although the Taft-Hartley law provides for complaints against the unfair practices of employers by putting into the hands of General Counsel Denham the final right to dictate whether any complaint should issue, it effectively destroyed the union's rights. AFRA has run into a veritable snowstorm of discharge cases. Whenever we go into a new section and file a petition for certification, we find that our men are fired. Our complaints of unfair practice have for the most part been dismissed, and we have no effective appeal. At one station we petitioned for a unit of five, and within 24 hours three of the five were fired. The General Counsel's Office refused a complaint and we had no appeal. At another station we petitioned for a unit of four and within 48 hours two of the four were fired with the same results.

But even more disastrous is the mockery that has been made of section 8 (a) (5)—the charge of refusal to bargain, which is the foundation of the very existence of the ordinary white-collar union. At one station AFRA won a representation election unanimously in 1947. Negotiations ensued, but the employer refused to meet AFRA's request that he guarantee more than $36 for a 40-hour week for announcers. After the Taft-Hartley law was passed another election was held, this one the union-shop election. It was held in January 1948, and again AFRA won unanimously. Negotiations recommenced. At one point it appeared that the AFRA representative and the employer's representative had reached an agreement, and as a result AFRA's representative sent the employer a proposed contract. The employer said after we got in touch with him he did not like the contract and said he had written a letter stating what was wrong with it. But he never sent the letter, and he never stated his position to AFRA. Instead, he changed his personnel and informed AFRA that he was no longer under any duty to bargain despite the elections, because he had all new announcers. We filed a charge of refusal to bargain.

The NLRB investigator said he would recommend a complaint, but the regional director turned it down. We appealed to Mr. Denham, and he turned us down. The czar had spoken and there was nothing further we could do.

At another station refusal to bargain was so patent that the NLRB investigator recommended a complaint, but the regional director gave the employer the right to "settle"—and I put that word "settle" in quotes—by simply posting a notice saying that he would bargain. He had always stated that he would bargain—merely saying so means nothing, and we protested to the regional director and then to Mr. Denham's first assistant in Washington. I was informed that although we could appeal to Mr. Denham's office there was no chance of that appeal being successful because it was the official policy to allow these so-called settlements by the simple posting of a notice. Of course that employer did not bargain with us after that, any more than he had before, and he made it qiute clear that he never intends to bargain. This whole requirement of bargaining as set forth in 8 (a) (5) must be read in relation to section 8 (d), which is a new section in Taft-Hartley, which spells out the fact that the obligation to bargain does not compel either party to agree to anything. Only recently in Atlanta an employer's representative sat back in his chair, smiled, and said to me: "We'll bargain. We'll listen. We don't have to agree to anything."

In view of these Taft-Hartley activities of employers as outlined above, basically the fact that under the Taft-Hartley law an election can be stalled for months and our people are fired one by one during the interim, and even after we win an election the requirement to bargain has become meaningless. In view of all that, this peaceful law-abiding union will probably have to come to the conclusion that if the Taft-Hartley Act is not repealed, instead of using these peaceful processes we shall have to adopt an entirely different approach in order to protect innocent announcers and their families from being thrown on public welfare. We shall have to forget about petitions, elections, and long drawn out negotiations, and substitute the quick and unexpected strike for recognition. Instead of using Labor Board procedures, we shall be driven to adopt the system of sending a representative into a manager's office with a proposal, asking for immediate and quick bargaining, and pulling a strike without warning, in the event that he does not agree. AFRA has always scrupulously avoided such tactics. We could avoid them successfully under the Wagner law, but the continued existence of the Taft-Hartley law must push us, and probably many other white-collar unions, into that undesirable position. In other words, the Taft-Hartley law will cause more strikes.

Third, of special interest to AFRA are the provisions of section 8 (b) (4), which have to do with what are commonly called secondary boycotts. We are in the peculiar situation of having our own members in the network centers being forced to contribute their efforts to help recalcitrant employers in the field break down AFRA standards. Thus in some city other than New York, Chicago, and Los Angeles, we organize the announcers at a radio station that is a network affiliate—that is, it is an independently owned station, but it carries most of its programs on a network basis. Its owners, we will say, refuse to pay their staff announcers a reasonable wage. They refuse to arbitrate and they say to us: "Go ahead—go out on strike. You won't hurt us a bit, because instead of taking network programs for 70 percent of our broadcasting day, we will cut into the network during 100 percent of our time on the air. And your own members who perform on network shows originating in New York, Los Angeles, and Chicago will scab on you." To prevent just that situation, we have established by contract, a voluntary agreement, with the networks the right to refuse to perform on shows that would be fed to an unfair station, providing our members in the network centers voted to take such action in any individual case. In other words, they must vote to do it.

We do not call that a secondary boycott—we think it is distinctly primary, because those network performers appear on the affiliated station just as surely as they appear on the originating station. Nevertheless, the passage of the Taft-Hartley law has raised a considerable question about this, becaue it makes it an offense to refuse to perform services where an object thereof is to require an employer to cease doing business with any other person. Admittedly this is not clearly applicable, but the danger is great, particularly in view of the fact that section 303 of the Taft-Hartley law repeats the language of section 8 (b) (4) and adds a provision for recovery of damages, and also in view of the fact that under section 10 (l) any charge of violation of section 8 (b) (4) (A), (B), or (C) must be given priority over all other cases, and even before a complaint is issued, if the regional attorney has reasonable cause to believe there is some truth to the charge, he must petition for an injunction.

This, incidentally, is one of the most unfair provisions of the Taft-Hartley law. In cases of violations of the law by an employer, there can be no injunction until after there is a complaint, and then there need be no injunction. It is simply discretionary on the part of the Board. But in the case of this particular type of violation by a union. not only need there be no complaint and not only is the injunction mandatory, but it is obtained by one of the regional officers so that there is no waste of time.

Now this whole subject is further confused by the fact that subsection (B) of 8 (b) (4) apparently allows a refusal to perform services in order to require some other employer other than your own to recognize and bargain with a certified labor organization. The cute catch here is, as pointed out above, the practical difficulty of getting the general counsel to authorize a complaint against any employer on the grounds of refusal to bargain. We feel that the provisions of H. R. 2032 insofar as secondary boycotts are concerned are satisfactory and do allow the sort of essential primary action that is no necessary in this type of situation, but that anything less than that must be carefully scrutinized to avoid the one-sided oppression produced by the Taft-Hartley law.

Fourthly, another provision of the Taft-Hartley law which is of a special interest to AFRA is the proviso in 8 (a) (3) that says that under a union-shop contract the employer can discharge a man only because of his failure to tender his periodic dues and initiation fees. AFRA has never had a closed shop; we have always permitted employers to hire anyone they wanted. But this provision makes it impossible for the union to enforce any kind of discipline. In a talent union, certain minimum scales are set up, both by agreement with employer and by rule. These minimum scales are absolutely necessary to prevent the sort of thing that occurred in the pre-AFRA days when kick-backs, commissions, agency fees, and cut rates took most of a performer's earnings. Unlike the mass-industry unions, it is important for a talent union to enforce its minimum-pay rulings and its rulings that limit the amount of commission an agent may take—and to prevent, in some cases, its own members from entering into kick-back arrangements or from working below scale.

The only method of disciplining members for such violations is the threat of suspension from the union and consequent loss of employment. Under the Taft-Hartley law, however, that threat has been taken away. Any member who pays an agency an exorbitant commission or who works below scale or who indulges in a kick-back or who otherwise violates a contract, can today do so with impunity—and thus lower the standards that all of his fellow members depend upon. The Taft-Hartley law on the one hand makes unions responsible for all sorts of unauthorized activities on the part of some members, and at the same time it takes away from the union the very necessary right to discipline its membership.

Finally, in closing, gentlemen, current newspaper reports indicate that the prospects of repeal of the Taft-Hartley law and enactment of H. R. 2032 are seriously threatened by a coalition of opposing forces. It is apparently possible that the repeal will be so cluttered by amendments as to result in the retention of most of the worst features of the act, including the booby traps, to some of which I have referred.

This would be a tragic mistake. American labor unions, including AFRA, are extremely anxious to see the Taft-Hartley law repealed as a simple matter of self-preservation. But they recognize the fact that, vital though this is, it is not the most important issue facing the world today. The great global struggle is between democracy and totalitarianism—and our most pressing need is to be able to sell democracy as a way of life to millions of confused people. In order to do that we must show them that democracy, as we know it, works.

Now what does that mean? It means that when our people demonstrate by orderly peaceful use of the ballot that they want a certain law repealed, it is repealed—really repealed. Under our system, the only opportunity the people have to influence legislation is in the congressional and presidential elections. In 1948 we elected a President who, more than any other in modern history, made a forthright campaign on the issues. Both he and his party pledged repeal of the Taft-Hartley law. Both he and the majority of the successful candidates for House and Senate campaigned vociferously against the record of the Eightieth Congress, a record that was epitomized by the enactment of the Taft-Hartley law. If ever in American history there was a mandate from the people, there is one here.

Certainly an unholy coalition may defeat the will of the people—but what a fine argument they will present to the supporters of dictatorship. I can hear their propaganda now: "Americans prate of democracy" they will say—"but it means nothing. Coalitions and amendments and legislative booby-traps make a mockery of their high-sounding phrases."

This, gentlemen, must not be. The members of the American Federation of Radio Artists at their last two annual conventions have gone on record as opposed to the Taft-Hartley law. They will not rest until it is repealed. Most of our members will, I am sure, volunteer their time and their talent to see to it that it is repealed. And they will do so inspired by the knowledge that they are not only fighting for the survival of their union and themselves, but that they are striking a blow for American democracy, and for the faith of liberty-loving humanity throughout the world.

If there are any questions, I shall be pleased to answer them.

Mr. Irving. Mr. Kelley, do you have any questions?

Mr. Kelley. Under the Taft-Hartley Act, under the subject of discipline, how are you going to get rid of a Communist if you have one?

Mr. Reel. That also is made impossible under section 8 (a) (3). You cannot discipline any member for any reason other than his failure to pay his dues and initiation fee.

Mr. Kelley. Not failure, but as long as he even tenders his dues.

Mr. Reel. Tenders them; that is right.

Mr. Kelley. You do not even have to accept them?

Mr. Reel. Correct.

Mr. Kelley. Mr. Chairman, that is all.

Mr. Irving. Mr. Werdel, do you have any questions?

Mr. Werdel. I have just one I want to ask.

From your expressions on the secondary boycott, you feel that the act should be changed so that you could picket, for instance, the networks to go off the air so that they would not be servicing one station when you took that station on; is that the point you make?

Mr. Reel. Let me explain that, sir. We have established by contract with the four networks the right to terminate those contracts for that purpose, provided the people involved who would be striking would vote to do that. In other words, it cannot be done by any executive order. It cannot be done by vote of our national board. It must be done by the vote of the people in our three major centers, New York, Chicago, and Los Angeles. And if they do so vote, they have, under their contracts, that right.

It is our fear that the Taft-Hartley law has taken away that right. We do not call that a secondary boycott, because we feel, and we know, that those people are paid by their employers, who are usually advertising agencies or sponsors, not because they appear simply on the originating station. That would not pay them enough. But they are paid to appear on all of these stations, and we feel that is very much a primary situation.

Mr. Werdel. Yes. But what you really are saying is that you want the right, then, whether it is by contract right or the right of secondary boycotts, that you had under the Wagner Act, to close those network primary stations so that they will not feed an individual station which you are dealing with?

Mr. Reel. We want the right to be able to exercise our contractual right, to refuse to scab on ourselves, to have our own members in New York scab, we will say, or our members in New Orleans or our members in Buffalo or wherever it may be.

Mr. Werdel. What you have just said, then, is that that is the right you want?

Mr. Reel. Yes, sir.

Mr. Werdel. You want to be able to close down the central station?

Mr. Reel. Yes, sir. I do not want to describe it as a secondary boycott. I do not think there is anything secondary about it, and I do not think it is a boycott.

Mr. Werdel. We have a lot of confusion of meanings of words in this case.

Mr. Reel. Oh, yes.

Mr. Werdel. And then if the issue was whether or not a man who did not want to go into your union, from Texas or Washington, would be forced in, still you would be able to say to the station operator, "Either he goes or you go off the air?"

Mr. Reel. No, sir. The contracts that we have with the networks gives us that right only in the event that we represent the people in the State and the employers refuses to arbitrate or deal fairly with us. We must offer him arbitration; we must represent the people. We do not want the right for any other purpose than to get a square deal where we represent the people and where we have offered arbitration and where everything has been turned down. It is not a case, sir, of requiring anyone to join the union.

Mr. Werdel. I believe that is all.

Mr. Irving. Thank you for your presentation and appearing here.

Mr. Reel. I want to thank you, sir. I realize I was a little late because the plane I intended to come down on was canceled, and I had to come by train. I appreciate your indulgence.

Mr. Irving. We had plenty of witnesses; so it is all right.

(By order of the chairman, the following letter is made part of the record.)

General Electric Co.,
New York 22, N. Y., March 22, 1949.

Hon. Augustine B. Kelley,
House Office Building, Washington, D. C.:

Dear Mr. Kelley: Last Tuesday evening when Mr. Wilson, our president, and I were appearing before your subcommittee, you referred to a letter or statement which you mentioned you had received from a Mr. Reel with respect to a situation at our radio station WGY in Schenectady. Since then, Mr. Reel's testimony before your subcommittee on March 18, 1949, under the caption "The General Electric situation" has been called to my attention.

Although I believe that we covered this situation generally in answer to your questions, I am writing you merely to clarify the record in order that you may have the facts more fully before you.

We have never had a strike or other unsettled dispute among these 10 employess at Station WGY in the almost 10 years we have operated this station. Our relations with them have always been very harmonious. The agreement with the American Federation of Radio Artists originated when the National Broadcasting Co. was operating Station WGY, was taken over by this company at the time we reacquired the station, and was renewed from time to time until the union served a notice of termination last August.

Mr. Reel, who has never been either an employee of this company or a member of the bargaining unit in question, went up to Schenectady from New York City and insisted upon provisions which our lawyers concluded might constitute an illegal closed shop and which also appeared to countenance illegal secondary boycotts and featherbedding practices under certain conditions. Although we declined to agree to such provisions, we suggested that the employees be given the wage and salary increase, which had tentatively been agreed upon, without waiting for final agreement on this particular question of the union shop. As soon as Mr. Reel and all others concerned agreed to this proposal, we immediately put the pay increases into effect.

Our last meeting with Mr. Reel was held with a Federal mediator, J. A. Rooney of Albany, present. Mr. Reel agreed to eliminate the provisions which were objectionable on legal grounds but again insisted on a union shop. We offered a maintenance-of-membership clause covering the payment of dues and providing for an annual escape period, but this was not accepted, allegedly because the national office of the union had passed a resolution stating that it would not approve any contract which did not include a union shop. We have heard nothing further from Mr. Reel since that time indicating any willingness or desire whatever to negotiate further with respect to any matter.

Mr. Pfeif, who has been in charge of our union relations for many years, and others of my staff who attended the last meeting with Mr. Reel, advise me that Mr. Pfeif told Mr. Reel very clearly that there had not been any change in our attitude with respect to union-shop provisions. Quite aside from the objectionable possibilities we felt were implicit in Mr. Reel's proposal, our general policy over the years has been to try to negotiate union security only to the extent of maintenance of membership or the voluntary check-off, leaving employees free to join or not join unions and to remain or not remain members, just as their individual impressions of the union and its management warranted.

The Taft-Hartley Act could not have had any effect in changing anyone's attitude with respect to a union shop, unless it were to somewhat reduce their objection thereto, in view of the provisions in that law designed to eliminate some of the abuses thereof, because both before and since the passage of that act the question of union shop has been a matter for collective bargaining.

At the time of our last meeting (mentioned above) with Mr. Reel, I am informed that he refused to consider a contract without the union-shop clause, which was the only unsettled issue between us, stating that he was afraid the men would not remain members of the union unless he had a union shop and that the board governing the national office of his union had passed a resolution stating that the board would not approve any contract which did not include a union shop. I also understand he first stated that his union had no contracts without a union-shop provision, but subsequently admitted that they did have in States where union-shop provisions were forbidden by law; and still later he admitted that there might be other local contracts without such provisions which did not have his national board approval.

We do not question that some national or international union officials may be displeased with some of the provisions of the present law, including their duty to bargain. We feel that this very situation at Station WGY, where our employees received the pay increases they negotiated and have continued to work uninterruptedly, is illustrative of our feeling that the distemper with the present law is confined to some union officials whose power over members has been interfered with, and that it proves very definitely that there has been no interference with good employee-employer relationships.

Very truly yours,

L. R. BOULWARE, *Vice President.*

Mr. IRVING. The next witness will be Mr. Kearns, of the Boston Chamber of Commerce.

TESTIMONY OF LAWRENCE M. KEARNS, MEMBER, INDUSTRIAL RELATIONS COMMITTEE, BOSTON CHAMBER OF COMMERCE, BOSTON, MASS.

Mr. KEARNS. Mr. Chairman and members of the committee, I know the hour is late, and I will try to confine my remarks to about 5 minutes.

Mr. IRVING. It does not have to be that short a time. But, if you care to summarize a little, it will help.

Mr. KEARNS. My name is Lawrence M. Kearns. I live in Beverly, Mass., and practice law in Boston, Mass., with the firm of Morgan, Brown & Kearns. I have ben engaged in industrial-relations law since my admission to the bar in 1938, except for 3 years in the Army, during part of which time I was also engaged in labor-relations work for the labor branch of the War Department.

I am a member of the industrial relations committee of the Boston Chamber of Commerce, for whom I am speaking today.

The Boston Chamber of Commerce has a membership of 2,300 persons, including 1,500 employers, employing 200,000 people in the Greater Boston area. We think we have good industrial relations in Greater Boston.

Back in December, the industrial relations committee, which consists of 14 people actually engaged in labor-relations work for companies as personnel managers for as industrial consultants or labor attorneys, sat down and prepared what they felt would be a fair labor law, a fair national policy, which they could live with and which would not be unfair to labor.

This resulted in a statement which was approved by the board of directors of the Boston Chamber of Commerce, consisting of 33 leaders of business in the Greater Boston area. You have a copy of this statement, and I will summarize it very briefly.

We list six unfair labor practices for employers and six unfair labor practices for unions. The first five employer unfair labor practices are the same as were contained in the Wagner Act and the Taft-Hartley Act. The sixth unfair labor practice is a corollary of the fifth union unfair labor practice, which is to strike or engage in a walk-out if there exists any bargaining agreement containing a procedure for the final adjustment of grievances arising under it. In other words, we propose to deal with the problem of wildcat strikes or strikes during the term of an agreement by saying that it would be an unfair labor practice for a union to strike or an employer to lock-out if we have a voluntary arbitration clause in that agreement.

We feel that one of the important things in preserving collective bargaining is to assure that the agreement will be lived up to by both sides. This provision that we have proposed will encourage the inclusion of voluntary arbitration provisions and agreements, which is stated as a policy in the administration bill, but this gives us an enforceablity without the resort to damage suits, which was an indirect method under the Taft-Hartley Act.

Under the union unfair labor practices we listed the restraint or coercion of employees; and we list the refusal to bargain in good faith by the union engaging in a secondary boycott on a jurisdictional issue, which is covered in the administration bill; or engaging in a secondary boycott where the employed against whom the economic pressure is brought is not directly involved in the union's primary labor dispute, or where the issue involved is not one involving wages, hours, or conditions of employment.

We feel that the secondary boycott is a very difficult subject, and if the employer is really neutral or innocent he certainly deserves some protection under the law, but there are times when one employer may inject himself into a primary labor dispute, and in that instance the protection of the law should not be afforded him.

The fourth would be to draw the line between direct and indirect interests. But an administrative agency experienced in this field can perhaps evolve a series of decisions which would not be possible for the legislature to include in a formula in a law.

We also suggest that so-called featherbedding be included as an unfair labor practice.

Then, in discussing the NLRB, we believe in the separation of functions and in the reasonable statute of limitations, that the Board should have the authority to determine jurisdictional disputes, which the administration bill covers, and that both employers and union should have the right to petition for an election if a union claims to represent a majority, and that the Board hold elections.

Those are all covered by previous speakers. For example, the testimony of Mr. Brooks, the other day, went into that.

I would like to point out specifically this question of preliminary relief in unfair-labor-practice cases. The preceding witness pointed out to you the long delays in the Board's processes. Under the administration bill, if there is a secondary boycott in a jurisdictional strike case, what the previous witness said would be true; it would be a matter of many months, perhaps even a year or two, before the Board's order would be finally enforced in the circuit court. And meanwhile the innocent company, the neutral company which suffered the secondary boycott for jurisdictional reasons, would either be out of business or there would be no longer much point to the circuit court's order; so that this, we feel, is an important thing, for the Board to have discretionary authority to get some immediate action in these cases. This is entirely distinguishable from the cases of injunctions in public-emergency disputes.

The administration bill, in fact, does provide for an injunction in a sense, which is nothing more than a court order direction action. The only difference in the administration bill is that that court order does not issue until after the hearing and all the administrative processes have first been held.

We believe that the right of free speech should be spelled out, and on the closed and union shop we propose what the Massachusetts law now provides, which is to leave the closed shop, the union shop, and union security to collective bargaining but to protect the rights of individual employees by permitting an appeal to the labor relations commission, or in this instance the NLRB, if they have been arbitrarily denied admission to, or arbitrarily suspended or expelled from, membership by a union.

The Massachusetts law was passed as a result of a unanimous report of three members of labor unions, A. F. of L., CIO, and the railroad brotherhoods, three industry representatives, and three members of the public. It was headed by Professor Slichter, of the Harvard Business School. They recommended that the principle of the open union was important to maintain because the right to union membership, either to join or to remain a member, is now affected with the public interest, because the livelihood of so many people depends upon whether they are able to be in good standing in a union.

The idea of having an open union is simply to require that the union act fairly in regard to its admission requirements and its suspension or expulsion of members.

We are not necessarily supporting the closed shop or the union shop in this position we take, but we say it may well be left to collective bargaining; and, if an employer does not wish to grant it, then, as under the Wagner Act, he has a right to that poistion.

We also believe that supervisors and other representatives of management should not be included within the area of compulsory collective bargaining, because management so strongly feels that they are a part of their own organization and that the forced bargaining in this field would result in many bitter disputes and create a great deal of disharmony.

We also believe that every legitimate weapon should be used to fight communism and that the weapon of the non-Communist affidavit under the Taft-Hartley Act is an appropriate method to do that, and also in respect to our union-shop and closed-shop proposal we suggest adding that no union which has failed to file the non-Communist affidavit be permitted to have a union-security clause.

Finally, we recognize that national-emergency strikes must be handled in some way, but we do not presume to say how that shall be done.

I think that is all I wish to say, and I certainly appreciate the opportunity of speaking before you, and I appreciate your staying over until this late hour.

If there are any questions, I should be glad to answer them for you.

(The recommendations referred to are as follows:)

RECOMMENDATIONS OF THE BOSTON CHAMBER OF COMMERCE RELATIVE TO PROPOSED FEDERAL LABOR LEGISLATION, BASED ON A REPORT OF ITS COMMITTEE ON INDUSTRIAL RELATIONS

Again the spotlight is focused on the problem of what national labor relations policy should be embodied in Federal law. The Secretary of Labor and other public officials have stated that Federal labor legislation should be fair to both management and labor. The committee on industrial relations recognizes the difficulties in securing general agreement on whether many of the particular provisions of a national labor law are fair and equitable. In an effort to assist in working out a constructive basis for the orderly handling of union-management relations, it is our purpose to set forth what we, as a management group, consider essential in a national labor policy without implying that additional provisions may not be desirable.

1. We believe that the practice and procedure of collective bargaining should be protected and encouraged. Certain practices of employers and unions which are contrary to this policy or involve the use of economic power where not justified should therefore be proscribed.

(*a*) It should be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of their right to form or join labor organizations and engage in union activities;

(2) To establish or maintain a company-dominated union;

(3) To discharge or otherwise discriminate against employees because of union membership or union activities;

(4) To discharge or otherwise discriminate against an employee because he has filed unfair-labor-practice charges against the employer or testified in a case arising under the act;

(5) To refuse to bargain collectively in good faith with a union which has been chosen as the representative of the majority of the employees in an appropriate unit;

(6) To engage in a lock-out while a collective-bargaining agreement is in effect, if such agreement contains a procedure for the final adjustment of grievances arising under it.

(*b*) It should be an unfair labor practice for a union—

(1) To restrain or coerce employees in their right freely to choose whether they desire to form or join a labor organization or engage in union activities;

(2) To refuse to bargain collectively in good faith with the employer if it is the majority representative;

(3) To engage in a strike or secondary boycott where a jurisdictional issue is involved; i. e., where a rival union strikes against a union certified as the majority representative or where the dispute concerns the class of work over which the union claims jurisdiction;

(4) To engage in a secondary boycott (i) where the employer against whom the economic pressure is brought is not directly involved in the union's primary labor dispute, or (ii) the issue involved in the primary labor dispute is not an economic issue such as improvement in wages, hours, or conditions of employment, or other generally recognized legitimate trade-union objectives.

(Comment: This would permit secondary boycotts against companies which inject themselves into the primary dispute by doing work for the company involved in the primary dispute or which deal with the company involved in the primary dispute in a manner other than in the normal course of business. It would prohibit the application of coercive economic pressure in the form of secondary boycotts where the purpose is to conscript companies which are neutral as far as the primary dispute is concerned or are far removed in every way from the primary strike, and also where the primary dispute involves political issues, a demand to violate the law, or to remedy unfair labor practices. If the unfair labor practice, there is no need for a union to resort to economic warfare.) administrative agency is given effective power to remedy promptly any employer

(5) To strike or engage in a secondary boycott or cause the employer financial loss thereby while a collective-bargaining agreement is in effect if such agreement contains a procedure for the final adjustment of grievances arising under it.

(Comment: Unions and employers should assume the same degree of responsibilty in seeing that labor peace is maintained while a collective-bargaining agreement is in effect and to back up this responsibility by making good any damage caused.)

(6) to require work to be performed which the employer does not desire to be performed or to require payment for work which is not done.

2. We believe that an adminstrative agency such as a National Labor Relations Board should be given the responsibility for administering the policies above enumerated. To carry out such policies effectively we believe that the following provisions are vital:

(*a*) There should be a separation of functions between the Board and the General counsel so that the former makes the decisions after the hearing and the latter initiates and prosecutes the cases.

(*b*) The general counsel of the NLRB should have discretionary authority to obtain preliminary relief from the courts to restrain any employer or union from continuing to engage in an unfair labor practice.

(*c*) There should be a reasonable statute of limitations so that neither employers nor unions could file unfair labor practice charges long after their occurrence.

(*d*) The NLRB should have the authority to determine jurisdictional disputes, i. e., disputes as to the class of work over which a union claims jurisdiction.

(*e*) Both employers and unions should have the right to petition for an election to determine the claim of a union that it represents a majority of the employees.

(*f*) Prior to certifying a union as the majority bargaining agent for employees, the NLRB should hold an election.

3. We believe that employers and unions should have their right of free speech in labor matters fully recognized so long as the expression of views contains no threat of reprisal or force or promise of benefit.

4. We believe that the extent of union security under a labor agreement may reasonably be left to collective bargaining, provided that unions which have closed shops, union shops or maintenance of membership agreements should be required—

(*a*) to maintain an "open union," or not insist on denying the applicant opportunity for employment, and

(*b*) to suspend or expel members only for proper cause and after a fair hearing or not insist upon their discharge, and provided that unions which have not filed non-Communist affidavits may not have any form of union security.

Comment: An "open union" is one which permits applicants for membership to join upon tender of reasonable initiation fees and dues, on the same terms and conditions generally applicable to other members, and without any discrimination as to race, creed, color, or political beliefs.

(It might well be provided that if an employee covered by a union-security agreement is suspended or expelled by the union, he may be suspended from work subject to a decison by the NLRB whether he was granted a fair hearing by the union or suspended or expelled by the union in violation of the principle of maintaining an "open union."

(To permit a Communist-dominated union the privilege of a closed shop or other form of union security would entrench Communists in positions of leadership and hinder the efforts of responsible American trade-union leaders and workers in their efforts to rid the American labor movement of the relatively few, but important and dangerous, Communist leaders.)

5. We believe that employers should not be required to bargain collectively with supervisors or other representatives of management.

6. We believe that a very legitimate weapon should be used to fight Communist influence wherever it may exist and that in labor-management relations an effective and legitimate weapon is to deny the processes of the NLRB to any union or employer whose officers refuse to file non-Communist affidavits.

7. A procedure for the handling of threatened strikes which would endanger the national health and safety must be included.

8. Conciliation and mediation services of the Federal Government should continue to be available to employers and unions, and appropriate conciliation services, Federal, State, and local, should always be called in before either the employer or union resorts to the use of economic force to settle a dispute.

Mr. IRVING. Mr. Kearns, you are not actually taking a position of sustaining the Taft-Hartley or reverting back to the Wagner Act?

Mr. KEARNS. That is correct. We felt that the question of the Taft-Hartley Act or Wagner Act was so largely a political and emotional issue that the proper approach should be one of looking at issues and trying to point out those which were the most important and most essential and to see if a national labor law could not be drawn up on that basis.

Mr. IRVING. In others words, you are more interested, if any laws are necessary, in those that would promote harmony between the employer and the employees?

Mr. KEARNS. That is correct.

Mr. IRVING. I noticed something you said about featherbedding and the closed shop. I have many good friends that are lawyers, and I hope you will not take offense. I know in Missouri—I live just close to the Kansas line—if we have any litigation or cases in Kansas it is always advisable to get a Kansas lawyer to represent us.

Then I was talking to a witness here the day before yesterday, I think, from the papermakers' union, and their union was involved in considerable litigation under the Taft-Hartley Act. He said—I believe it was Pennsylvania, although I would not want to say for sure—that it appeared that if you had a case in one county, you could not bring a lawyer from another county. There was a closed shop in each county. You could use your own lawyer, but you had to have a lawyer from that county introduce him to the court, and then he sat there all day long without doing anything, and yet he charged $100 a day.

It looks like a combination of featherbedding and a closed shop. So I bring that out, not in any way of approving those things, but more or less to bring out the fact that a lot of statements have been in regard to unions, but it seems to exist in a great many other professions and in business, and so forth—and if we have no demand for some legislation on that subject.

Mr. KEARNS. I would just like to say that in Massachusetts we do not have any such policy as they do in Pennsylvania. I understand what you have said is correct in respect to the policy of Pennsylvania in regard to lawyers being confined to counties. In Massachusetts a lawyer can appear anywhere in the State.

Mr. IRVING. You would agree that it is somewhat of a closed shop, and something in the nature of featherbedding? You understand, featherbedding is supposed to be getting paid for something you do not do or work you do not perform.

Mr. KEARNS. I imagine in Pennsylvania that probably is historical, and perhaps goes way back. I have never looked into it, but in any event, I suppose it is not a national problem, but a problem of Pennsylvania.

Mr. Irving. I understand they have some similar regulations in California, that you have to be a member of the bar association there, or something.

However, you speak of its being historical. Many of the practices of trade-unions are very historical—50, 60, or 75 years. In fact, they started with the guilds before the trade-unions were developed.

I think that is all.

Mr. Kelley, do you have any questions?

Mr. Kelley. You say these recommendations were culled from your Massachusetts labor law?

Mr. Kearns. There are three of them which are in our Massachusetts labor law. As a result of the Schlichter Committee's report, they added two of them to our State Labor-Relations Act, which was originally the same as the Wagner Act—the unfair labor practice of a union to refuse to bargain collectively in good faith. This committee which represented management and labor and the public equally felt that that was a fair thing to have in the law. The closed- and union-shop provision with the open-union proviso was the second one; and a third one was giving the employer the right to petition for an election if the union which is demanding to be recognized, has not previously been recognized as a bargaining agent, or if it is on strike for recognition without submitting a demand. In other words, they limit it to a first recognition and not to a question of where you have recognized a union and may want another organization. It is the initial election.

Mr. Kelley. Suppose you had a secondary boycott like this. Suppose you had two manufacturing plants making the same material, automobile wheels. Let us say they organize at one plant, and that wage scales were satisfactory and working conditions, and hours, and so on, and management signed up.

In the second plant they were not successful. Do you think that it is permissible to boycott the second plant?

Mr. Kearns. I would say that if the second plant—excuse me just a minute.

As I understand it they have organized the first plant?

Mr. Kelley. That is right.

Mr. Kearns. Then they go to the second plant and they cannot get anywhere. Now, do they strike them, the second plant?

Mr. Kelley. Yes.

Mr. Kearns. That is a direct strike for higher wages.

Mr. Kelley. Let us say they boycott it and draw a picket line around it.

Mr. Kearns. If they do anything directly to that company, it would not be a secondary boycott. The point would be, if they went back to the first company and said, "We are going to picket you unless you tell that fellow over there that he should get in line," then it is a secondary boycott on that first company.

Mr. Kelley. What do you think of that situation then?

Mr. Kearns. I do not think that is fair, because the first company is living up to union standards, and it has nothing to do with that other company; it is just——

Mr. Kelley. Then suppose that happens. Suppose the second company which is not organized pays a smaller wage scale or works longer working hours, and produces the same goods that the first plant did, which is organized. They go out and undersell the first plant, and mapbe steal their markets. I think even the management of the first plant would be glad to go along to see that the second fellow was organized. I have known those cases to happen where the management wanted the unions to take care of the second plant, and they would cooperate with them.

Mr. KEARNS. That may be true. The only difficulty is where you have that plant and then they might ship goods to two or three people down the line, and somebody who was 4 or 5 degrees removed from that may be working on those goods and he has those goods, and he has no connection with the first fellow; if he is genuinely neutral and innocent, it seems rather hard for him to bear the burden of having his business damaged simply because he happened to be working with the product which four or five steps back along the line may have been made by an unfair fellow. I mean, there are two justifiable ends. I can see the union's point of view in wanting to improve the standards up here.

Mr. KELLEY. The management's point of view?

Mr. KEARNS. If they are competitors in that industry, but then the poor fellow down here is in a tough spot, too, because he may be paying good wages. He may have a union contract. But if this particular part was made out in California, and if the workers said, "We have been informed by that union that that company is having trouble with that union, and we cannot work on it," in many instances, it is difficult to find a ready substitute for some parts. But what we mean by direct and indirect is that if one company tries to help another—in other words, if you have trouble with the union and I am in the same business, so that I do your work for you to help you out, and we say, "Well, I am no longer neutral or impartial"—I put myself in the middle of that thing, and if I am picketed, that kind of secondary boycott should not necessarily be declared illegal.

In Massachusetts, however, all forms of secondary boycott always have been, and still are, illegal under the common law, and it has never been changed.

Mr. KELLEY. Is most all the labor in the Boston area organized?

Mr. KEARNS. Greater Boston is a largely organized area.

Mr. KELLEY. Do the labor members agree or assent to the recommendation of yours?

Mr. KEARNS. No, sir.

Mr. KELLEY. They were not consulted about it?

Mr. KEARNS. We submit this as a management view. We specifically say that we set this up as what we think a management group should consider essential in a national labor policy.

Mr. KELLEY. That is all.

Mr. IRVING. I was going to ask you the same question, whether there were any labor leaders or labor people in the Chamber or on this committee that drew this up.

Mr. KEARNS. At one time, our industrial relations committee contained a representative of the A. F. of L. and the CIO, directly on our chamber committee; but for some reason or other, lack of interest or difficulty in meeting, and so on, it has more or less drifted apart, and there has not been any specific policy on it, but we think generally conditions and relations between unions and industry and management are good in the Greater Boston area, and we think we have some solutions in our Massachusetts law that may be well worth consideration nationally.

Mr. Irving. Just expressing my own opinion, I think it is probably more helpful if both sides are taken into consideration and consulted on those matters which certainly affect both sides. There is certain to be a reaction when one side has no voice or no chance to give their ideas on the matter. I think perhaps that was one thing wrong with the law that we are talking about now. It was fixed up by one side and not much consideration given to the other side.

That is all.

Mr. Wier, do you have some questions?

Mr. Wier. You said you have in the State of Massachusetts a Labor Relations Act covering industrial relationships?

Mr. Kearns. Yes, sir.

Mr. Wier. Is the closed shop forbidden in the State of Massachusetts?

Mr. Kearns. No, sir; the closed shop and union shop is handled——

Mr. Wier. Just answer "Yes" or "No." I do not want the details. The closed shop is still legal?

Mr. Kearns. Correct.

Mr. Wier. Do you have a waiting time in the State of Massachusetts before service can be called?

Mr. Kearns. No, sir.

Mr. Wier. Many of the things you advocate here are not in your State law?

Mr Kearns. That is correct.

Mr. Wier. Is the secondary boycott in your State law?

Mr. Kearns. That is a matter of common law in the State of Massachusetts. The Supreme Court of Massachusetts has upheld injunctions.

Mr. Wier. Does the State include within its provisions an injunctive process where they think they have a right to get relief by getting injunctions without hearings?

Mr. Kearns. No, sir; the State act is similar to the Wagner Act.

Mr. Wier. Why did you not bring the State law down here? If it is good for your State it should be good for all people.

Mr. Kearns. We analyzed the situation from the point of view of our State act, and all the other suggestions that the members of the committee brought in.

Mr. Wier. You are tougher in your State law than you are in this.

Mr. Kearns. I do not know. For example——

Mr. Wier. Let me ask you this, then: Has your State law worked with some degree of satisfaction to the population of the State?

Mr. Kearns. There has been some question since the Taft-Hartley Act, particularly as to the scope of its jurisdiction.

Mr. Wier. That has happened in every State.

Mr. Kearns. Yes; so that I think it can be fairly said that there has not been as much activity, or use of it, since the Taft-Hartley Act, as there was before.

Mr. Wier. When was your State law enacted?

Mr. Kearns. I believe it was around 1935, or so. It was very soon after the Wagner Act. It has been on the books quite a while.

Mr. Wier. That is all.

Mr. KEARNS. There is one other thought, and that is the provision outlawing State laws and check-offs. For example, in Massachusetts, since 1933, we have had a statute permitting the check-off of union dues, provided there was individual written authorization. There is a question under your bill——

Mr. WIER. Not mine; do not look at me.

Mr. KEARNS. Excuse me, under the administration bill, whether or not that would supersede our Massachusetts act, because as I understand it in the administration act it permits the compulsory check-off and says that any State law that prohibits a check-off is out. Would that prohibit our Massachusetts law which provides for individual authorizations?

We just had two cases in the Supreme Court in the last couple of weeks on the question of State union shops.

Mr. WIER. We have that in Minnesota, too. The National Labor Relations Board has assumed jurisdiction over our State board on several differences of law.

Mr. KEARNS. It would seem the clarification of that is important, because it seems reasonably clear in the Taft-Hartley Act that the State union-shop acts could act, and yet there was grave doubt about it.

For example, in Massachusetts the State act we would like to see superseded by the national act, and similarly, if the national act does not provide an open-union policy and closed shops, we would like that in the Massachusetts act to continue.

Mr. WIER. You are here representing the Boston Chamber of Commerce, and I assume you are speaking to some degree, at least, in the interest of employers of the State of Massachusetts or the city of Boston?

Mr. KEARNS. Yes, sir; entirely.

Mr. WIER. That is what I thought.

Mr. IRVING. There are no lawyers left here on the committee, and I do not suppose we could rule on your question.

We want to thank you for appearing here, and I will make this announcement, that the committee will adjourn its hearings until Monday morning at 10 o'clock, and they will be in the caucus room on the third floor.

(Whereupon, at 5:30 p. m., the subcommittee adjourned to meet again on Monday, March 21, 1949, at 10 a. m.)

APPENDIX

The several statements and communications referred to by Mr. Bailey are as follows:

Statement of Julian D. Conover, Secretary, American Mining Congress

The American Mining Congress, representing the various branches of the mining industry of this country, is deeply interested in the legislation now under consideration by your committee.

We feel that the pending bill, H. R. 2032, falls far short of providing a sound code of labor law which will promote harmonious labor-management relations and will be fair to all parties—employees, employers, unions, and the public.

The mining industry recognizes that good employee-employer relations cannot be produced by legislation alone. This universally desired objective can only be achieved by understanding, mutual trust and confidence, and a desire to cooperate between labor and management. These necessary elements are a state of mind of the individuals in management and in labor and cannot be legislated, but one-sided legislation which does not provide for equal rights and responsibilities has been found to be a tremendous obstacle in the way of achieving good employee relations. This is not a matter which concerns employers and unions alone but is one which is extremely important to the public welfare because the standard of living which we have achieved in this country cannot be maintained and improved unless sound and cooperative relations exist between management and labor.

The bill now before you, H. R. 2032, omits certain important provisions which our experience has shown to be of the highest importance to sound industrial relations. Among the notable deficiencies in this bill are the following:

PROTECTION AGAINST COMMUNISM

The mining industry has had a harrowing experience with a Communist-dominated union—the International Union of Mine, Mill, and Smelter Workers, CIO—which has convinced us that the anti-Communist affidavit must be retained. Leaders of this union were denounced as Communists by President Philip Murray of the CIO, following an investigation and report showing that the then president (and now secretary-treasurer) of the union was continuously dealing with representatives of the Communist Party in shaping union policies, and that other union representatives were active in attempting to organize men into the Communist Party. During the past 2 years more than 65 local unions, representing employees of various companies, have seceded from this international union, in protest against its Communist domination.

The destructive tactics of Communists in labor, their planned interference with stable relations and efficient production, and their "militancy" in stirring up trouble and demoralizing operations in an industry producing strategic and critical materials, were described in some detail by Howard I. Young, president of the American Zinc, Lead & Smelting Co., and president of the American Mining Congress, before the Senate Committee on Labor and Public Welfare on February 19. Mr. Young outlined the action taken by his company—in order to give a clear understanding of the Communist menace to the great majority of loyal Americans among the company's employees, and to carry out the evident intent of Congress to protect workers against Communist exploitation—in refusing to recognize the mine-mill union or to negotiate with it until its officers filed the non-Communist affidavits as specified by the law. He described the strike which followed, marked by violence, intimidation, and coercion of employees, and concluded with the following statement, which represents the position of the mining industry on the Communist issue:

"We know from bitter experience that Communist control must be removed from the mining industry and this is equally true of all industries in which it still maintains a foothold. We feel that our protection from communism is in the hands of this committee. We are dealing here with a menace to the safety of our country. Unless you can devise an even more effective means of ridding the labor movement of communism, I strongly urge you to retain and strengthen the anti-Communist affidavit provisions of the present law. I think it would likewise be advisable to make these provisions apply to employers so as to eliminate the complaint that labor is being discriminated against.

"Our country is spending billions of dollars in an endeavor to prevent communism from spreading beyond the iron curtain. We surely should not be remiss in our endeavors to prevent communism from further infiltrating into our labor unions, and to eradicate its baneful effect wherever a foothold has been obtained."

FREEDOM OF SPEECH

We strongly urge retention of the provision in the present law which grants freedom to employers, employees, and labor organizations to express their views on labor matters "if such expression contains no threat of reprisal or force or promise of benefit." It is of the utmost importance to good employee-employer relations that both labor and management have full freedom to explain their viewpoints in all matters affecting contract negotiations and collective bargaining. To omit the guaranty of freedom of speech would be a distinct backward step and would tend to defeat the objective we all seek of promoting mutual understanding and cooperation between labor and management.

SUPERVISORY EMPLOYEES

We cannot too strongly emphasize the importance of the provisions in the present act under which supervisors are specifically excluded from the definition of "employee" and the term "supervisor" is carefully defined. In our experience these provisions have had a very beneficial effect.

In the mining industry it is imperative, from the standpoint of the hazards involved in the safety of men and property alone, that supervisors and other employees who are a part of management be in a position to give their undivided loyalty to the employer. Supervisors are responsible for the enforcement of safety codes and State mining laws. They must so conduct mining operations that valuable equipment will be safeguarded and valuable ore will not be lost. They must at all times be in position to enforce discipline without fear or favor. One of their responsibilities is the making of contracts with miners, in which the supervisor exercises the full responsibility of management as to the method and amount of payment and as to measuring up the work for which payment is to be made. The supervisor represents his company when a miner first brings up a grievance and the action which he takes at that time is binding upon the company. It is impossible for supervisors to sit on both sides of the bargaining table in the adjudication of grievances or in contract negotiations.

Before the present Labor-Management Relations Act became law there was much turmoil in mining as well as in other industries over the status of supervisors in connection with collective bargaining by rank-and-file unions. The act remedied this situation and the public attention which was focused on the problem of unionization of supervisors awakened many managements to the need for strengthening the ties between foremen and the higher ranks of management. As a result many companies have adopted new programs or have strengthened old programs for making foremen feel that they are truly a part of management. The fact that there have been no strikes in the supervisory ranks in this period is evidence that supervisors are responding to these programs and that there is today little or no desire for foremen's unions.

Exclusion of supervisors from the definition of employees in the law has tended to clarify the status of foremen in their own minds as well as in the minds of higher management, and the relationship of supervisors with higher management is far better today than it was a year and a half ago. This provision of the law has proven its value and should be retained.

BARGAINING IN GOOD FAITH

If the law is to promote true collective bargaining, it is essential that there be an equal obligation on management and labor to bargain in good faith. To impose such an obligation on one of the parties to collective bargaining and not on the other is not only repugnant to our sense of justice in America, but mitigates strongly against responsible leadership in unions; it plays into the hands of the Communist labor leader who looks upon collective bargaining merely as a means of driving a wedge between management and labor and weakening the industry of our country.

To achieve and maintain industrial peace, there must be a proper balance in the responsibilities and obligations of management and labor. Both should bo equally responsible and answerable in carrying out their undertakings and for any violation of contracts that may occur.

THE RIGHT TO WORK

We recognize that the right of men to strike for proper purposes should be protected so long as they do not resort to violence, intimidation, or coercion in the course of a strike. We submit that the right of men who wish to work should be given equal protection. We therefore urge that you retain the existing restrictions upon compulsory union membership, with the exception of the requirement that elections be held in union-shop cases. We also urge that you retain the provision of the present law which protects the integrity of State laws dealing with compulsory union membership and with protection of the right to work.

It is appropriate at this point to quote briefly from the statement submitted by Charles R. Kuzell on behalf of the mining industry to the Senate Committee on Labor and Public Welfare on February 11, 1947 (record of hearings on S. 55 and S. J. Res. 22, part 2, pp. 698, 700, 701). Mr. Kuzell said:

> "Compulsory unionism is a weapon which good union leaders do not need and which irresponsible union leaders should not have. * * * The Railroad Labor Act has for many years prohibited the closed shop, but that has not destroyed unions. * * * The brotherhoods are today among the soundest and strongest of labor organizations.
>
> "Unions demand and fight for compulsory union membership. That provision gives the union the power to enforce a real sanction against a man through expulsion from the union—involving loss of his job and entry of his name on the union blacklist. An individual threatened with expulsion for noncompliance with or criticism of union policies or actions is thus faced with the loss of his livelihood. His membership in the union becomes more important than his rights as a citizen. A totalitarian state has no power more effective than this.
>
> "Compulsory union membership is an invasion of the civil liberties of the individual. It should be outlawed in a sound code of labor law."

WELFARE FUNDS

The bill now before you would remove such safeguards as are provided in the existing law upon the collection and administration of trust funds or so-called welfare funds for union members. We suggest that the entire subject of union welfare funds be given further study, and that the effect upon the Federal Government's social security program and upon our general economy of these vast funds (which are in reality collected from the consuming public, to be devoted to the exclusive benefit of the members of certain unions) be carefully considered. We recommend that the law be amended at this time to remove the central union welfare fund from the field of required bargaining under the law.

CONCILIATION AND MEDIATION SERVICE

In our judgment it is extremely important that the independent status of the Conciliation and Mediation Service be retained. The establishment of this Service as an agency independent of the Department of Labor has resulted in a feeling of confidence in its impartiality on the part of both management and labor. To return this Service to the Department of Labor would tend to reduce or destroy its effectiveness.

SEPARATION OF FUNCTIONS WITHIN NATIONAL LABOR RELATIONS BOARD

Experience under the former National Labor Relations Act demonstrated that one of its greatest defects was the failure to recognize the fundamental principles of American justice by separating the prosecuting and judicial functions of the Board. That defect was remedied under the present Labor-Management Relations Act, and Congress should not now repeat the mistake which was previously made.

NATIONAL HEALTH AND SAFETY STRIKES

The provisions of the present law for dealing with national emergency strikes were enacted to meet a real need, which has nowhere been more apparent than in the coal-mining industry. That need still exists, and the Government must have adequate means of coping with strikes which affect the public health and safety. It would be a serious mistake to omit such provisions in any new Labor-Management Relations Act.

STATEMENT RELATIVE TO POSITION OF THE FOREMAN'S ASSOCIATION OF AMERICA, COMPILED BY A COMMITTEE OF FIVE MEMBERS AND SUBMITTED BY CARL BROWN, PRESIDENT, IN REPLY TO TESTIMONY AND STATEMENT GIVEN TO SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE ON FEBRUARY 16 AND 17, 1949, BY WILLIAM T. GOSSETT, VICE PRESIDENT AND GENERAL COUNSEL, FORD MOTOR CO.

From the foreman standpoint, bargaining relations with the Ford Motor Co. from the first recognition in May 1942 through its various stages, while not entirely satisfactory, did represent growth and development that was not without acceptable compensations to both the company and the union.

As long as supervisors in industry are hired and compensated, either on an hourly rate or salaried basis for their services in performing the functions delegated to them by management, they are employees in this relationship and no amount of categorical statements or misstatements can change the fundamental basis of their position. The problems of management in modern industry may differ between one group of employees and another just as the responsibilities and obligations of one group of employees may differ from those of another group of employees in relation to management.

Mr. Gossett states: "The problem of supervisory unions is often characterized as a 'labor' problem. This is a fundamental error of great importance. The question involved is, rather, the ability of management to perform its function."

It is our contention that this is strictly a labor problem in that the rights of Ford supervisors are involved in their relationship as employees of the Ford Motor Co.

We also want to make it clear that we regard the Ford Motor Co. in its role of employer as being entitled in full measure to the application of our individual abilities and loyalty. Our adherence to our own individual interest through membership in a labor union, namely the Foreman's Association of America, does not in any way impair or diminish our obligation to our employer within the scope of the responsibilities inherent in our position.

The fact that Mr. Gossett has only recently become associated with the Ford Motor Co. may preclude his having a complete insight into the company's past relationship with its foremen, because in all labor relations problems the influence of personalities is always present and leaves its imprint despite the written record.

The signing of the contract between the Ford Motor Co. and the UAW-CIO had an influence on the organization of foremen in the Ford plants, in that a new set of circumstances under which they worked was created. The company failed to furnish guidance for its foremen, and for some time the individual foreman was forced to struggle with the situation as best he could. At the same time the company markedly failed to take cognizance of the foreman in his economic relationship, until at last, through a spontaneity of action seldom witnessed in the labor world, Foreman's Association of America came into being. Foremen sought membership, rather than becoming members through solicitation, and it was a very small minority who were subsequently solicited to make up the better than 95 percent of Ford foremen who joined Ford Chapter No. 1.

The Foreman's Association of America was formally set up at a meeting in Dearborn, Mich., on November 2, 1941, and within 3 days thereafter opened its office at 5746 Schaefer Road, from which address chapter No. 1 has operated since.

In December of 1941 a formal request for recognition was mailed to Mr. Harry Bennett, then heading labor relations for the company. Subsequently a number of other communications were sent and attempts to contact Mr. Bennett were made during the months of January, February, March, April, and May seeking a conference for the purpose of requesting recognition by the company.

On May 22, 1942, the foremen had become so well organized that when a superintendent of the Spring & Upset Building saw fit to fire within the matter of a few hours all of the foremen in his building (totaling 169) for protesting against the discharge of their elected representative for speaking up in their behalf a crisis developed that eventually led to recognition of the association by the company. This event brought to light the fact that arbitrary dictatorial action on the part of management's representative when it involved an injustice to a foreman who was a member of a labor organization no longer could be effective. The 169 discharged foremen were asked to return to work the next day, but all refused to return unless their representative was taken back first. Two days after the firing, with production tobogganing in the building without supervision, the company finally agreed to meet with representatives of the association. At this meeting on May 25 the first recognition of the Foreman's Association of America was initiated, and thereafter began the process of setting up the machinery for the effectuation of such recognition. This was settled amicably through negotiations, and all the discharged foremen were reinstated without any blemish on their record and reimbursed fully for the time lost.

Despite Mr. Gossett's statement in the last paragraph of page 2 to the effect that late in 1941 the Foreman's Association of America was making promises to weld the so-called management team together, all of the record of that period shows that the activities of the Foreman's Association of America was aimed in behalf of its own membership, and that even the company representatives had no thought of including foremen as part of management, even to the extent of talking to them as a group, until May 25, 1942. The meetings between representatives of the company and of the association during the summer of 1942 took the form of discussions of problems of relationship on an exploratory basis, and not until November 5, 1942, did there emerge the concrete accomplishment in the form of the original rate and classification agreement signed between the Ford Motor Co. and the Foreman's Association of America.

Mr. Gossett chooses not to review the first few years of the relationship between the company and the association, but we believe that this is the important period to be considered in discussing this relationship. This was the period of growth and development. Many ideas were advanced, discussed, and partially accepted or discarded by both sides. This was the period in which the first economic readjustments were agreed upon. This was the period in which the foremen accomplished a reclassification that was a recognized determination of their position in the scheme of things.

The period preceding the signing of the contract of May 9, 1944, was not entirely free of friction, and to any sensible person it could not possibly have been expected to be so—but, by and large, the relationship between the company and its foremen improved. Certainly the willingness of the company to sign a complete labor contract with the Foreman's Association of America on May 9, 1944, is conclusive verification of the foregoing statement. The contract represented a great advance in our relationship over that exhibited in the rate and classification agreement of November 2, 1942. Even though this contract was never considered entirely satisfactory by all the foremen nor by all the representatives of management, it did establish a workable relationship.

The principle of arbitration through an impartial chairman of the joint final grievance committee was included in the contract of May 9, 1944, but its operation was held in abeyance through differences of opinion with respect to the selection of such impartial chairman for more than a year. It was 2 months later before any case was processed by an umpire, due to refusal of the company to submit its portion of the case as required by the supplemental umpire's agreement dated July 13, 1945.

With respect to Mr. Gossett's claim beginning on page 3 and continuing on page 4 of his statement that the company was under no obligation to recognize and deal with the Foreman's Association of America, let us point out that the basic law of the land gave all employees the right to organize and bargain collectively, and that this difference of opinion as to the possible interpretation by the courts of the question of foremen being employees has no valid place in the picture. The facts are that the foremen were organized. They demanded the right to bargain collectively—and that demand was acceded to by the Ford Motor Co., and that is all there was to it.

If the company expected bargaining relationships to function automatically and completely to the satisfaction of the management, it was their own self-delusion that lead to their disillusionment. The Foreman's Association of America fully recognized that a contract did not automatically solve the management-employee relationship, but that it had to be interpreted and made to work by day-to-day application of the provisions therein on a reasonable and logical basis.

Under the provisions of the contract there ultimately developed a very large number of foremen grievances that had progressed through the various States provided for, and were ready to be appealed to the umpire as a result of persistence on the part of the association in pressing the claims of its members and obstinate resistance on the part of the company to the recognition of these claims. It so happened that contracts with other employers covering chapters—

No. 4—Detroit Lubricator Co., Detroit, Mich.
No. 20—Kaiser-Frazer Corp., Willow Run, Mich.
No. 52—United Stove Co., Ypsilanti, Mich.
No. 79—Consolidated Paper Co., Monroe, Mich.
No. 156—I-T-E Circuit Breaker Co., Philadelphia, Pa.
No. 159—Great Lakes Licensed Officers' Amalgamated Chapter
  Nicholson Transit Co., Ecorse, Mich.
  Wabash Railway Co., Detroit, Mich.
No. 166—General Ceramics & Steatite, Keasbey, N. J.
No. 183—Kaiser-Fleetwings, Inc., Bristol, Pa.
No. 186—Lever Bros., Hammond, Ind.
No. 206—Baldwin Rubber Co., Pontiac, Mich.
No. 230—Detroit Graphite Co., Detroit, Mich.
No. 262—Conmar Products Corp., Newark, N. J.
No. 279—Textileather Corp., Toledo, Ohio.
No. 303—Hupp Motor Corp., Detroit, Mich.
No. 322—Kaiser-Frazer (engine division), Detroit, Mich.

contained provisions for arbitration similar to that in the Ford contract. Under none of these contracts has there ever developed the necessity of a case being appealed to the umpire or arbitrator. When negotiations are carried on in good faith, appeals to an arbitrator are seldom necessary.

Those who advocate denial to supervisory employees of the right to protect their own interests do so on the theory that only one interest is involved. An employer-employee relationship by its very nature must include at least two distinct interests—one of which is that of the employer, and the other separate, and sometimes conflicting, is that of the employee, who in this case serves his employer in a supervisory capacity. In a free and democratic economy the interests of one's self and his family must be the primary interest of every individual. When he becomes an employee he thereby enters into a contract, either explicit or implied, to perform certain specific or customary functions in behalf of his employer, but he does not thereby renounce any right or even privilege to protect his own interests. If those interests lead him to combine his efforts with those of his fellow employees in an appropriate group for the purposes of dealing with his employer on a basis of more nearly equal strength, he would be a failure as a free citizen if he did not avail himself of such a medium in his own interests.

If the experience of an employer through the habit of exercising absolute and unrestricted power over all the interests of his supervisory employees has led him to believe that only the interests of the employer can be taken into consideration, it is a sad state of affairs, and a correction of this impression is now long overdue.

The elements of allegiance, responsibility, morale, and efficiency are intangibles in the employer-employee relationship which are basically dependent upon human reaction both in the employer and the employee group. They cannot be measured in fixed units, nor by their very nature can they be other than resilient and fluctuating. They are good or bad as past or present practices influence them.

The charge that independence of collective action is impossible by one group of employees or another in the same plant is dependent only on whether or not the employer has seen fit to treat the interests of one group or the other in the same manner or from the same viewpoint. A denial of the right of any group of free citizens to confer or to consult with any other group of citizens with respect to their own rights is something that no true American will stand for.

The citation of specific cases by Mr. Gossett as examples of the vacillation of the loyalty of supervisory employees, in the performance of their duties, is so restricted a showing of the routine practices of foremen in the performance of their duties, in which literally thousands of similar incidents were handled daily in the interests of the company, and in such manner as to produce in large volumes the finest products the company has ever turned out. All of these cited instances occurred during a period when the company was reorganizing from war production to the production of automobiles under conditions in which a rank and file union was involved, which was something that had not existed previously in the Ford plants while producing automobiles. The foremen had not at any time previous to this period received instructions from management as to the requirements of the company's new policies. If we are to rely on cited instances to determine whether or not organization among foremen is detrimental to the requirements of their job, why does the company not bring forth a few of the thousands of cases in its files in which the foremen were not backed up by the company when they did attempt to perform their functions of direction and discipline and orderly conduct of production processes in the traditional manner.

Shortly previous and during the time covered by the cited instances much trouble was occasioned by the development of the habit among the rank and file workers of lining up at the time clocks before the specified quitting time, and excessive loafing in the toilets. In hundreds of cases foremen have docked employees for time thus lost, and have upon repeated occasions been reversed by their supervisors or the labor relations department. These practices, condoned by the company through their disciplinary machinery, were not conducive to the maintenance of morale nor the effectiveness of the foremen. In fact violent assaults upon foremen while attempting to perform their duties in the traditional manner became so frequent that without the self-protection afforded by organization among the foremen themselves, company measures to protect foremen in these cases was admitted by the company to be ineffectual. However, action by the foremen through the association in cooperation with the company and the union ultimately reduced these incidents to a point where they are no longer a problem. Among the assault instances there occurred at least one death and quite a number of serious injuries to foremen.

In answer to the complaint, page 9a of Mr. Gossett's statement that representatives of the Foreman's Association of America spent excessive time collecting union dues and soliciting membership, we recall that the question of dues collection was a matter of negotiation, and that instead of writing a provision into the contract it was mutually understood that dues would be collected anywhere and anytime. With more than 95 percent of the foremen as members there was practically no solicitation for membership by anyone, either in or out of the plant. As for setting an example to the rank and file union, with the dues check-off and union shop in the UAW contract, it was not necessary for them to follow anyone's example with respect to these two items.

With the authority of the supervisors so undermined by company policy in dealing with union matters, and with inadequate instruction in these policies, is it reasonable to hold foremen responsible for the failure of the company's policies to be carried out?

Contrary to the attempt to indicate that collective bargaining by supervisory employees interferes with recognition of merit and initiative, the facts are that one of the primary incentives to organization among foremen was the resentment against what is known in the shop as apple polishing. In other words, the placement in preferred positions of men incapable of fulfilling the functions thereof except through the dependence on services of capable and efficient subordinates, who if the strict rule of merit were followed would be the logical candidates for promotion.

The association suports the general rule of seniority only to the extent that it does not interfere with the true recognition of merit and ability. This is shown by the terms of the contract between the company and the association. In the administration of this clause, certainly the interests of any individual foreman affected by promition or demotion were processed by the association with vigor through the recognized channels provided in the contract.

As early as the preagreement days of late 1942, and following the establishment of the foremen's personnel office by the company in January of 1943, representatives of the association repeatedly complained to the director of that office that the company should have a comprehensive program of training for its foremen, so that every foreman could be better equipped to meet his problems in accordance with the policies of the company. The feeble attempts along this line made by the company for a long time were ineffectual. Only within the past year and that following the strike by the foremen in the summer of 1947 has there been a real effort made by the company along this line, and that effort has been coupled with a program of attempted indoctrinization in the statement that "foremen are part of management," in spite of the fact that no appreciable change in the authority vested in them has been made.

The fact that the Ford Motor Co. and others repeatedly refer to foremen as part of management certainly does not make it so, unless foremen are given the authority to set company policy and are treated similarly to those who are now vested with genuine management prerogatives.

Proof of the insignificant part of management foremen are considered to be by the company can be cited in the fact that Form No. 6 (rev. 9–3–1948) recently prepared by the company and referred to by Mr. Brown in his testimony as "They are also now required, as I understand it, to sign a yellow-dog contract" is just as repugnant to Ford foremen as a yellow-dog contract and can only be considered as being in a yellow-dog category.

Following herewith find photostatic copy of front and back view of the form mentioned above.[1]

The contract of May 9, 1944, provided for a schedule of pay rates for the different classifications of the foremen as a basis for their compensation, but it also provided as follows: "The differential indicates the minimum per hour which a foreman shall be paid over a rate base as follows:". And in another section provides as follows: "(3) The agreed rates for foremen as per schedule section 20 (a) will be minimum rates paid by the company and higher rates may be paid without changing the classification of foremen, upon proper approval." It can be plainly seen that the statement by Mr. Gossett or the implication that the association stood in the way of the company's rewarding any foreman on a merit basis is not a fact.

In answer to the statement beginning in the middle of page 14 of Mr. Gossett's statement, the association might well say: "The situation facing us in the spring of 1947 thus had many aspects:"

(*a*) We did not want to strike.

(*b*) Experience had convinced us that management's conception of a proper supervisor's union was that it should be a company-dominated organization.

(*c*) In the Packard case the National Labor Relations Board had held finally that supervisory employees were employees under the National Labor Relations Act, and that management thereby was obligated to recognize and bargain with them.

(*d*) The foremen through the fact of organization were committed to the principle that if they so chose they could be represented by a labor organization in dealing with their employer on their own employer-employee problems.

The objectives of the company as proposed in a letter dated May 15, 1947, were all properly subject to negotiation under collective bargaining because they very plainly involved the interests of every supervisory employee of the company. The requirement that these objectives, as stated in the letter be blindly endorsed by the association as representing the foremen and as demanded therein, did not constitute collective bargaining.

The subject matter of negotiation under collective bargaining cannot in any way form the basis of a conclusion that collective bargaining per se for any group of employees should be outlawed.

Without representation by a strong organization the interests of the individual are overwhelmed by the will of the company.

Let it be noted that the deterioration of the authority of the foreman and the destruction of the traditional respect in which he was held by those under his direction resulted from failure on the part of the company to support him in said authority previous to the time the foremen felt impelled to organize in defense of their position. Credit for rebuilding the respect and prestige with which formen are held by those under their direction was the result of insistence on the part of the association that the company support their foremen in the performance of their duties.

Circumstances leading to a strike emanate from at least two sources, one, being the company, and the other, the group contemplating said strike. A strike, in essence, is a test of economic power inherent in the parties to it—in short, economic war. In toto it is never conclusive. During its existence the resources of one or the other, possibly both, tend toward depletion. When the resources of the weaker party are exhausted the strike comes to an end, but in no way can the circumstances attendant upon it be considered in the determination of the right of employees to equal treatment under the law with respect to their right to collective bargaining.

The conclusions of the management of the Ford Co. with respect to its experiences in dealing with the Foreman's Association of America or its predictions based on those experiences are weak arguments indeed upon which to base the denial of equality before the law to supervisory employees. Predictions in the past have proven fallacious, and promises are as good only as the results of the company's practices may indicate.

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[1] This form was reproduced as part of testimony of Mr. Carl Brown. See pp. 705 and 706.

Despite the assertions and claims made by Mr. Gossett's statement on behalf of the Ford Motor Co. as to the present improved status of their foremen, one must obviously conclude that this has been largely, if not wholly, brought about by the activities of the Foreman's Association of America in the Ford plants.

This question of denying foremen collective bargaining rights under the Taft-Hartley Act is strictly a labor problem, and the only real issue before the committee is, will the foreman's interests best be served by granting the same collective bargaining rights to foremen as are enjoyed by other groups of employees throughout this country, or whether on the other hand the foremen should be denied protection under the law of our land in his efforts to improve his working conditions. Anyone taking the latter view would in effect be placing the foremen in a position of absolute servitude in his day-to-day relationship to his employer. He would be utterly helpless before the whims and fancies of management changes and/or changing managements, as in the not too recent Ford Motor Co. shake-up when the old management team was released almost in its entirety and a new team recruited.

In conclusion, let us remember that we are not here dealing with the detailed quarrels between the Ford Motor Co. and the Foreman's Association of America, but rather to consider whether or not supervisory employees anywhere in our country should be subjected to group discrimination simply because they perform certain specific functions for their employer.

It is our contention that so long as the employee and employer relationship obtains all employees should be treated equally under the law.

Statement of Don Petty, General Counsel, National Association of Broadcasters

My name is Don Petty. I am general counsel of the National Association of Broadcasters, a nonprofit organization with a membership in excess of 1,750 radio broadcast licensees located in all parts of this country.

Since radio broadcasting is free to the listener, it, of necessity, is operated in the interest of the public. If it were not, people would not listen. So, at the outset, it should be clear that my suggestions are objective and of importance equally to the public generally and to those in the radio broadcast industry.

Industrial disputes frequently involve not only statistics, wage rates, hours of work, and other details concerning employment, but also questions of power and authority—all of which vitally affect all segments of American life.

Abusive practices by either a handful of labor leaders or a small minority of employers should not be used as an argument against the enacting of adequate laws in this field. For without equitable and effective laws, collective bargaining will not become an integral part of American society.

Therefore, it is respectfully submitted that any legislative approach to the field of labor-management relations must be concerned with: (1) Safeguarding the public welfare against those labor-management disputes which trespess upon the normal functioning of our economic system; (2) recognizing collective bargaining as a method of determining disputes, rather than as a privilege or favor to be granted to any segment of society; (3) protecting the freedom of collective bargaining where such method is the desire of the majority of employees; (4) establishing of the area within which collective bargaining may function; (5) creating adequate procedural machinery. Accordingly, I offer the following amendments to H. R. 2032.

1. *Obligation to bargain collectively.*—The collective-bargaining process is founded upon the responsibility and good faith of both parties. These cannot be established by legislative fiat. However, legal barriers to prevent irresponsible acts or those in bad faith will do much to establish the boundaries of collective bargaining.

The obligation to bargain collectively in good faith is a mutual obligation. If it is necessary to make it an unfair practice for employers "not to bargain collectively and in good faith," it is equally essential that labor organizations be charged with the same parallel responsibility.

In the present bill the obligation to bargain in good faith is imposed only on management. I know of no good reason why this obligation should not be mutual. Therefore, I suggest that title I of H. R. 2032 be amended by adding the following section:

"Sec. 112. Section 8 of the National Labor Relations Act of 1935, as amended by the addition of subsection '(b)' is further amended by adding thereto the following paragraph: '(4) to refuse to bargain collectively with an employer for whose employees said labor organization is the recognized bargaining agent.' "

2. *Supervisors.*—During the past several years the arguments for and against application of sections 8 and 9 of the National Labor Relations Act of 1935 to supervisory employees have been thoroughly aired. I have no desire to retrace that ground at this time. In this matter I support a practical approach which has often been suggested. Employers should not be obligated to bargain with a union representing supervisors which also admits to membership nonsupervisory employees. It is obvious that to permit representation of supervisors by such a union is to invite intraunion pressure directed toward influencing vital managerial decisions which all foremen are continually making. This unrealistic situation not only creates conflict but is inconsistent with the efficient production of goods and services. In addition, the term "supervisor" should be clarified. Therefore, I suggest that title I have the following sections added:

"SEC. 110. Section 2 of the National Labor Relations Act of 1935 shall be amended by adding thereto paragraph (13) which shall read as follows: '(13) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action.'

"SEC. 115. Section 8 (5) of the National Labor Relations Act of 1935 shall be amended to read as follows: '(5) to refuse to bargain collectively with representatives of his employees subject to the provisions of 9 (a): *Provided,* That no employer shall be obligated to bargain collectively with a labor organization seeking to represent a unit of supervisory employees or a unit which contains supervisory employees if said labor organization admits to membership nonsupervisory employees.' "

3. *Employer petitions.*—Administrative decisions under the National Labor Relations Act of 1935 permitted an employer to file a petition only when confronted with conflicting claims of majority representation. The Labor Management Relations Act of 1947 permitted an employer petition when confronted by a single request for recognition. There is no legitimate reason why this procedure should not be included in the new legislation.

The basic purpose of the procedure set up under section 9 of the Wagner Act was the peaceful settlement of disputes over recognition. While strikes for recognition were not made unlawful, the hope was that their use would be discouraged. If a union requesting recognition does in fact represent a majority, it should not object to an election. If it does not so represent the employees, then it should not request recognition unless it is willing to stand the test of an election, nor should it be permitted to bargain for the employees.

The argument that in some instances an employer petition may be a "stalling" procedure, runs not to the validity of the procedure, as such, but to administrative delays which have often beset many representation cases. The remedy is a more expeditious operation of the administrative machinery rather than an abolition of a fair and desirable procedure. Therefore, I suggest that the following section be added to title I:

"SEC. 116. Subsection 9 (c) of the National Labor Relations Act of 1935 shall be amended as follows: '(c) Whenever a question affecting commerce arises concerning the representation of employees the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of the employees, or utilize any other suitable method to ascertain such representatives. A petition initiating proceedings under this section may be filed by a labor organization or by an employer when said employer has been confronted with a request for recognition by one or more labor organizations.' "

4. *Interference, restraint, and coercion.*—The acceptance of collective bargaining obviously does not mean that all employees must pursue this process of employee-employer relations, but it does mean that workers have the statutory right and freedom to join unions if they choose.

Under the provisions of the Wagner Act and the Labor-Management Relations Act of 1947, employers are not permitted to interfere with, restrain or coerce employees in the exercise of their right to self-organization. The Labor-Management Relations Act of 1947 also placed a substantially similar obligation on labor organizations.

I believe such a prohibition is good. The principle of self-organization cannot exist side by side with coercion, whether it comes from an employer or from a union. To my mind there is no substantial difference between the threat of an employer to discharge an employee because of unionization and the threat of a union leader to force the discharge of an employee if he does not join the union. Both methods are equally repugnant to the spirit of the Wagner Act.

Mass picketing is another type of coercion which has no place in industrial disputes. If peaceful picketing is to be regarded as a form of free expression, certainly mass picketing falls completely without that definition. These and other forms of coercion should be prohibited.

To cover these situations, I suggest that the following section be added to title I:

"SEC. 113. Section 8 of the National Labor Relations Act of 1935, as amended above by the addition of subsection (b), is further amended by adding to subsection (b) thereof the following paragraph: '(5) to coerce employees in the exercise of their rights guaranteed in section 7.' "

5. *Freedom of speech.*—Under the American concept, freedom of speech is not a right to be granted to one group and taken from another. It is inherent in all—free from abridgment by Government. Any legislation which discriminates between employee and employer in the field of free speech and expression is not only contrary to the American concept, but will invite conflict within our own society.

The right of free and open discussion is the cornerstone of our type of government. Only the most pressing and fundamental considerations have been allowed to impose limitations on that right. Early administrative interpretations of the Wagner Act attempted to do so by stringently curtailing the right of an employer to express his opinion on the subject of unionization. In later years, judicial decisions gradually brought about the adoption of a more liberal policy, one more consistent with constitutional and statutory requirements. And in section 8 (c) of the Labor Management Relations Act of 1947, Congress gave statutory expression in the field of labor relations to the constitutional requirements. This clause provided, in effect, that no statement by a representative of management or labor should be regarded as coercive unless it contained a threat of reprisal or a promise of benefit. In my opinion, it is essential that a similar clause be included in the proposed statute. Therefore, I recommend that the following amendment be added to title I:

"SEC. 114. Section 8 of the National Labor Relations Act of 1935 is amended by adding at the end thereof the following subsection (d): '(d) the expressing of any views, argument and opinion or the dissemination thereof, whether in written, printed, oral, graphic, or visual form, shall not constitute an unfair labor practice under any provisions of this act if such expression contains no threat of reprisal or force or promise of benefit.' "

6. *Secondary boycotts.*—While the present secondary-boycott provisions of H. R. 2032 probably were intended to apply to situations arising in such service industries as radio broadcasting, the legislative intent should not be left in doubt. The word "services" should be inserted in the proposed definition. Therefore, I recommend that section 106, subsection (b) be amended as follows:

"(b) Section 2 of the National Labor Relations Act of 1935 is amended by striking out paragraph (11) thereof and by adding two new paragraphs (11) and (12):

" '(11) The term "secondary boycott" means a concerted refusal, in the course of employment, by employees of one employer to use, produce, manufacture, perform, transport, distribute, or otherwise work on articles, materials, goods, services, or commodities because they have been or are to be manufactured, produced, distributed, rendered, or used by another employer.' "

Within the fabric of the law—Wagner Act, Taft-Hartley Act, and the now-proposed Labor Management Relations Act of 1949—interpreted by court and agency decisions, there is a definite set of rules covering employer action. However, H. R. 2032 regards the possible transgressions of unions as being relatively few. In fact, the proposed statute restricts such proscribed union tactics to only two limited type of secondary boycotts arising out of jurisdictional conflict. This limited approach, in my opinion, fails to recognize the great potential harm and genuine unfairness of destructive secondary boycotts, and will create employee-employer strife.

As it stands, the bill continues as unfair the use of secondary boycotts in only two instances: (1) Where a secondary boycott is used as a weapon by one labor organization to force an employer to deal with it rather than with another labor organization already certified or validly recognized; or (2) where the essential issue involved is a jurisdictional controversy between two unions. While I approve of these provisions, I believe there are other situations where justice, fair play, and the public interest demand protection from secondary boycotts.

One involves what has been called a secondary organizational strike. In its simplest terms it is this: Company A's employees are not represented by any labor organization. The employees of Company B, which sells to or buys from Company A, goods or services, are represented by the X union. The X union advises Company B that it will call a strike unless it brings pressure to bear on Company A to sign a contract with the X union. If Company B is compelled to utilize its influence and Company A is compelled to submit, the latter will have been forced to sign a contract with the union regardless of the wishes of its employees. The result reached in this example is not only unfair to all concerned (even, for example, leaving Company A open to possible charges of illegal assistance under section 8 (1) of the National Labor Relations Act of 1935), but it is contrary to the spirit and purpose of the original Wagner Act. Section 7 of that act guarantees to employees "the right to self-organization * * * to bargain collectively through representatives of their own choosing." By no stretch of the imagination can the unionization of the employees of Company A, in the example above, be regarded as "self-organization"; nor was the union 'of their own choosing." The company, because of pressure and because it was economically unable to resist, "chose" a union for them.

Another problem arising from the secondary boycott not covered by the provisions of H. R. 2032 has to do with economic pressure placed on one employer by a labor organization to compel another employer to utilize services of employees who are not needed. This is an obvious type of uneconomic "make-work" arrangement which has no legitimate place in our economic society. Resulting higher costs are a cancerous growth within labor and management alike.

A final problem arises when the secondary boycott is used to induce an employer to breach previously incurred contractual obligations. A simple illustration will suffice: Company A and Company B deal separately with the X union. Company A also has a binding contract to provide for or receive goods or services from Company B. As a result of a dispute between Union X and Company B, the union requests Company A to refrain from dealing with Company B, threatening a strike if the request is not granted. Company A is thus faced with either a strike or the necessity of breaching a legally binding contract, thereby incurring legal liability. To permit such a result is patently unfair to Company A. Moreover, the public interest demands that contracts be honored and that, wherever possible, industrial disputes be limited to the actual disputants. Only in this way can injury and inconvenience to the public be kept to a minimum.

The above examples themselves demonstrate clearly the need for preventing the use of secondary boycotts in such instances. In the field of radio broadcasting, where there is the legal necessity of providing continuous and uninterrupted service, the need for protection from the unregulated use of the secondary boycott is even clearer. There are no backlogs of inventory accumulations in radio. Work stoppages terminate all operations. The station's audience disappears, and when it resumes operations, audiences must be rebuilt. By law the broadcaster must provide service to his listeners, and so, he is entitled to protection by law from damaging secondary boycotts. News, political broadcasts and entertainment—they are all a necessary part of American life which should be given at best a minimum of protection from secondary boycott action. Therefore, I recommend the following amendment to H. R. 2032:

"Add to subsection (d) of section 106, which adds subsection (b) to section 8 of the National Labor Relations Act of 1935, the following additional paragraphs: '(3) to cause or attempt to cause employees to engage in a secondary boycott to compel another company (i) to be deprived of rights grants under any existing contract or agreement; (ii) to bargain with a particular labor organization as the representative of his employees; (iii) to hire employees for services that are not performed or are not required to be performed in the operation of the business.' "

7. *Injunctions to prohibit secondary boycotts.*—Whatever bans are placed on secondary boycotts, they should be enforceable by injunction proceedings. In making this recommendation I am fully aware of the long history of violent hostility of organized labor to the use of injunctions in industrial disputes. Organized labor has raised its criticism of the statutory use of injunctions on

the grounds that it resulted in unequal availability of remedial action. Thus, so the argument runs, if the use of preliminary restraining orders is not permitted where an employer commits an unfair labor practice, such procedure should not be available when the union violates the law. This line of reasoning does not take into consideration the realities of the usual situation.

Let us examine them. If an employer discharges an employee because of union activity, and that fact is proved, the remedial order under the National Labor Relations Act of 1935 and the Labor-Management Relations Act of 1947, includes, among other things, back pay and an offer of reinstatement. The purpose of those statutes was to restore the situation to the status quo ante as well as to prevent future violations. That purpose can be achieved. Now, on the other hand, let us take the case of a secondary boycott. The immediate result of the union's unlawful economic pressure is complete or partial cessation of the employer's operations. In any industry the immediate loss to the employer can, in dollars and cents, be substantial. In a service industry such as radio it can be ruinous. However, the broadest construction of the remedial powers given to the National Labor Relations Board under subsection 10 (c) of the National Labor Relations Act of 1935 (which is revived by the present bill), would permit no more than an order against the union requiring it to cease and desist. For the radio industry, as well as others, such an order has little value. Station owners would be forced to submit to unlawful pressure because of the inadequacy of the remedy. By the time that cease and desist order was forthcoming, the employer would have suffered irreparable loss for which he could not recover any compensation. Therefore, I recommend that the following amendment be added to title I:

"Sec. 111. Subsection 10 (b) of the National Labor Relations Act of 1935 is amended by adding the following paragraph: '(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraphs (1), (2), or (3) of subsection 8 (b), the preliminary investigation of such charge shall be made forthwith. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any District Court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the District Court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days except upon consent and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such persons, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection District Courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit.' "

8. *Union security.*—The recognition of a legitimate right, on the part of employees, to afford their union and its members security against interference should not be confused with a monopoly control over a person's right to work.

The underlying premise of collective bargaining is majority rule. Representation itself is predicated upon the fact that the majority of employees, within an appropriate unit, desire collective bargaining with their employer, through the agency of a selected union. A combination of employees for mutual protection is one thing, but such combination for the purpose of erecting monopoly barriers and exerting monopoly practices is another.

The closed shop is not necessary to effective union security. Throughout their existence, virtually all CIO unions sought only a union shop and not the closed shop. So too with some AFL unions. The weight of evidence covering abuses of the hiring hall version of closed shops so vastly outbalances the benefits derived by unions that closed shops should be prohibited.

The maximum form of protection by statute should be the union shop. Under that full protection is afforded the unions as continued employment requires union membership. However, full opportunity is granted employers in the selection and hiring of new employees, and full opportunity is maintained for American men and women to secure employment without having previously been required to pay initiation fees to a union for the privilege of being permitted the right to work.

Consequently, it is recommended that title I of H. R. 2032 be amended by adding the following sections:

"SEC. 118. Section 8 (3) of the National Labor Relations Act of 1935 is amended as follows: '(3) by discrimination in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in Sec. 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is later; *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;'

"SEC. 119. Section 8 of the National Labor Relations Act of 1935, as amended above by the addition of subsection (b) is further amended by adding thereto the following paragraph: '(7) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection 3 (a) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;'"

9. *Featherbedding.*—Few will disagree with the proposition that an employer should not be compelled to pay for services which are not required, or to pay exactions for services not performed. Wasteful and uneconomic featherbedding increases costs and leads to reduced buying power. A provision to cover such situations was included in subsection 8 (b) of the Labor-Management Relations Act of 1947. Therefore, I recommend the following amendment to Title I of H. R. 2032:

"SEC. 117. Section 8 of the National Labor Relations Act of 1935, as amended above by the addition of subsection (b), is further amended by adding to subsection (b) thereof the following paragraph: '(6) to cause or attempt to cause an employer to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.'"

10. *Definition of the term "labor organization."*—The Labor-Management Relations Act of 1947 was criticized from some quarters because it allegedly utilized two varying concepts of the law of agency, one for labor organizations and another for employers. Whether or not this criticism was justified is not at issue here. The same rules of agency should apply to each. Thus, that there may be complete equality in the responsibility of employers and unions for unfair labor practices, there should be included in the definition of the term "labor organization" the phrase "any person acting in the interests of said labor organization, directly or indirectly." Similar language appears in the definition of the term "employer" in paragraph 2 of section 2 of the National Labor Relations Act of 1935. Therefore, I recommend that the following section be added to title I of H. R. 2032:

"SEC. 109. Paragraph (5) of section 2 of the National Labor Relations Act of 1935 shall be amended as follows: '(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work, and shall also include any person acting in the interests of said organization, directly or indirectly.'"

11. *Separation of powers.*—In 1946 Congress in the Administrative Procedure Act recognized the need for the separation of the legislative, executive, and judicial functions of government. The history of administrative agencies makes clear the danger inherent in failing to maintain such separation, which is for the protection of the citizen. Labor and management are equally affected by this problem, and should be equally concerned that the separation of the legislative, executive, and judicial functions be maintained. In order to insure that H. R. 2032 shall not, either as it now stands or as amended, be construed to prevent the provisions of the Administrative Procedure Act from applying in full force and effect, I recommend that the following section be added to title IV of H. R. 2032 as sec. 406 and that the present sec. 406 be renumbered as sec. 407:

"SEC. 406. Nothing in this act or the National Labor Relations Act of 1935, as here reenacted, shall be construed to be in derogation of any right secured to any person under the provisions of the Administrative Procedure Act."

I further recommend any implementation of the spirit and intent of the Administrative Procedure Act which may be necessary to maintain, within our Government, the principle of the separation of powers.

I appreciate the opportunity of presenting this statement. If I can furnish the committee with any additional facts, please call on me.

STATEMENT BY LESTER WASHBURN, INTERNATIONAL PRESIDENT, UNITED AUTOMOBILE WORKERS OF AMERICA, ON THE SUBJECT OF THE NEED FOR IMMEDIATE REPEAL OF THE TAFT-HARTLEY ACT IN ITS ENTIRETY AND THE REENACTMENT OF THE WAGNER ACT

A little more than a year and a half ago the Congress of the United States embarked on a new, and what labor considered to be a dangerous experiment—that of detailed regulation of the relationship between labor and management with respect to the processes and details of collective bargaining, and including the control of its manifestations and the economic activities engaged in for the protection of the respective interests of each. This experiment is now known as the Taft-Hartley Act.

The passage of the law was preceded by fiercely partisan debate and much public discussion, both lay and professional. This was understandably so, since never before in our history had Congress attempted to deal on such a comprehensive basis with what is undoubtedly the most volatile and explosive of domestic matters—the relationship between labor and management.

Labor's position at the outset was that the law considered as a whole would discourage the association of employees in free labor unions for their mutual aid and protection and would discourage the practice of free collective bargaining. We felt it would not solve any of this country's basic economic problems. We saw in this law arbitrary class discrimination, government by injunction, and the substitution of litigation for good-faith collective bargaining and voluntary arbitration. We believed that it would increase the causes of strikes. At the same time we called it a slave-labor law because it prohibited certain types of strikes. We feared injection of political considerations into labor-management relations. We anticipated that many of the provisions of the law would be unduly cumbersome, if not wholly unworkable. We felt that some of its provisions could not stand the constitutional test. We thought that the law marked the beginning of wage fixing, price control, and compulsory arbitration.

All of us are agreed that, if the law did in fact or would in fact so result, it would be a bad law for everyone.

Of course, our original indictment of the law was comprehensive. But many of us did hope that our fears were only fanciful—that by some miraculous combination of conservative administration and favorable construction on Government's side, and common sense, restraint, and good faith on management's and labor's side, we would find that things were not so bad as they seemed.

But labor must now report that the experience under the law has, in our opinion, confirmed and reinforced these fears and predictions. This in spite of the fact that we still haven't felt the full weight of the law because of the preservation of certain contractual rights during most of the first year and in spite of the fact that employers generally have been advised to proceed and are proceeding with caution, either for political reasons or because of present prosperity, in utilizing those provisions of law which are most punitive and dangerous.

We do not set forth our conclusion either with a gloating spirit of "I told you so" or with any degree of satisfaction. It is not an occasion for joy to point the finger at that which bodes ill for all of us. But we believe the record speaks for itself. Here it is:

JURISDICTIONAL PROBLEMS AND DIFFICULTIES

Preliminary, one of the most troublesome questions raised by the law, and which has confronted both labor and management, is that of what parties and relationships are subject to its provisions and whether the same rules of law or administrative discretion shall apply to election cases, including elections for the union shop, as shall apply to unfair-labor-practice cases, regardless of whether the employer or the union is the alleged violator.

Under the Wagner Act, and after the early decisions of the United States Supreme Court giving wide scope to its application, the National Labor Relations Board quickly recognized the administrative difficulties involved in seeking to apply the law to all cases which, strictly speaking, might come within its jurisdiction. Today we see no such restraint on the part of the general counsel, who believes that the West Virginia bartender selling Milwaukee beer comes within the ambit of the law. This, of course, approaches the ludicrous, and even those who sponsored the law now find themselves in disagreement on this point; but these oft-repeated assertions by the general counsel have raised important and difficult problems. Outstanding among these is the question of the building and construction industry.

It is clear from the congressional debates what the authors of the law had in mind what they consider to be certain undesirable practices in that industry. But it is not clear even at this time just how far and in what way the industry has been affected. The Board, its trial examiners, the general counsel, the Federal district courts, and the attorneys for both employers and labor unions have failed to find a common touchstone for answering the question. In alleged boycott cases this difference of opinion has been particularly sharp, and in union-shop elections in this industry the procedure has been uncommonly complicated and delayed.

I refer you to the National Labor Relations Board's efforts to set up a pilot election in Wayne County, Mich., which, after 5 months of study and planning, was given up. Why? Because it was impractical and impossible and, at best, would only determine what everyone already knows—that this is traditionally a closed-shop industry for the mutual benefit of employees and employers, the preponderant majority of which would have it no other way. The same administrative problems in the trucking industry have caused similar complications and difficulties.

That these and similar questions of jurisdiction and scope of coverage have impeded and will impede collective bargaining is self-evident. That they lead only to uncertainty and confusion is equally evident. That wholesale evasions of the law and "bootleg" contracts have resulted and will continue to result is the accepted fact. And I am reasonably certain that on this phase of the discussion there are not many on management's side who will disagree.

DEPRIVATION OF THE PROTECTED RIGHT OF COLLECTIVE BARGAINING TO LARGE CLASSES OF EMPLOYERS

The Taft-Hartley Act was designed to remove from the beneficent coverage of the Wagner Act many employees, in number and class, who had previously been protected in their right to organize and bargain collectively.

The broad definition of the term "supervisor," with its five tests, which, according to Board and court decisions, are applied in the disjunctive rather than the conjunctive, is an outstanding example. As you know, the question of whether the old act did or should apply to foremen became a highly controversial issue, which was finally resolved by the United States Supreme Court in the Packard Motor Co. case in favor of the Board's conclusion that it did. Bearing in mind the nature of the present-day mass-production industry and the rather low position in the hierarchy of management held by foremen, there was, in our opinion, sound basis for the Board's holding that foremen, too, should have the protected right to form and join labor associations and bargain collectively with management through representatives of their own choosing.

The United States Supreme Court in the Packard case made this apt observation:

"Even those who act for the employer in some matter, including the service of standing between management and manual labor, still have interests of their own as employees. Though the foreman is the faithful representative of the employer in maintaining a production schedule, his interest properly may be averse to that of the employer when it comes to fixing his own wages, hours, seniority rights, or working conditions. He does not lose his right to serve himself in these respects because he serves his master in others, and we see no basis in this act whatever for holding that foremen are forbidden the protection of the act when they take collective action to protect their collective interests."

The question of dual loyalty referred to by the Court and raised by those who differed with the opinion might have been fairly resolved by a provision similar to that relating to plant guards, whose status as employees under the Taft-Hartley Act was not disturbed. Instead, again assertedly because of the question of dual loyalty, provision was made for their representation by labor organizations wholly independent of those who represented production workers. This is not to say that we are in accord with such treatment.

It has raised a host of new problems and has created obstacles to collective bargaining. For example, the recent strike of the independent plant guards' union at the Briggs Manufacturing plant in Detroit, with its consequent effect upon thousands of other employees, would not have happened had these guards continued as part of the over-all production unit. But the plant-guard method of approach at least would have preserved the rights of a great class of employees and would have encouraged rather this discouraged industrial democracy.

The first immediate effect of this treatment of foremen was the breaking of the strike of the Ford foremen's union and the discharge of some of its leaders. The foreseeable effect in the future—bearing in mind that no country has yet successfully devised a way of perpetually depriving workingmen of their rights to act in concert for their self-protection, and bearing in mind that, if they are not employees for the purpose of this law, there apparently is available to such foremen many devices which are otherwise forbidden to employees under the law—is, unless management will voluntarily recognize the unions composed of foremen and deal with them in good faith, strike and disaster.

One instance where the answer of a group of organized employees to management's contention that it need not recognize their bargaining representative because they are supervisory employees and not covered by the act was immediate insistence upon the signing of a closed-shop agreement, contrary to the provisions of the law. Through their economic strength such employees were able to secure that request.

This provision of the law has also raised important problems relating to working foremen, who, not being included in a collective-bargaining unit and not being subject to the union-shop provisions of the law, pose a continual threat to the standards of the union because of their wage competition. The practical answer to this has been to secure contracts which prohibit such foremen from doing any work within the jurisdiction of the union—a result which should have been avoided.

Another class of persons who have been excluded from the law is that large and growing class known as independent contractors. Here, too, legalisms have overcome common sense, and those who fancy themselves injured by the United States Supreme Court decision in the Hearst case prevailed upon Congress to overrule the Court. But the United States Supreme Court decision was one in favor of good-faith collective bargaining and industrial stability. The Court recognized that, in order to accomplish the purposes of the Wagner Act, the common-law definition and tests of what is a master-servant relationship could not be applied in certain cases because of the presence of an economic relationship and interdependence that brought the parties within the contemplation of the law. Congress repeated the same purposes and intents in the preamble and introduction to the Taft-Hartley Act, but then made them impossible of fulfillment by devices such as this.

There are very few truly independent contractors today in the economic sense. Many former employees have been put on their own by employers, on the surface at least, for the purpose of evading responsibilities of other laws of social beneficence, such as workmen's compensation and social security. This trend seems to be increasing. The time may very well come in some trades and industries when the independent contractors, so called, will be the instruments for the liquidation of the astute businessmen who created them.

Since the passage of the Taft-Hartley Act, we have had one experience with this provision of the law which demonstrates its lack of wisdom. A large group of employers in the over-the-road trucking industry who had believed that by virtue of the Taft-Hartley Act they would be able to free themselves of union representation of the so-called independent contractors proposed to put the union and the independent contractors to the test. But wiser heads in the same industry very quickly pointed out that, were it not for the stabilizing influence of the union contract and union membership, it would be only a very short period of time before the independent would either dominate the industry or have to be discontinued entirely. Neither alternative was desirable—the first for obvious reasons, and the second because there is in this industry a real need for the flexibility of operation afforded by the use of the independent. The employers changed their minds, but today they live in fear that these independent contractors might change their minds, assume the role of competitive businessmen and take advantage of the law.

QUESTIONS RELATING TO UNION LIABILITY

Another change in the law which has frustrated good-faith collective bargaining and caused great difficulties is that relating to responsibility for acts of agents when considered in conjunction with the provisions relating to unfair labor practices of unions, and lawsuits against labor organizations for breach of contract.

As to the latter provision, I would like to make it perfectly clear that unions do not want nor do they seek immunity from liability for breaches of contract where they are properly chargeable with the same. They always have been liable without any such statutory provisions; and most unions, as most employers, have lived up to their contractual obligations. There have been some exceptions on both sides. A preliminary objection to the contract-liability provisions is that by its inclusion in the law it has created a climate which is unhealthy for the processes of collective bargaining and voluntary arbitration. These provisions have confirmed labor's fears that the real purpose of the law is to drive labor unions out of existence by inviting and making easier costly litigation.

A more basic objection grows out of the provision that unions shall be liable for the activities of their agents, regardless of whether the actions complained of "were actually authorized or subsequently ratified." There has been much debate, scholarly and otherwise, about the meaning of this last-quoted language, and over whether or not it changes the common-law rules of agency. However, assuming that it doesn't and that all that was intended was to repeal paragraph 6 of the Norris-LaGuardia Act, labor unions and their attorneys, recalling other sad experiences in the courts, have been compelled to devote an extraordinary amount of time in the negotiation of no-strike clauses and union-liability clauses.

The approach has not always been the same. In some cases no-strike clauses had been replaced by right-to-strike clauses. In some instances, the unions had been required to spell out in detail the actual authority of their officers and agents and to receive employer recognition of such limitations on authority. In some cases the language of paragraph 6 of the Norris-LaGuardia Act has been written right into the strike or liability clauses; and in some cases provisions have been inserted confining the parties to arbitration as an exclusive remedy for breach, coupled with a liquidated-damage provision.

All of this has resulted in negotiations at arm's length, in creating suspicions on both sides of the table, in spending more time on such provisions than should ordinarily be spent, and in delaying and embarrassing the processess of collective bargaining.

Nor is that all. The very processess of voluntary arbitration have been impeded, in that some employers much prefer to have the weapon of lawsuit rather than arbitration as a compelling inducement against possible breaches by a union, and would prefer to take their chances as defendants in a breach-of-contract suit brought by a labor organization rather than to submit to arbitration. Some unions are beginning to feel the same way. Yet, arbitration as a means of solving disputes during the life of a contract, and the viodance of complicated and lengthy court procedure in a difficult and sensitive field with a language all of its own, is one of the keystones to industrial peace.

UNION SECURITY

Passing now to the unfair-labor-practices provisions of the law, the most significant change in the definition of employer unfair labor practices is that which prohibits discrimination in respect to hire or tenure because of membership or nonmembership in a labor organization, unless pursuant to a union shop, as defined in the act. The definition of "union" shop departs materially from that found in the Wagner Act. In the first place, under the Wagner Act, a majority status "with or without representation election" was sufficient to enable the making of a union-shop contract, but under the Taft-Hartley Act an election must be held for specific authorization to enter into such agreement. This election is not the ordinary type of election with which we are familiar in our political life, where a majority of all voting is sufficient to elect, with the result that sometimes as little as 5 percent of the electorate can select an important public official, such as United States Senator. In that Taft-Hartley type of election, the union is required to secure the favorable vote of a majority of all eligible to vote. A nonvoter, and in one extreme case, a dead man, casts a negative vote by his mere absence.

Results of elections conducted by the National Labor Relations Board during one quarter, from April 1 to June 30, 1948, cast an interesting light on the necessity for the election provision. In close to 12,000 union-shop elections, approximately 98 percent have been won by margins ranging from 90 to 99 percent. Yet the holding of these elections has been attended by an unreasonable expense and delay and has burdened the Board in the other way important functions which have been submitted to its jurisdiction.

Secondly, there has been a material departure from the old law in the type of union-security provision which is permitted. Under the old law, preferential hiring clauses were legal. That is, the employer could be required to contract to first give to the union an opportunity to supply competent employees from among its members. If the union were unable to furnish qualified workmen within a limited period of time, then the employer could hire whomever he saw fit, such new employee being required to join the union within a stipulated period of time. Under the Taft-Hartley Act this type of preferential hiring has been eliminated. The only permitted requirement is that the new employee join the union on or after 30 days of employment. This change may not appear to be too significant to those of you who think only in the terms of the mass-production type of industry, drawing chiefly on the unskilled or semiskilled worker, and where collective-bargaining contracts through their seniority provisions, give the employee some type of security in rehiring after lay-off.

But consider for a moment the construction industry, the maritime industry, and some phases of the trucking industry, and the service trades, in which employees work on a day-to-day and job-to-job basis for many different employers. Employees in such industries, because of the very nature of the industry, enjoy no such thing as job security, though seniority lies in preferential hiring or the hiring hall. It is only in this way that they can be assured of fairly regular employment or reemployment and, incidentally, the only way the employer can be assured of a constant source of experienced and competent help. The repercussions for the employers in this type of industry are just as serious as for the unions and their members.

The west coast strike of the CIO maritime unions grows in part out of the union's unwillingness to forego this minimum of security.

Shortly after the passage of the law, Senator Taft, one of its authors, recognized the inequity of the situation as it applied to the maritime industry. This is not said in praise of the Senator's wisdom, but to point out that the law was so hastily conceived and thrown together, in an effort to satisfy so many different types of pressure groups, most of whom spoke for only very small segments of industry, that its authors had no idea of the incalculable harm they were doing to the majority of employers and employees.

Thirdly, the union-shop provisions of the Taft-Hartley Act have made the traditional union shop nothing more than a dues-collecting device for labor unions, and have taken from labor unions the right of self-government and self-protection by making discharge for nonmembership dependent only upon failure to pay initiation fees and periodic dues.

I believe it is not consistent with industrial democracy to say that union membership may be a condition of employment if that is the desire of a majority of the employees and if agreed to by the employer, but to impose, as a prerequisite to enjoyment of the benefits of compulsory membership, the acceptance of strikebreakers, stooges, provocateurs, thieves, disrupters, Communists, and the like.

On the immediate results of this provision have been the disputes which have arisen relating to the so-called reciprocal-firing clauses in which the union insists upon the right to request the discharge, for reasons other than union membership, of employees, union or nonunion, who are not acceptable to their coemployees. This surely does not lead to industrial peace, and emphasizes how the law has encouraged unions to seek greater participation in management affairs for their own self-protection.

Finally, the provision of the law which permits individual States to impose greater restrictions upon union-security clauses than are found in the Federal law departs entirely from the scheme of uniform regulation, results in depriving some unions and employers of rights and privileges afforded to other unions and employers, and seriously interferes with those uniform trade agreements on a national basis which have aided management in many industries to stabilize the labor-management relationship.

Labor submits that the entire manner in which the union-shop question has been handled, ranging from the necessity of election down through the types of security granted and the saving of States' rights, has created a condition which of necessity has led to instability in the collective bargaining relationship, has caused major dispute, and has added nothing to the stated purposes for which the law was passed.

UNION UNFAIR LABOR PRACTICES

The provisions of the Taft-Hartley Act relating to unfair labor practices on the part of labor unions open up a wide field of dangerous possibilities. With respect to this subject, it should be pointed out that the record of labor's attempts to organize and bargain collectively reveals conclusively that each industry involved viciously opposed the organization of its employees and refused to recognize and bargain collectively with the unions chosen by a majority of their employees and refused to make or sign collective-bargaining agreements with them.

The best examples relating to these matters can be found in the reports of the Senate Committee on Education and Labor on the subject Violations of Free Speech and the Rights of Labor, based on its investigations from 1933 to 1937 which exposed the vicious attempts of industries to destroy or block the organization of labor unions even to the extent of the use of blacklists, private police systems, armed guards, labor spies, and arsenals of guns, tear gas, and so forth.

It should also be remembered that the so-called mass-production industries, such as auto, steel, and rubber, for a period of 2 years after the passage of the National Labor Relations Act (Wagner Act) brazenly violated and refused to abide by its provisions.

The Wagner Act was adopted as a result of the above-mentioned Senate committee's investigations, not for the purpose of giving labor something, but solely for the purpose of guaranteeing to the wage earners the rights they already had and were entitled to and to protect them in the exercise of these rights.

These facts can lead only to one conclusion, and that is that the desire to bargain collectively and enter into collective agreements with employers is, for the most part, the desire of labor.

Employers generally would much rather have no agreement and no collective bargaining so they could return to the days of industry control of the Nation's economy by dictating wages, hours, and working conditions, together with their practice of arbitrarily fixing prices.

These sections of the Taft-Hartley Act relating to union unfair labor practices will be utilized to the fullest extent by employers to delay, hinder, confuse, and avoid collective bargaining or the reaching of an agreement with their employees, since it is crystal clear that it never was the desire of industry, for the most part, to bargain with labor. This fact cannot be denied in the face of the industry's present propaganda campaign to retain the Taft-Hartley Act.

The following is a brief analysis of some of the provisions which have been involved during the past year.

1. *Coercion of employees in their right to refrain from concerted activities.*—Section 8 (b) (1) making it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in their right to either engage in concerted activities or to refrain from so engaging has been interpreted to apply to mass picketing and lawlessness on the picket line. These are usually police-court matters, but now, under the law, they become matters for complaint and hearing before the National Labor Relations Board and preliminary injunctions in the Federal courts with or without notice. So despite the accumulated wisdom of the years that ripened into the Norris-LaGuardia Act, we have again the Federal courts in the business of issuing injunctions in labor disputes. And since these activities are now defined as unfair labor practices, this provision, as all other union unfair labor practice provisions, becomes a ready device for forestalling collective bargaining, either by holding up elections until the unfair labor practice charges have been finally litigated, or by delaying bargaining for the same reason.

2. *Union's refusal to bargain in good faith.*—The provision making it an unfair labor practice to refuse to bargain collectively is, in my opinion, totally unnecessary, since that is the very reason for a labor union's existence. And while the provision may be harmless on its face, it provides a means for delay and procrastination on the part of employers who can file charges under this section and sit back and wait for a Board determinination rather than get on with the making of a bargain. The provision becomes particularly troublesome when considered in connection with section 8 (d) which sets forth the definition of "good faith collective bargaining." Ths definition embraces the serving of a 60-day notice prior to amendment or termination of an agreement, followed within 30 days by a notice to Federal and State mediation or conciliation services. The latter provision has become a laughing matter, since the 30-day notice is required even where the parties are making progress and it doesn't appear that intercession is either necessary or desirable.

One labor-relation consultant for management has advised me that, in his experience, the notice provisions have stirred up trouble, where none would otherwise exist, in that some unions after giving the 60-day notice and the automatic 30-day notice to comply with the law, have decided that as long as the law required notice to conciliation, they might just as well throw the whole problem into the Conciliation Service's lap and make a real dispute of it.

He points out that the serving of the notice has acted as a psychological prod, much like the commencement of a lawsuit. We all know that the average working man can be more easily induced to settle his claims before he actually signs a complaint and gets into court. This same average working man likens the requirement of formal notice to the Government to the commencement of a formal legal proceeding and reacts in similar fashion.

And bearing in mind the further provision of section 8 (d), which relieves either party from making a concession, one can fairly conclude that the net result has been to discourage rather than encourage good-faith collective bargaining.

As an example of the mischief which this provision has done, we can take the case of the strike at the Boeing aircraft plant in Seattle, Wash., which lasted from April 22, 1948, to September 10, 1948, and which has been prolonged by management's insistence that because of the union's failure to give a 60-day notice before striking, it has forfeited its rights under the law, its members were no longer employees by automatic operation of section 8 (d), and the company therefore was under no obligation to bargain with it. This despite the fact that the parties had been in negotiation for almost a year.

3. *Secondary boycotts.*—Section 8 (b) (4) (A) of the law is one which has given unions, employers, the Board, and the courts some of their most troublesome problems. This is the provision that is commonly referred to as the "secondary boycott" section, since it makes it an unfair labor practice "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is forcing or requiring * * * any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person." The language is broad and comprehensive, as well as cumbersome and difficult.

In referring to "an object" rather than ultimate purpose, there apparently is a complete departure from the usual rules of tort, and common-law conspiracy which have always distinguished between a legitimate ultimate and immediate means to accomplish that end. Even under the Sherman Antitrust Act, the United States Supreme Court has stated that the law permits of distinction between primary and secondary aims.

The Senate debates do not clearly disclose the real significance of the substitution of the language "an object" for the original language "for the purpose of." A difficult question of construction has thereby become more difficult.

Going on to the substance of the provision, we find disagreement between the courts, the Board and the general counsel as to what types of activities are actually precluded. One Federal court has held that the section really covers only boycotts against true neutrals, and not those allied in interest with the direct party to the dispute. This sounds sensible, but opens up a host of new questions as to what are neutrals.

This provision of the law is also carried over into section 303, which makes the same activities unlawful and provides that "whoever shall be injured in his business or property" because of violation may sue in Federal or any other court having jurisdiction over the parties for damages sustained.

A number of damage suits have been started under this section. The extension of this right to seek damages to "whoever shall be injured in his business or property" also opens up interesting vistas of how far the chain of causation shall be followed.

Additionally, the boycott provisions of the law are required to be given precedence in handling over all other cases, and the general counsel is required to seek immediate injunctive relief in the Federal courts, with or without notice and hearing, pending Board determination, the Norris-LaGuardia Act to the contrary notwithstanding.

This latter provision raises the pertinent question of why precedence and compulsory seeking of injunctive relief where the union commits an unfair labor practice should be the rule of law, while no such rule applies to employer's unfair labor practices.

The history of the Board shows that it has sought 22 injunctions against labor unions under these provisions of the law. Fifteen of those injunctions have been granted, three have been denied, two are pending, and two have been withdrawn. As against this record, the Board has secured or sought to secure two injunctions against companies' unfair labor practices. Only one, that against the General Motors Corp. has been granted.

One of the outstanding example of the lack of wisdom in this particular provision can be found in the Sealright case. In this case, General Counsel Denham secured an injunction in the Federal district courts against certain warehousemen who had refused to handle products which were transported from a struck plant to a dock which was being picketed by striking workers. General counsel argued that the mere presence of pickets in and of itself was for the purpose of encouraging others to stop their work within the language of the act, and, therefore an injunction should be issued. After the injunction was issued, a trial examiner rejected the theory of the general counsel and held that no unfair labor practice had been committed and that the stoppages of work which resulted were permissible under the contract between the union and the company. Yet the damage had already been done when the injunction was issued.

Additionally, the imposition of the obligation on the Federal district courts to issue temporary restraining orders or injunctions upon a prima facie showing have made the Federal courts mere appendages of the National Labor Relations Board, which makes the final and subsequent decision on whether or not a violation of the law actually occurred.

The net result of all these provisions is to effectively deter labor unions from taking what had hitherto been considered proper legal steps for protection of their legitimate interests. Under these provisions, labor unions have been and can be restrained from refusing to work on and from advertising to the public their aversion to goods and products made or transported by competitive nonunion labor. Those who complain most bitterly about the boycott have failed to comprehend a simple economic truism which was aptly phrased by the United States Supreme Court in the Thornhill case:

"It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned.

"The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing."

Just as in international politics we seek to quarantine the aggressor who threatens our peace or our economic security, just as in civic matters we seek to eliminate the slum and blight which threatens our health and our property values, so in the field of labor we seek to isolate those whose wages, hours, and working conditions, or employment practices, jeopardize those union standards for which we have fought and sacrificed for many years.

To tell a manufacture by law that he must aid and support his competitor, though doing so will seriously impair his own competitive position, is tantamount to appropriation of his property without due process of law. Similarly, to tell union men that they must work on, process, transport, or otherwise handle or perform any service on nonunion or scab goods, is asking them to be pallbearers at their own funeral.

Nor is it an answer to say that the law preserves their right as individuals to do those things. Unity of action is the cornerstone upon which union standards have been built; it is only through unity of action that they can be preserved.

And it should not be forgotten that union activities, in defense against the competition of nonunion labor, have been just as valuable and helpful to management as they have been to labor. Unions by this device have protected employers against unfair competitive practices based upon wage competition, just as effectively as they have protected themselves.

4. *Unlawful payments.*—Another provision of the law which is demonstrative of the mischief caused by the act is section 302, which makes it unlawful for any employer to pay or deliver any money or other thing of value to the representatives of his employees and for them to accept such payments. On a distinctly minor level, but nevertheless significant, insofar as a mutually cooperative labor-management relationship is concerned, is the discontinuance, because of these provisions, of payments made to union "sunshine" or union athletic activity funds out of the profits received by the employer from vending machines and canteens.

On the major level is the limitation and restriction upon welfare funds. Important among these is Government dictation of the way such funds shall be managed; and Government limitations upon the purposes for which such funds can be used. We have seen the immediate effect of these provisions in the mining industry, as well as in the music recording industry, where since the effective date of the law, until recently, new records could not be made by union musicians because of the previous royalty arrangement was for the purpose of creating employment for unemployed musicians, a purpose prohibited by law.

There is in these and other similar provisions not only impediments to good faith collective bargaining and industrial stability, but the actual intrusion by the Government over the scope of matters which may properly be the subject of collective bargaining. Sponsors of this law, who have been otherwise vigorously vocal in their protestations against excessive Government interference with business and in their defense of free enterprise, as distinguished from Government bureaucracy and regimentation, surely did not let their right hands know what their left hands were doing—and I use the words "right" and "left" in that order deliberately, and I believed accurately.

POLITICAL EXPENDITURES

Another substantive provision of the law which should be singled out for specific mention is that relating to the ban on political expenditures and contributions by labor unions. The United States Supreme Court has not yet had an opportunity to pass upon the full reach of the law; the one case in which it might have done so having been disposed of on the theory that the law did not comprehend the dissemination of political information on a partisan basis in regular union publications. We believe that the law is unconstitutional in its broader applications, but constitutional question aside, we also believe it is unfair and malicious. It appears obviously to have been an attempt to put labor up the creek and then take away the paddle. And attempted comparison with a similar restraint on corporations is about as realistic as saying that the law maintains the equality of political participation between Johnny Jones, laborer, and Mr. du Pont, industrialist.

This provision, and the law as a whole, have had a salutary effect. It has aroused labor politically as very few single acts have in the past.

NATIONAL EMERGENCY INJUNCTIONS

Section 206 of the law relating to cooling-off injunctions in cases where the President of the United States believes that the national health or safety may be imperiled has been invoked on several occasions. This not only represents the return to Government by injunction which played such significant political roles in the past, but the efficacy of the procedure is subject to considerable doubt. For instance, since September 3, 1948, the maritime unions on the west coast have been on strike, in spite of the fact that the national-emergency provisions of the law were invoked.

In the dispute on the atomic bomb project, the employer finally settled to avoid a strike; the union members voted to support their original demands in the last step of the procedure. The delay occasioned by invoking the law contributed nothing to the settlement, yet certainly must have interfered with the efficient operation of this important project.

Experience under the Smith-Connally Act during the war demonstrated that neither cooling-off periods, nor putting the last offer of the employer to a vote by employees would prevent strikes. On the contrary, the cooling-off period has usually been used as a warming-up period during which the union and the employer girded for the inevitable battle to come.

The fact is that strikes, and particularly those that involve thousands of employees and the public interest, are not called in haste. They are serious matters and involve great sacrifice. They are rooted in basic economic problems. Trimming the branches will not effect a cure.

PROCEDURAL PROVISIONS

1. *Registration and financial reports.*—The registration and financial information provisions of the law have placed additional expense and clerical burdens upon labor unions, have delayed their pursuit of remedies or elections before the Board, and have not, insofar as is now apparent, made any contribution to the objectives of the law.

2. *Decertification and deauthorization.*—The decertification and deauthorization procedures, together with the limitation against more than one election in a 12-month period, have delayed collective bargaining and have been used to frustrate genuine self-organization. Their full impact has not yet been felt because of existing contracts and certificates which have acted as a bar to such elections, but which will no longer have such effect in the near future.

3. *Non-Communist affidavits.*—The requirement of filing so-called non-Communist affidavits, aside from being a gratuitous insult to the preponderant majority of union officers, requiring as it does a special pledge of allegiance from them only because they are union officers; aside from being inconsistent with the American theory of a day in court for all, regardless of race, religion, citizenship, or political affiliation; aside from depriving thousands of workers of the processes of law because of the refusal of one such person to file an affidavit either as a matter of principle or because he will not falsely swear; aside from the fact that it can be so palpably and easily evaded; I say aside from these meritorious criticisms, this provision hasn't contributed one bit to good faith collective bargaining, industrial stability, or industrial democracy. On the contrary, it has been the direct nad immediate cause of break-down in collective bargaining and of strikes. For example, major strikes involving the CIO Farm Equipment Workers' Union, the CIO maritime unions, the AFL Brotherhood of Railway Clerks, and the Independent United Mine Workers, have been attributed directly to the failure of the leaders of these organizations to sign the non-Communist affidavits. It is a strange and dangerous state of affairs when private employers are encouraged to precipitate strikes by their Don Quixotic tilting at the chosen representatives of their employes. Yet the west coast maritime employers refused to bargain collectively with the representatives of the maritime unions, not because they denied their majority status, but because non-Communist affidavits had not been filed. So west coast shipping remained at a standstill.

4. *Elimination of short-cut procedures.*—The removal of short-cut procedures, the elimination of a review section, and the imposition of manifold new duties on the Board, including the requirement to grant priroity in the handling of certain union unfair labor practices, and the union-shop election requirements have resulted in delays in establishing bargaining rights and in affording protection against unfair labor practices of employers.

5. *Economic strikers and their right to vote.*—The provision of law which deprives economic strikers who are not entitled to reinstatement of the right to vote has seriously impaired the right to strike, in addition to presenting difficult administrative problems and delay to collective bargaining. An interesting side light on this is the recent case involving the Times Square Stores Corp., in which the Board pointed out that under the new law the general counsel has complete authority to determine whether or not a complaint shall issue. Therefore, where the general counsel has refused to issue a complaint on a charge that a strike was caused by unfair labor practices, the Board had no choice but to consider the strike an economic strike and to refuse to count the ballots of those employes who had been permanently replaced.

This latter case illustrates also the danger inherent in the division of authority and duties between the Board and the general counsel.

CONCLUSION

All that I have said represents only a part of labor's indictment of the Taft-Hartley Act.

And aside from the more or less specific counts of the indictment there remains the general, overriding fact, recognized by all who are actively engaged in representing one side or the other in labor-management affairs, that the past year has been marked by a complete change in the psychological setting. Good faith has been replaced by attempts to overreach; cooperation by antagonism, protection of mutual interests by unilateral aggression; and confidence by mistrust. This illustrates the truism that good faith cannot be legislated nor can injunctions or bayonets man the machines of industry.

I believe that we are not the only complaining witness in this matter. I am sure that management joins in some of our complaints. I hope that it will join in all. I know that those who have no particular ax to grind on one side or the other are not in accord with the type of solution offered by the Taft-Hartley Act and its proponents.

To illustrate, the social action department of the National Catholic Welfare Conference in a Labor Day message addressed to workers and employers had this to say about the Taft-Hartley Act:

"The chronicle of its day-to-day enforcement during the past year indicates that the measure was not sufficiently constructive and reinforces our conviction that the Congress ought to dig deeper in its inquiry into the underlying cause of industrial unrest. This time it ought to frame such legislation as will promote cooperation rather than give occasion for needless conflict. * * *

"We repudiate as ill-advised and discriminatory the efforts of those who not content with the disruptive effects of the Taft-Hartley Act are clamoring for further restrictions on the labor movement. We call attention in particular to the baneful influence of certain types of punitive legislation at the State level which are calculated to foster rather than diminish industrial strife, and which are designed whether willfully or not, to cripple the labor movement rather than reform it."

Therefore, in view of the foregoing statements and arguments, the international union, United Automobile Workers of America, affiliated with the American Federation of Labor, strongly urges yqou, as a member of the Eighty-first Congress, to vote, support, and actively work for the immediate repeal of the Taft-Hartley Act in its entirety, and the reenactment of the Wagner Act.

STATEMENT BY ARTHUR J. PACKARD ON BEHALF OF AMERICAN HOTEL ASSOCIATION

I am Arthur J. Packard, of Mount Vernon, Ohio, and appear before you on behalf of the American Hotel Association, which includes in its membership approximately 75 percent of all the hotel rooms in the country. The American Hotel Association urges upon this committee the need for an amendment to the Federal law governing relations between labor and management which will confirm in statutory language the exemption of retail and service establishments whose business is primarily local in nature. I use the word "confirm" advisedly because we are asking no more than a confirmation of the practice which prevailed during all of the years that the National Labor Relations (or Wagner) Act was in effect and which has been the practice to date under the Labor-Management Relations (or Taft-Hartley) Act.

During the period of more than 12 years that the National Labor Relations Act was in effect, there were never any court decisions or official interpretations holding that hotels affected interstate commerce and were thus subject to the act. On the contrary, the National Labor Relations Board has consistently refused during that period to take jurisdiction of such hotel employers. Under the Labor-Management Relations Act, the jurisdictional language and apparent coverage of the law remained unchanged and to date there have been no court decisions or decisions of the National Labor Relations Board under that law as to whether or not hotels affect commerce and were thus within the jurisdiction of the Board.

However, disregarding the practice of the previous 12 years, the general counsel for the National Labor Relations Board has stated upon several occasions during the past year before congressional committees and subcommittees that in his opinion not only hotels, but practically all other types of business, large and small and local or otherwise, affected commerce and were thus under the jurisdiction of the Board. Although the National Labor Relations Board has had no case presented to it involving hotels under the Labor-Management Relations Act, the Board has handed down a substantial number of decisions in cases involving local businesses of various types, either service or retail in nature.

From these decisions it is impossible to discover any pattern by which the ordinary businessman could be guided. Many of the decisions have been by a divided vote of the Board, and as each decision is based upon a different set of facts it is almost impossible to establish any general rule from which a guide could be had. This uncertainty was most clearly expressed in the report of the Joint Congressional Committee on Labor-Management Relations filed this year, in which the following language appears:

"In declining to accept jurisdiction, the Board has stated a variety of reasons. In one case, the expression 'essentially local in character' is used; in others, 'too remote or insubstantial effect on commerce,' or 'predominately local nature of operations,' or 'operations inherently local'; and in many, it would not effectuate the policies and purposes of the act."

There are frequently dissents by one or two members, but the identity of the dissenting members changes from case to case. In some cases the number of employees is mentioned, but how much weight is given to that factor cannot be determined. It should be noted that the general counsel believes jurisdiction should be asserted in all of the cases cited.

"A review of the cases justifies the observation that the small-business man cannot know, and it will be some time before he can ascertain whether or not his business is subject to the jurisdiction of the Board. He does not know whether he can legally enter into a compulsory membership contract with a union without first insisting upon a union-shop authorization election. If he takes his case to the Board and jurisdiction is declined, he may or may not know where he stands. If his business is in a State having a State act he may find himself in a 'no man's land' if jurisdiction is declined on the basis 'that it will not effectuate the policies and purposes of the act,' for that, in effect, is a ruling that the National Board has jurisdiction but does not decide to assert it."

The need for a clarification is thus obvious and in amending the statute for the purpose of clarification there can be no better guide than an existing provision of another Federal statute. It has been in effect for over 10 years, has been subject to judicial and administrative interpretation and accomplishes the same purpose here sought, namely a clear division between Federal and State jurisdiction. The obvious pattern of such division should be, of course, to reserve to the States control over operations which are essentially local in nature and to give to the Federal Government control of operations which are interstate in nature and are thus beyond effective control by the States.

This logic of such division was recognized in the reports of the House and Senate labor committees at the time of the enactment of the Fair Labor Standards Act. Page 5 of Report No. 884, dated July 8, 1937, contains the following language:

"The bill carefully excludes from its scope business in the several States that is of a purely local nature. It applies only to the industrial and business activities of the Nation insofar as they utilize the channels of interstate commerce, or seriously and substantially burden or harass such commerce. It leaves to State and local communities their own responsibilities concerning those local and service and other business trades that do not substantially influence the stream of interstate commerce. For example, the policy in this regard is such that it is not even intended to include in its scope those purely local and business establishments that happen to lie near State lines, and solely on account of such location, actually serve the wholly local community trade within two States."

Page 9 of Report No. 1452, dated August 6, 1937, contains the following language:

"It [the bill] applies only to industries engaged in the production of goods for interstate commerce and directly affecting interstate commerce. It does not affect the purely local intrastate business."

The conference report made no changes in this aspect of the bill and the Fair Labor Standards Act, as enacted by Congress and still in effect, contains a specific exemption of "retail and service establishments, the greater part of whose selling and servicing is in intrastate commerce." We respectfully urge that a similar exemption be incorporated in any legislation recommended by this committee on the subject of labor relations and thus accomplish at one stroke two desirable objectives: (1) to render uniform the provisions of different laws insofar as such laws required a line of demarcation between Federal and State jurisdiction; (2) to confirm by statute an interpretation as to jurisdiction which has been accepted by all parties for a period of over 12 years but in which an element of doubt has recently been introduced by the chief enforcement official.

I will now try to outline briefly the reasons why the American Hotel Association feels that the hotel industry is essentially local in nature and should be regarded as such by the Federal authorities, whether for wage-and-hour purposes or for the purpose of regulating labor relations.

Dealing first with labor relations, we point out that in those States where labor-relations boards have been set up pursuant to State law, hotels have regularly been under the jurisdiction of such State boards and there has been not a single case where such State boards were unable to exercise effective control of labor relations in the hotel involved. It may well be that because of their widespread operations, interstate in character, some industries could not be effectively controlled by State labor-relations boards. However, no such situation exists in the hotel industry.

Where collective-bargaining agreements have been made, they are primarily contracts with individual hotels. In a few cities collective-bargaining agreements have been negotiated by groups of hotels with trades-councils unions but in no case have such negotiations extended outside of the city involved, and even there they do not affect all hotels but merely those which are grouped together for that purpose. Obviously, State labor-relations boards can exercise effective jurisdiction over negotiations which do not extend beyond the limits of a city, or in most cases beyond the limits of the individual hotel.

There have been no instances of widespread strikes or major labor disturbances in the hotel industry. Individual strikes have occurred but because of the fact that collective-bargaining negotiations are ordinarily on an individual basis, the strikes have not spread to large numbers of hotels in the same area or elsewhere, a situation which might well have been if the industry was primarily interstate in nature.

Hotels are service institutions which, regardless of size, are essentially local in nature. Basically the services furnished by hotels consist of food and lodging, and in their very essence these services are rendered entirely within the establishment. Hotels do not form a part of the distribution system which handles goods in commerce; they are not purveyors of merchandise except perhaps to the extent that they furnish meals to their guests.

The essentially local nature of hotels has always been recognized under the Fair Labor Standards Act. Section 13 (a) (2) of that act exempts retail and service establishments the greater part of whose selling and servicing is in intrastate commerce. Hotels have been held by court decision and administrative ruling to be included in this exemption. (See Wage-and-Hour Interpretative Bulletin No. 6.) We believe that at all times it has been the intent of Congress to exempt local businesses from jurisdiction of Federal labor laws, and not to disturb the well-established, harmonious, and universally approved method of handling labor relations in the industry. No demand exists on the part of either labor or management for a change. There has not been an iota of evidence produced before any congressional committee indicating any public demand for a change.

Accordingly, we urge this committee to recommend an amendment to the existing Labor-Management Relations Act or to incorporate in any revision of said act which may be recommended by this committee, a provision identical in language with section 13 (a) (2) of the Fair Labor Standards Act and thus establish for all time a clear-cut demarcation between Federal and State jurisdiction in labor-relations matters following thereby the pattern of demarcation already established in the Federal law governing wages and hours.

STATEMENT BY THOMAS KENNEDY, VICE PRESIDENT, UNITED MINE WORKERS OF AMERICA, BEFORE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE RELATIVE TO SUBSTITUTE S. 249

The proposals pending before this committee are the repeal of the Labor-Management Relations Act of 1947 and reenactment of the Wagner Act with certain proposed amendments. The present bill represents an amendment in the nature of a substitute for S. 249, a bill originally submitted on January 6, 1949, by Senator Thomas of Utah, chairman of this committee.

During the past 18 months of its scatter-barrel application and interpretation by its general counsel, and his arbitrary and ruthless use of the weapon of injunction, there has developed under the Taft-Hartley Act a campaign of legal terrorism and abuse, all as was originally predicted prior and subsequent to its enactment. It is (and has proven to be) the "first ugly, savage thrust of fascism in America." It has sought to "create an inferior class of citizens, an inferior category, and a debased position politically for the men and women who toil by hand or brain for their daily subsistence to safeguard the future for their loved ones."

This committee has before it in filed statements, reports, exhibits, and in approximately 3,000 pages of oral testimony adduced in the past 10 days, a wealth of information on this law, its workings, and the burning necessity for its repeal.

The legal problems involved in, and the confusion growing from even an attempted interpretation of that statute can perhaps be tersely illustrated (with propriety, for this phase is not now in litigation) by poining to just one section alone, i. e. section 302, dealing with union welfare funds. The coal operator representative on the United Mine Workers Welfare and Retirement Fund (from Senator Taft's home State of Ohio), hiding behind this Taft-Hartley law, arbitrarily and capriciously refused to agree to activation of the 1947 fund, and after 9 long months of delay, finally filed suit in the United States District Court for the District of Columbia, seeking to interpret that one section (among the hundreds of other sections contained in the act), and to prevent any distribution of the accumulated funds to the members of the mine workers. He filed one suit, and after an answer had been made, withdrew it. He filed another, and again after answer, withdrew that petition. He filed a third, and while it was pending, filed a fourth. The third action was decided against him, and he then dismissed the fourth—and all of this brought confusion to the industry, which could and should have been otherwise avoided.

Multiple illustrations of this maze and jungle of legal restrictions contained in the bill might well be made. The mine workers need not, however, burden the record with further detailed discussion of the wrongs and injuries, harshly arbitrarily, and by the use of midnight injunctions, wreaked upon it and its members. An appeal is now pending from the outrageous punishments inflicted upon the United Mine Workers and its members through the invocation of this law. We shall try our case, however, in the courts, and not in the halls of Congress.

Much has been said about the right to strike, and multiple suggestions made as to its modification, restriction, or prohibition. We submit that if it can legally be denied for 80 days, or 30 days, or 30 seconds, it is the denial of a basic and moral right of the American laborer inherent in a free people. As has heretofore been said by this union, this country has never suffered irreparable injury by a stoppage of work, for the limit of human endurance in the realm of industrial strife means inherently that "each strike and each lock-out carries with it the seeds of its own determination." Invocation of the injunction by Government, under express or implied powers, is to torpedo the rule of reason and prevent the free play of general collective bargaining as it should and would (absent restrictive and punitive legislation) be practiced by American labor and American industry.

Heat, passion, prejudice, and pressure never serve to bring about mature and constructive legislation. Our history is replete with illustrations of that fallacy. The present sitluation is one which demands affirmative, blunt, and quick action to remedy the legal wrong perpetrated upon labor by the Taft-Hartley Act, and at the same time fully justifies and requires a calm and dispassionate consideration on the reenactment of the Wagner Act plus such amendments, if any, as a broad study by a committee of labor, management, Congress, and the public, may, after reasonable study, desire and recommend.

This committee could be immediately created, after repeal, and enjoined to make report by a day certain, so as to allow this Congress to thoroughly review, study, and legislate in the interest of and for the benefit of all America. We so urge and recommend. The proposed changes in S. 249 substitute, for the most part should receive careful and calm consideration, and they could and should be incorporated in the field of study proposed. Their merits can then be more fully determined.

The United Mine Workers of America again reiterate their well-known position that the best interests of labor, management, our citizens, and our Republic can be furthered more through the immediate repeal of the Taft-Hartley Act and by the application of the rule of reason, through real collective bargaining, voluntary conciliation and mediation, than it can be by any other process—and we rest upon this declaration.

STATEMENT BY W. FLOYD MAXWELL, EXECUTIVE DIRECTOR, LITHOGRAPHERS NATIONAL ASSOCIATION, INC., RELATIVE TO NATIONAL LABOR RELATIONS ACT OF 1949 AND LABOR-MANAGEMENT RELATIONS ACT, 1947

Pursuant to permission granted on its application to the chairman, Lithographers National Association, Inc., a trade association of small-business men, files this brief for inclusion in the record of hearings held on the above legislation and respectfully requests the Committee on Education and Labor of the House of Representatives to consider, in connection with any revision of the Labor-Management Relations Act, 1947, and in connection with the enactment of any new labor law, the following statement of its position with reference to the present law and the need for further legislative protection in order to establish equality of bargaining position between small-business men and national and international unions.

A TRADE ASSOCIATION OF SMALL-BUSINESS ENTERPRISES

Lithographers National Association, Inc. is a trade association whose membership is restricted to employers engaged in the operation of lithographic plants. The firms comprising its membership operate plants in the District of Columbia, Hawaii, and 31 States of the Union. This brief is on behalf of lithographers which operate approximately two-thirds of the lithographic production capacity in the United States and which employ approximately 70 percent of the lithographic labor force in this country. This association and its predecessor organizations have been in existence as recognized trade associations since about 1888.

SIZE OF PLANTS

The lithographic industry is an industry of small-business men operating small lithographic units, employing per plant about 10 to 300 lithographic production employees and probably average about 50 to 75 such employees to a plant.

LITHOGRAPHIC PRODUCTS

The production of the member plants of the association include many vitally needed articles of considerable importance to many other businesses and educational organizations. Without attempting to enumerate all the forms of lithographic printing, some of the more important ones are charts and graphs, maps, business forms, catalogs, seed packets, labels, folding boxes, insurance policies, advertisements, posters, greeting cards, checks, bill heads, looseleaf bookkeeping and accounting forms, tariffs for common carriers, construction manuals, installation manuals, school books, letterheads, and envelopes.

THE NEED TO PROTECT THE SMALL-BUSINESS MAN

As an organization of small-business men, we feel that in the enactment of labor laws and in the debate on the present law, the Congress appears to be giving some consideration to the public interest and some consideration to the relative positions of large aggregations of capital engaged in mass production and of large international unions but insufficient consideration to the need to establish equality in bargaining position between small-business enterprises and large international unions.

The lithographic industry is not all comparable to such basic or mass production industries as steel, automotive equipment, coal, rubber, and other industries where the employers are large companies of tremendous resources. We believe that questions of the need for protection of employer's rights should not be gaged by the strength and bargaining position of such large aggregations of capital but that more consideration should be given to the urgent problems and dire needs of the small-business man.

Change in market conditions.—In considering the position of the small-business man, we submit that the Congress must give special attention to the change which has taken effect and is continuing in the economic conditions of this country. Business is now definitely in a market more competitive than for several years and the small business will have its full share of problems in attempting to survive in such a market. Since there are many small-business enterprises, including many in this industry, of such limited assets that they cannot survive if they are faced with prolonged labor disputes, strikes, or constantly increasing costs, we submit that it is the obligation of Congress to see that the law is not in such a state that unnecessary and severe hardships and burdens are imposed upon the small-business enterprises.

RIGHTS OF EMPLOYERS

It is our purpose in this brief to point out first some rights of employers which we believe should be protected in the new law and some cases in which more protection is needed than is given in the Labor-Management Relations Act, 1947. We refer particularly to the following rights:

(*a*) The employer's rights of free speech;
(*b*) The employer's right to operate free from secondary boycotts;
(*c*) The employer's right to give employment and to select his employees.

RESPONSIBILITIES OF UNIONS

In connection with the responsibilities which we believe should be established and maintained on unions, we propose to consider in this brief: (*a*) the obligation to bargain in good faith, and (*b*) the responsibility for maintenance of contracts entered into and for breaches thereof.

In connection with the rights of employers and the responsibilities of unions, we desire to direct the attention of the committee to some later observations in this brief on the proposals to nullify certain State laws, to remove restrictions on health and welfare funds, to remove protection of the public in national emergencies and to eliminate the so-called non-Communist affidavit.

EMPLOYER'S RIGHTS OF FREE SPEECH

While we feel that the employer's rights of free speech are guaranteed in the Constitution of the United States beyond any limitation thereof by the Congress of the United States or the National Labor Relations Board, nevertheless we desire to point out that, if there is omitted from House bill 2032 the protection of such rights as in the existing law, the matter will again become one of doubt. The omission will be interpreted as the intent of the Congress not to allow the employer the same rights of free speech as appear in the Labor-Management Relations Act, 1947. As stated in that act, the tests as to what are proper exercises of the right of free speech are very simple, understandable and provide a means under which the small-business man can determine to what extent he may make representations to his employees.

In this matter, as in many others which are covered by provisions of the Federal labor law, the small-business man is not in a position to litigate close questions of law. The expense is beyond his means. Thus, in many cases a legislative enactment by the Congress which casts doubt upon the rights of the small-business man is an effective way of denying him the exercise of such rights. Certainly, the National Labor Relations Board, if House bill 2032 is passed without any affirmation of the employer's right of free speech, will revert to a more harsh theory in determining to what extent he may exercise such right. We emphasize again the difficulty under which the small-business man operates under Federal labor law today. He is not in the position of a large enterprise engaged in mass production which can maintain thoroughly trained personnel departments, staffed by experts in labor law, who can pass upon every statement made, and, we submit, is entitled to receive from the Congress, a clear and unmistakable statement of his rights and a clear, plain, unequivocal statement of the standards under which he may operate and exercise such rights. Even the cost of defending such rights in a proceeding brought by the National Labor Relations Board is a tremendous burden upon small businessmen, and the law should be so drafted that such cases will be unnecessary except in the rare and unusual instances of flagrant violations of law.

Since we are discussing under this point a right not peculiar to the collective-bargaining process but a right guaranteed to the small-business man under the Constitution of the United States, we submit that the Congress in any revision of the labor law should make it very clear that the Congress does not mean in any way to abridge any of his constitutional rights nor to require him to litigate before the National Labor Relations Board or elsewhere to maintain such rights.

SECONDARY BOYCOTT

The pending House bill 2032 is designed to eliminate the provisions of the Labor-Management Relations Act, 1947, which gave to the employer and to members of the general public some protection against secondary boycotts.

Secondary boycotts in jurisdictional disputes.—We submit that instead of limiting the protection against secondary boycotts to apply only to cases of jurisdictional disputes, which is the general effect of House bill 2032, the provisions in the Labor-Management Relations Act, 1947, should be strengthened in order that this threat to the economic life of small-business enterprises may be removed.

The provisions of House bill 2032 against secondary boycott in cases involving jurisdictional disputes are inadequate in that the bill supplies no adequate method of enforcing the prohibition which it establishes and provides no reasonable protection to the business enterprise which is injured by such a secondary. boycott. While the bill provides that it would be an unfair labor practice for a labor organization to cause or promote a secondary boycott to compel an employer to bargain with a particular labor organization if another labor organization has been certified as representative of the employees, or if the employer was under order of the National Labor Relations Board to bargain with another organization, or if the employer was operating under a collective-bargaining contract and if no quesiton of representation could be appropriately raised, nevertheless, the bill does not provide any prompt remedy against the union which engages in such unfair labor practice. The proposed law provides for a compulsory arbitration of jurisdictional disputes but does not contain any efficient remedy against the union which may ignore the final jurisdictional arbitration award of the National Labor Relations Board or of an arbitrator appointed by the Board to decide such jurisdictional dispute.

The employer, against whom such unfair labor practice is committed even after the arbitration, could only file a charge of an unfair labor practice with the National Labor Relations Board and then wait for 1 or 2 years while the Board issued and processed its complaint to final decision. If the union did not then elect to obey the Board but preferred to challenge the matter by appeal to the circuit court of appeals, the employer would then have to wait until that court finally decided the issue. The plain and unmistakable fact is that the small-business man operating with limited resources just cannot survive through those years of litigation, if the secondary boycott is continuing against him while the issues are being litigated.

Injunction is the only effective remedy against secondary boycotts.—The only effective way of protecting the small-business man from a secondary boycott, even the restricted type of secondary boycott which is declared by House bill 2032 to be an unfair labor practice, is to allow an injunction to be issued to prevent the continuance of such boycott. The union should not be allowed to continue the boycott during the period in which the matter is being presented to arbitration and certainly there can be no doubt that the boycott should be enjoined if continued after the award of the arbitrator.

NLRB injunctions against employers.—We realize in presenting the foregoing argument in favor of injunctions against unfair labor practices by unions that there has been urged upon the Congress the theory that in no case should any officer of the Government be allowed to seek or secure an injunction against a labor union, regardless of the irreparable injuries which such union might be causing by engaging in unfair labor practices.

In this connection, we want to point out, however, that the National Labor Relations Board has as a principal part of its business the power and obligation to issue injunctions against employers, and it performs such obligations by issuing 200 or more of such injunctions every year of its life. Of course, the injunctions issued by the National Labor Relations Board are generally designated as "orders" or as "cease and desist orders" but, in force and effect and except for the name, they are injunctions.

Other secondary boycotts.—There are, however, many other secondary boycotts forbidden under the Labor-Management Relations Act, 1947, which apparently will be permitted under House bill 2032 in cases where no jurisdictional disputes are involved. Against this type of boycott, the small-business man urgently needs not only the protection given in the Labor-Management Relations Act, 1947, but additional protection.

Secondary boycott as means to organize.—The secondary boycott is commonly used by unions as a short cut to organization of plants. Rather than engage in the work of persuading the employees of employer "A" to join their organization, it has become a simple matter for the union to impose a secondary boycott on the products of employer "A" thus denying him access to the channels of commerce and forcing employer "B" to discontinue handling the products of employer "A".

Against this type of secondary boycott, the small-business man needs not only the protection granted in the Labor-Management Relations Act, 1947, but he needs to have the provisions of that act clarified to make such protection clearer and more effective. This is illustrated by the following provisions taken from contracts negotiated in this industry since the enactment of the Labor-Management Relations Act, 1947, from which it will appear that it has become a common practice of the union in this industry to maintain, notwithstanding the law, its alleged right to boycott and to find devices to make effective such secondary boycott.

The following are examples of clauses which employers in this industry have been forced to accept in collective-bargaining contracts, even since the enactment of the Labor-Management Relations Act, 1947:

"The company agrees that the union and its members have the absolute right to refuse to execute work received from, or destined for, any lithographic employer with whom the Amalgamated has a strike or a lock-out, and the company agrees not to request its employees to handle such work."

"The employers further agree they will not request their employees to execute work received from or destined for any lithographic employer with whom the Amalgamated has a dispute."

Coupled with these clauses or similar clauses to the same effect, there is usually a provision which gives the union the right to terminate the contract forthwith on breach of this provision by the employer. Of course, there is frequently included in the contract also a statement to the effect that the clause shall have effect only to the extent permitted by law which leaves the small employer the prospect of litigating the clause if the effect of the clause under the law is later challenged.

We further submit that the use of secondary boycott as an aid in organizing plants is certainly an undemocratic method of organization. Regardless of the wishes of his employees, if an employer is barred from the channels of commerce by a secondary boycott, then he is compelled to coerce his employees into joining the union which is engaging in the secondary boycott or the union on whose behalf some second union is engaging in a sympathetic secondary boycott.

We submit that instead of removing the present restrictions against secondary boycott, the provisions in the existing law should be strengthened to cover the situation illustrated by the foregoing contract provisions and that it should be made unmistakably clear that such clauses are not permitted under the law.

Sympathetic secondary boycotts.—We desire, however, to point out that even in the cited clauses, the union has reserved the right, in effect, to invoke a secondary boycott only in the cases of a dispute between the union and another employer in the lithographic industry. If the provisions of the present law were eliminated as now proposed in House bill 2032, the unions could go even beyond the right they attempt to reserve in the foregoing clause. They could then engage in sympathetic secondary boycotts under the provisions of House bill 2032.

If the type of products produced by this industry are kept in mind, such as labels, for example, the members of the committee can readily see the extent to which pressure could be placed on employers in the lithographic industry to refuse to produce goods for other enterprises with which some union had some kind of a dispute. In such cases, we submit that the secondary boycott is not any necessary adjunct to collective bargaining, but is, in effect, a form of economic warfare designed to injure innocent third parties and should therefore be completely prohibited.

As small-business men, the members of this industry should be required to bargain with the representatives of their employees only on matters relating to wages, hours, and working conditions under which the employer's shop operates. They should not be compelled to let the union determine whose goods may come into their plants nor to whom their products may be sold and delivered. When an employer is denied the opportunity to ship his goods in commerce and to have them further processed or handled for him by other employers, there is invoked against him a sentence of economic death. That is the effect of the secondary boycott. By closing the channels of commerce, the secondary boycott gives the union the arbitrary right to force employers out of business or to require them to accede to unsound, uneconomic demands, and to deal with only those suppliers and customers who are approved by the union. This becomes a "White List" which is as objectionable as a "blacklist."

We therefore respectfully submit that instead of eliminating the provisions of the present law governing secondary boycott, such provisions should be strengthened by the Congress.

EMPLOYER'S RIGHT TO SELECT HIS EMPLOYEES; THE CLOSED SHOP AND THE CLOSED UNION

The third right of the employer which we desire to emphasize and which we urge be maintained in the law is the employer's right to select his employees. Under existing law, the closed shop is definitely forbidden, but union security is provided by authorizing a union shop. Under House bill 2032, the closed shop is not only restored but all State laws which have the effect of prohibiting discrimination in employment in favor of union members or have the effect of prohibiting any requirement that employees as a condition of employment first join a union are nullified.

We submit that no problems of union security require the closed shop, and that this is particularly true when there is a closed union or when membership in the union and the right to work at a certain craft are limited and restricted by severe apprenticeship requirements and limitations.

The closed shop establishes labor monopolies.—We appreciate that the argument is generally made that the antitrust laws should not apply to labor unions because the service of an individual is not a commodity. This argument overlooks the fact, however, that under the closed shop system, the labor union is a monopoly. Whether the labor monopoly is to be regulated under the existing antitrust laws or under other laws, it must be recognized that every monopoly must be subject to regulation in the public interest.

To the individual employee, as well as the small employer, the matter of the closed shop is of tremendous importance. The right to work is the right to live. When any organization is given the right to determine when, where, or how a man can work, if at all, that organization is given very drastic control over the individual, inconsistent with our democratic form of government.

In skilled crafts such as those employed in lithographic production, there is necessarily a training period of some appreciable length. In many jobs the employer is automatically restricted in selecting employees by the skills required for the job. The union, by its constitution and by its contracts in this industry, has established a low ratio of apprentices to journeymen. By maintaining such restrictions on number of apprentices and by being permitted to use its economic strength to force the closed shop on this industry, the union would maintain a definite control of production. A closed shop and the limitation of apprentices would control the expansion of the industry and may limit it so that many persons who otherwise could be employed in this industry will be denied such opportunity of employment. By thus inducing an unnecessary scarcity of labor and of particular skills, the union can promote a kind of economic waste for which the public must pay in higher prices and less production.

The actions of almost a score of the States of the Union in forbidding the imposition of any requirement that employees must be members of the union before employment is just another example of the American feeling against monopolies, even labor monopolies. The need to protect employees' rights to organize and bargain collectively does not require the closed shop nor the establishment of labor monopolies. The Members of the committee and of the Congress must recognize that history has shown us that monopolies, whether of labor or industry, tend to exercise against the public the full force of power which monopoly gives them. For this reason it is the established policy of this country that monopolies are to be avoided and prohibited and that, in the cases such as public utilities where monopoly is deemed to be inevitable, then they are to be regulated to avoid and prevent the abuse of monopolistic power and to protect the public.

Many members of this association operate their plants in States in which the State legislature has, by formal enactment, forbidden the closed shop. We submit that the Congress of the United States should not lightly or casually overrule the considered judgment of these State legislatures and that therefore the provisions of House bill 2032 which is designed to nullify a large number of State laws should not be enacted by the Congress of the United States. Only the most overwhelming national necessity would appear to justify the Congress of the United States in thus overriding the actions of these State legislatures. No such overwhelming necessity exists in this case. In fact, it is neither necessary nor desirable to promote monopolies of labor.

THE MUTUAL OBLIGATION TO BARGAIN COLLECTIVELY

Under the existing law, the duty to bargain is a mutual, reciprocal obligation of the employer and of the union. In our opinion, the proposed change in House bill 2032 by which the unions are relieved of all obligations to bargain with the employer is not well founded. This inequality is so apparent and so obviously unjustified that prolonged argument should not be necessary to establish that the present law should be maintained on this point.

The international unions, as well as their various local units, should be under obligation to bargain collectively with the employer and as a condition of bargaining should be required to accept full responsibility for the contract if it maintains the right to veto agreements acceptable to local unions. At the present time, the international unions, by policies expressed in their constitutions, or adopted at national conventions and by policies imposed on national officers, determine the terms and conditions of the contracts and compel the local unions to agree with the employer on these terms and no others. This control of collective bargaining by the international union is usually made apparent on the face of the contract by clauses such as the following:

"This agreement is subject to the approval of the international president. Such approval does not, however, under any circumstances, make the internationalresponsible for the observance of this contract, or any breach thereof."

The bargaining relations in the lithographic industry are in general between employers and the Amalgamated Lithographers of America, an affiliate of the Congress of Industrial Organizations. This union, formerly an affiliate of the American Federation of Labor, is a mature union of many years experience in collective bargaining. It claims a membership of approximately 20,000 lithographic employees.

Techniques of collective bargaining in the lithographic industry.—The collective bargaining in the lithographic industry is not on a national or industry-wide basis but is by individual employers with the local unions or by small groups of lithographic employers in metropolitan areas. In general, the international union prescribes the terms under which the local union may contract with the individual employer or the area group of employers. The international union thus has a complete control over the collective bargaining but is under no obligation to assume any responsibility. In many instances, individual employers or groups of employers have, through negotiations, come to complete agreement with the local union with which they are dealing but have been unable to complete the contract because of the refusal of the international union to sanction the bargain made by the local union.

We, therefore, submit that instead of relieving unions of the obligation to bargain collectively as is proposed in House bill 2032, there should be added to the existing law a requirement that the international union, if it controls collective bargaining in its industry, must become a party to the contract and accept responsibility therefor. In the alternate, the international union should not be permitted to prevent a local union from executing a contract, the terms of which have been accepted by the local union in collective bargaining with the employer.

The present inequality in bargaining strength between the international union and the small business enterprises which compose the lithographic industry is ilustrated by other techniques used by the international union in addition to the above-mentioned technique of prescribing the terms of the contract and vetoing agreements accepted by local unions. By reserving to itself the right to veto any such agreement, the international union can force any dispute between it and the employer (even though there may be no dispute between the employer and the local union) to a strike and immediately thereafter the international union could, if House bill 2032 is adopted, employ the secondary boycott. By applying the secondary boycott to a customer of the employer whose plant is on strike, the international union can prevent that customer from receiving and using the products of the employer even though such products were completed before the strike was called.

In a similar manner, the secondary boycott could be employed, if authorized as now proposed under House bill 2032, to prevent employers who are engaged in making lithographic plates or supplying other raw materials or finished or semifinished products to the employer whose plant is on strike from continuing to supply for such employer. The small-business man subjected to this kind of economic force could not survive against it.

The international union, in the course of forcing a group contract on an area and refusing to accept any other terms, can carefully select small individual units which are to be called out on strike, permitting the competing units to continue to operate. This method has been employed in this industry. By this method of selection of the individual plants against whom a strike may be called, the international union has in its hands a weapon and a bargaining strength far superior.

to the strength of any small lithographic enterprise. The small lithographic enterprise of limited assets and resources could not survive a long strike of this sort, and could not resist successfully such secondary boycott.

The law should establish an equality of position which would permit the small-business men, who are now under restrictions which prevent them from presenting a united front, to engage in a common lock-out or other common defense in order to meet these tactics of the international union.

In the economic conditions which are present today and which are anticipated to continue in the near future, this inequality in bargaining position, unless corrected promptly by remedial legislation, could easily result in the complete domination of the industry by the international union and in the elimination of any small enterprises which the international union desires to put out of business.

Therefore, we submit that there is needed a strengthening of the present Federal labor law so as to permit employers, particularly those engaged in group or area bargaining, to unite and to use all necessary economic force and strength to bring themselves to a position of equality in bargaining with the international union.

UNION RESPONSIBILITY

As indicated in the foregoing discussion of the obligation to bargain, unions should not only be required to bargain collectively but also to accept responsibility to adhere to the bargain thus negotiated.

We know of no other field in human relations in which one party is entitled to insist that the other party assume contractual obligations without assuming some obligations under the contract also. It is of the very essence of a bargain that both parties who agree to the bargain be bound by it.

Obviously, neither party is effectively bound unless there is some adequate method of enforcing his obligation to abide by the conditions of the contract. In all other fields of contracts, when a situation arises in which one party refuses to abide by his obligation, the other party has recourse to the courts.

In all other contracts, any corporations or organizations which act through agents or employees are bound to see that such agents or such employees live up to the duties and obligations assumed by the corporation or the other organization under its contract. There is no reason why the unions, including the international unions, should not accept the obligation to see that their agents and employees do not engage in breaching or nullifying the contracts entered into with employers in collective bargaining. The provisions of the Labor-Management Relations Act, 1947, which imposed certain responsibilities on unions for their own acts, and for the acts of their agents and employees, should be maintained in the law. The provisions of the existing law which permit recourse to the courts, especially the Federal courts, for suits by and against unions should be maintained and preserved in the law. The international union which dominates the bargaining should be compelled to become a party thereto and accept full responsibility therefor.

We appreciate that it is frequently urged against the foregoing argument that unless there is preserved the right to quit work, then employment becomes involuntary servitude. We submit that this theory was never well founded and was certainly well destroyed years ago, particularly in a decision by Mr. Justice Brandeis in the case of *Dorchy* v. *Kansas* (272 U. S. 306), in which he said: "Neither the common law, nor the fourteenth amendment, confers the absolute right to strike."

The right to strike is, of course, a right which may be waived by the parties in a collective-bargaining contract, and when so waived the parties should be compelled to adhere to their contract.

This responsibility for actions in violation of a contract or in violation of law should apply to actions which promote illegal secondary boycotts, and the same right of recourse to the courts should apply in such cases. Particularly, there should be the right to hold the organization responsible for the acts of its agents and its employees since it is only through agents and employees that an organization such as a labor union or a corporation may act. As noted above, the right to injunction against acts which cause irreparable injury should be maintained in this field as in all others.

In general, the unions should be required to accept the same degree of obligations under a contract as the employer and to the same degree should be subject to the same means of enforcing the contract or securing relief for breach thereof.

NULLIFICATION OF STATE LAWS

House bill 2032 proposes to nullify certain State laws which forbid the closed shop or the imposition by contract of a requirement that before employment a prospective employee must be a member of the union. As we have dealt with this subject under the heading of the closed shop and the employer's right to select his employees, no extended argument will here be made.

We do, however, believe it is desirable to point out that the whole development of the law in this country has until recent years been to allow the local community, and the sovereign State, to work out their problems individually as each might determine. We believe that this method should still be followed. Except in cases of utmost necessity, such as in cases where it is necessary to override State laws in order to promote free flow of commerce between the States, the Congress should not overturn or nullify the laws of the States. In enacting into law the provisions of House bill 2032, the Congress would be overriding State laws which relate directly to the rights of individual citizens of such States to secure employment and would be authorizing procedures under which those citizens may be debarred from employment in their own States contrary to the provisions of State laws. Since this is no isolated example of one single bit of legislation in one State, but is a matter on which almost a score of State legislatures have adopted laws favoring the citizen and his right to work, we submit that the Congress should permit those laws to remain in full force and effect.

THE SO-CALLED NONCOMMUNIST AFFIDAVIT

We believe that the provision in existing law which requires union officers to file the so-called non-Communist affidavit has thoroughly established its usefulness and should be maintained in the law.

In support thereof we suggest to the committee that the employer who is engaged in collective bargaining has the right to know whether or not the leadership of the union which is bargaining with him is bargaining in good faith on demands made for the benefit of employees or is bargaining on demands made in the execution of a program designed to overthrow our constitutional form of government and impose a totalitarian state upon us.

The individual worker is entitled to know whether the leaders representing him are Communists or otherwise in favor of overthrowing the Government of the United States by force or violence. The attitude of the individual worker on this is well demonstrated by the history of decertification elections. In 35 decertification elections held in the period from January 1 to May 15, 1948, the nonfiling unions lost 30, or 86 percent of the elections.

The general public has the right to know who are public enemies.

We submit that this provision has already resulted in much good to the public in general and particularly to members of labor organizations in that it has aided in eliminating from many unions leaders who were unrevealed Communists or otherwise in favor of overthrowing the Government of the United States by force and violence.

We see no objection to requiring the employer who seeks to invoke the processes of the National Labor Relations Board to file a similar affidavit. In fact, we believe that anyone who turns for help to the Government of the United States and any of its agencies, whether the National Labor Relations Board, the Federal Mediation and Conciliation Service, or the courts may well be required, as a condition of the assistance which he seeks, to advise the Government that he does not advocate and is not engaged in any effort to overthrow the Government by force and violence.

HEALTH AND WELFARE FUNDS

We object to the provisions of House bill 2032 designed to repeal the provisions of existing law with reference to payments by employers to health, welfare, and similar funds.

We believe that the problems involved in the establishment of health, welfare, insurance, or pension programs are so complex that they should not become a part of collective bargaining. These matters involve important actuarial problems: compliance with State insurance laws; compliance with tax laws, State and Federal; investment of trust funds under applicable statutes; and are frequently complicated by multiple unions and multiple plants of a single employer, sometimes in more than one State.

If, however, these matters are to remain in the field of collective bargaining, then we submit that the provisions of the existing law should be strengthened rather than repealed. In our opinion, there should be a requirement that every such program be actuarially sound and that before any contributions are deducted from the pay of employees by the employer or payments made by the employer himself, the specific benefits to be paid from the fund should be unmistakably set forth. If the employer is to participate in such a fund, the requirement of the law should be for joint administration in every detail thereof and for impartial arbitration in the event of the failure of the parties to agree upon the benefits to be paid, the methods of handling claims, the insurance companies to be selected, the investment of the funds, or any one of the innumerable important details involved in such a program.

NATIONAL EMERGENCIES

While no strike or series of strikes in the lithographic industry are likely to be considered as national emergencies which endanger the public health and safety, nevertheless the members of this industry, as members of the general public, are interested in the statutory provisions dealing with national emergencies. We earnestly recommend to the committee that no change be made to weaken the provisions of the existing law which protect the public from the dangers involved in national strikes which may injure the public health or safety.

We urge that the rights to injunction so frequently invoked within the past 18 months by the President of the United States be maintained and be clearly stated in the statute.

We recognize that the argument has been made that the President has inherent rights to secure such injunctions and to take measures to protect national health and safety from threatened danger. We suggest, however, that such rights were not recognized until after the enactment of the Labor-Management Relations Act, 1947, and we believe that the repeal of those provisions will remove such rights. In other words, we submit that the President does not have such inherent powers. The power, and the duty, to protect the public welfare rest on the Congress under the provisions of section 8 of article I of the Constitution of the United States.

We believe the Congress is embarking on a dangerous course if it accepts the theory of such inherent powers in the Chief Executive. We respectfully remind the committee that, as stated in the tenth amendment to the Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Acceptance of the doctrine of inherent powers, or of the power to take such action as a crisis or emergency may appear to require, would destroy the constitutional reservation of the rights in the people.

RIGHTS OF INDIVIDUAL EMPLOYEES

Finally we urge that there be maintained, as now provided in the existing law, the right of the individual employee to refrain from joining a union or engaging in union activity. The individual employee has more need for protection against coercion and intimidation than has the organization of employees. The employee should be permitted to decide for himself whether he will join or not joint any union and whether he will work or strike. We should be protected against mass picketing and violence designed to keep him from exercising his right to work.

CONCLUSION

We therefore respectfully urge on the committee that the existing law be maintained except for such amendments as may be needed to establish more clearly the prohibition against secondary boycotts, the responsibility of unions, particularly international unions, and proper control over the trust funds collected for health, welfare, insurance, or pension programs.

SUMMARY OF STATEMENT BY WALTER J. MUNRO, COMMISSIONER OF CONCILIATION, UNITED STATES DEPARTMENT OF LABOR, BEFORE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, ON FEBRUARY 16, 1949, RELATIVE TO S. 249

Appearing before the committee as a former member of the Conciliation Service, Mr. Munro was invited to make some observations on title II of the Thomas bill, S. 249.

Title II establishes the United States Conciliation Service within the Department of Labor and provides for the appointment of a Director of the Service, to be appointed by the President and confirmed by the Senate, who will work with and under the direction of the Secretary of Labor. It provides the procedure to be followed by the Conciliation Service, and it establishes as the policy of the United States the inclusion of a provision for voluntary arbitration in labor-relations contracts.

Mr. Munro stated that he had been appointed as Commissioner of Conciliation in the Department of Labor in September 1942 and resigned from that position March 1, 1947. He said in those 4½ years, covering the war period, he worked under the Director of the Conciliation Service and under the direction of the Secretary of Labor. He said he was stationed at Minneapolis, Kansas City, and Chicago, and from time to time worked throughout the territory, including Des Moines, Milwaukee, Cleveland, Ohio, and at times Detroit.

He said that since 1947 he had been associated with the Brotherhood of Railroad Trainmen, and particularly with A. F. Whitney, its president, on matters pertaining to public relations. He made it clear that in appearing before the committee he did not speak for the Brotherhood of Railroad Trainmen nor for President Whitney, but solely as a former Commissioner of Conciliation in the United States Department of Labor.

He said that title II of the Thomas bill, entitled "Mediation and Arbitration," which establishes the Conciliation Service within the Department of Labor, is the broad, straight highway that leads to industrial peace. He said that the experience of the Service from 1913 down through the war years, to and including 1947, did no tjustify the abrupt transfer of the Division of Conciliation from the Department of Labor, as was done in 1947 by the Eightieth Congress when it enacted the Taft-Hartley Act.

He said that he thought that this action on the part of the Eightieth Congress was hasty, probably a mistake, and as far as he could find out was certainly on the basis of information or assertions or testimony that was very shallow or very slim when measured against the performance of the Service, particularly during the war years. He said that he thought that perhaps the Eighty-first Congress might well review the evidence and reconsider the subject in justice to all conciliators and the fine work which they had done through the years.

He was asked by Senator Donnell if he had read or heard the testimony given by Mr. Ching (present Director of the Mediation Service under the Taft-Hartley Act). He said that he had. Senator Donnell then asked him: "Would you be kind enough to give us your view?"

Mr. Munro said that respect for the Conciliator or for the Conciliation Service is something that does not originate with management or with labor, that it originated within the mind and within the attitude and the make-up of the Conciliator and is conveyed to the parties with whom he comes on contact in helping them, as a friendly third party, to effect a settlement.

Mr. Munro said that the organic act of the Department of Labor imposed upon the Secretary of Labor the obligation to pursue those things which would result to the welfare of labor. He said that in his conception the way to do that was to do it in such a just way, such a fair way, and in such a right way that it would not injure at any time any manufacturer. He said that he thought he could, as Secretary of Labor, be faithful to the power imposed by the Government under the organic act in the Secretary of Labor, and do it in a way that you would almost think he was working in the interest of the manufacturer. He said he thought he could do exactly what the Congress intended the Secretary of Labor to do and do it in the interest not only of labor, but to the benefit of labor, business, the farmer, and all society.

He said also that the organic act specifically empowered the Secretary of Labor to act as a mediator or a conciliator, and that the Secretary of Labor had done so impartially and effectively from 1913 through 1947.

He challenged the statement that Mr. Ching made in his testimony that: "The experience of the present Service has been that dozens of the most able mediators who found the doors of many employers closed to them for years under the

Department's administration, found such doors ajar when they introduced themselves as representatives of that independent agency."

He said that in 4½ years as Commissioner of Conciliation he had never encountered a closed door, and that in all of his experience he had never heard of a closed door to the Conciliation Service, with the single exception of the J. I. Case Co. of Racine, Wis. He suggested that this statement by Mr. Ching be investigated and an opportunity provided for Mr. Ching to sustain it with facts. He said that the Conciliation Service within the Department of Labor would provide the cooperation of the Secretary of Labor and the Under Secretary of Labor and the Assistant Secretaries of Labor, and that this cooperation could well prove highly effective.

He said he thought that the transfer of the Conciliation Service from the Department of Labor in 1947 was a terrible reflection on the 250 conciliators who had done such a magnificent job; that it was a reflection on Dr. John R. Steelman, who at one time was a Commissioner of Conciliation, for many years the Director of that Service, and at present the assistant to the President of the United States. He said he thought it was a tremendous reflection on the marvelous Secretary of Labor Frances Perkins. He said that he thought Congress did not intend this reflection, but the transfer did carry that reflection and that it had disturbed the morale of the Service.

Asked by Senator Pepper if he thought there would be more and better industrial peace under the Thomas bill than under the Taft-Hartley Act, he said that that was true without any question.

He spoke of the fine cooperation which had existed between the Conciliation Service within the Department of Labor and with the State conciliation service in Minnesota and he complimented Senator Humphrey, who, as mayor of Minneapolis, had cooperated with the Conciliation Service in preserving and developing industrial peace in that area during the war years. He also complimented Senator Thye, who was at that time Governor of Minnesota, who likewise cooperated splendidly with the Conciliation Service.

In conclusion he said that an investigation would show that the Conciliation Service deserved to remain in the Department of Labor; that in his opinion it should have a larger appropriation and provided with more people because it was the avenue that runs directly to industrial peace and not the one that runs to the divorce court with a lot of trouble. He was referring to the National Labor Relations Board and the many opportunities provided in the Taft-Hartley Act leading to the National Labor Relations Board.

Mr. Munro's testimony before the committee was consistent with the plank in the Democratic platform which urged the strengthening of the Department of Labor and the return of the Conciliation Service to that Department. It was consistent with the position taken by the President of the United States prior to, during, and since the campaign, and endorsed the position taken by Secretary Tobin in the administration bill S. 249, now before the committee for consideration.

His testimony was in violent opposition to the position taken by Mr. Ching, present Director of the Federal Mediation Service, as established under the Taft-Hartley Act.

AMERICAN HOSPITAL ASSOCIATION,
Washington 6, D. C., March 15, 1949.

HON. AUGUSTINE B. KELLEY,
Chairman, Labor Subcommittee, Committee on Education and Labor,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN. The American Hospital Association respectfully urges that the present exemption of nonprofit hospitals from the National Labor Relations Act be retained. The present act (sec. 2 (2)) contains the following provision:

"The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholders or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

It is our sincere belief that collective bargaining cannot apply in its usual sense to hospitals. A hospital is not a commercial enterprise; it is a public-service institution. There are no profits to bargain with; collective bargaining rules for industry as applied to hospitals can only be at the expense of the patient, and hospital costs have already increased substantially because of inflationary costs of materials and salaries.

The majority of the hospital beds in the United States are owned and operated by units of government and, as such, along with other agencies of government, are exempt from the National Labor Relations Act. However, the voluntary nonprofit hospitals perform in their community a similar function. This function is so important that it cannot be interrupted without jeopardy to the lives of sick people. Where a strike may be injurious to a commercial enterprise, it could be disastrous in a hospital.

The American Hospital Association includes in its membership more than 4,000 hospitals of all kinds—long-term hospitals, such as those for mental cases, tuberculosis and chronic disease, and short-term hospitals for general medical and surgical care. These hospitals may be owned by governmental units, such as city, county, State, and Federal, or by voluntary agencies, such as churches, religious orders, nonprofit corporations and associations, and a comparatively small number of proprietary hospitals which operate on a commercial basis. In our membership we include nearly 90 percent of all of the general hospital beds of the Nation. Our primary aim is the improvement and safeguarding of the quality of hospital care so that it may be made adequately available to all citizens.

Of the 1,425,000 hospital beds in the United States, approximately 832,000 are in long-term hospitals, nearly all of them operated by units of government. The remaining 592,000 hospital beds are for general medical and surgical cases, the type of care required by the average citizen when he needs to go to his community hospital. Of these approximately 592,000 general beds, about 258,000 are operated by units of government—city, county, or State, and some Federal. Some 36,500 beds are in proprietary hospitals which frankly operate on a commercial basis. The remaining 334,500 beds are in hospitals owned and operated by churches, religious orders, nonprofit associations, and corporations. Approximately 51 percent of the general hospital beds of the Nation are in nonprofit hospitals.[1]

However, these nonprofit hospitals take care of 76 percent of the people who require hospital care. In 1947 total admissions to governmental hospitals were 3,587,000. But, in the same period, 11,578,000 persons were admitted to nonprofit hospitals.

Thus the burden of general hospital care in this Nation is carried by nonprofit hospitals. This group includes many of the teaching hospitals in which doctors, nurses, and other health personnel are trained. It includes many large institutions in urban areas. It also includes innumerable small hospitals in small communities which depend on the hospital as a community service in time of need.

It is unnecessary to point out the danger of interruption of hospital service. Many hospitals have duplicate power plants which could instantly supply electricity within the institution if the outside source of power should fail. Interruption of hospital service would immediately place the lives of sick persons in jeopardy; as we have said, it could be disastrous.

Yet there have been a very few occasions when hospital service has been interrupted in a community because of the attempts of overaggressive labor organizers to call strikes in order to gain recognition of their union. In such cases, some

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[1] The 1947 census of hospitals of the American Medical Association shows the following classification of beds:

Classification	Government	Voluntary
Long term:		
Mental	662, 452	18, 461
Tuberculosis	70, 041	11. 287
Special	19, 323	28, 689
Institutions	20, 505	2, 011
Total long term	772, 321	60, 448
Short term: General	257, 884	334, 569
Admissions to general hospitals	3, 580, 422	11, 084, 773

employees have been called out on strike in order to force other employees to join a union. The community has reacted in these instances by rallying immediately to the support of the hospital. Volunteer workers have joined with employees who refused to go out on strike, and in every case, hospital services have been maintained and the strikes have been unsuccessful.

We believe that such labor activities have been due to a misunderstanding of the basic principles involved in the collective-bargaining processes and in a failure to understand that the position of nonprofit hospitals is different from that of commercial industry.

The fact is that the unique character of the nonprofit hospital makes collective bargaining impossible, in the usual sense of the term as applied in industrial enterprises. The management of nonprofit hospitals is usually in the hands of trustees who are prominent citizens of the community which the hospital serves. It is the responsibility of these trustees to conduct the hospital in such a manner that it provides the utmost of service to the community in the most efficient manner possible. Protection of the patient is, of course, the cardinal principle of hospital service. Thus, funds which come to the trustees of the hospital, either from patient income, charitable contributions, gifts, or endowments, must be divided equitably so as to provide adequate service to the community at reasonable cost to the patient and without injustice to the employee.

Thus collective bargaining in a hospital pits the employee against the patient; demands of employees are inevitably met at the expense of sick people. But while employees can be represented in collective bargaining, the sick people cannot be, except as the trustees represent them and the community as a whole. This is one of the difficulties of collective bargaining as applied to any public service.

In the normal collective-bargaining situation, labor and management sit down to bargain over the distribution of the profits from the commercial enterprise. But the hospital is not a commercial enterprise and there are no profits to bargain for. If labor's demands increase, they do so by adding to the cost of hospital care.

As a matter of fact, the constant increase of costs of hospital care reflects a continuing increase in the cost of wages and salaries. A recent survey of a representative county in Indiana showed that in the past 10 years the total amount paid for hospital wages and salaries had increased three times. Ten years ago wages approximated 50 percent of the total cost of hospital care; they now constitute 60 percent. This is an indication that hospital salaries have increased in keeping with living standards and costs, and that nonprofit hospitals, on the whole, have been fair and equitable in their distribution of the hospital dollar between wages to employees and services to sick people.

We fully recognize that exemption from the National Labor Relations Act imposes a responsibility upon hospital trustees and administrators to be fair in their dealings with employees. We believe that the record of hospitals shows that this responsibility has been fairly met and any other attitude would be contrary to all tenets of those who assume responsibility for providing hospital service to the community. We are proud to say that there has been a minimum of labor difficulty in the hospital field. The American Hospital Association is active in promoting the best personnel practices. Working conditions in hospitals are probably more favorable than in many commercial industries. There is no seasonal unemployment; hospital employment is stable and permanent, providing a maximum of security. And the humanitarian motivation of hospital service tends to provide satisfactions which are not possible in commercial enterprise.

The unique position of hospitals has been recognized in many of the State labor laws which have exempted nonprofit hospitals from their provisions. There have been occasional legal decisions and informal rulings holding that hospitals are not engaged in trade and commerce to the extent necessary to bring them within the jurisdiction of labor laws. Community resentment at labor activities in hospitals has been frequently demonstrated. We believe that the essential character of the nonprofit hospital has been generally recognized and accepted.

However, we believe that it is better to have the law clarified in a situation where such clarification is easily possible. Under the old Wagner Labor Relations Act the impropriety of collective bargaining was pretty well recognized, but the uncertainty of the situation in the minds of overeager labor organizers occasionally created difficulties for hospitals which threatened deterioration in service and jeopardy to the community. The existing law clarified the situation so that there can be no such doubt. We respectfully urge that in any revision of the National Labor Relations Act there should be no return to the confusion which existed under the provisions of the previous law and which might be seriously increased if Congress failed to show clearly that it approves of the services which nonprofit hospitals render to the people of the Nation.

Respectfully submitted.

Joseph G. Norby, president, American Hospital Association; John N. Hatfield, president-elect, American Hospital Association; Charles S. Wilinsky, M. D., senior member, board of trustees, American Hospital Association; John H. Hayes, chairman, council on Government relations, American Hospital Association; Rt. Rev. Msgr. George Lewis Smith, President, Catholic Hospital Association; Chester C. Marshall, D. D., president, American Protestant Hospital Association.

MAGNETIC METALS CO.,
Camden, N. J., March 17, 1949.

HON. JOHN LESINSKI,
Chairman, Committee on Education and Labor,
House of Representatives, Washington 25, D. C.

DEAR MR. LESINSKI: In response to the recent invitation of Senator James E. Murray, chairman, Committee on Expediting Hearings, to this company to submit a written statement for consideration by the United States Senate Committee on Labor and Public Welfare of our views on Senate bill 249, and the subjects currently being covered by the public hearings of the committee thereon, we respectfully offer you the following:

In our own experience we have encountered abuses of good labor-management relations which we believe any constructive legislation on that subject should attempt to correct. We list them and comment briefly on each herewith:

1. *Misrepresentation of fact as to the effect of a forthcoming election.*—In the local area it is a common occurrence for a union in advance of an election to determine a collective bargaining representative to issue statements to the effect that "if you are against the union, it is not necessary for you to cast a ballot." This is a misrepresentation of fact by which a union seeks to secure a majority of the votes cast and thus determine the election contrary to true majority sentiment. It is a false representation of the rule of law governing all elections by secret ballot under the democratic process that the votes of those eligible to vote but not voting are presumed to be cast in agreement with the majority of those actually cast. It is not enough that legislation leave the employer free by counterstatement to combat such misrepresentation. Where there is proof of such fraudulent inducement to remain away from the polls, the result of any election procured by such means should be invalidated.

2. *Demands in collective bargaining that the employer agree categorically not to resort to any remedies provided by laws, State or Federal, regulatory of union practices.*—By demands of this kind, enforced by threat of strike, Ford Motor Co. and RCA-Victor have been forced to write the provisions of the Labor-Management Relations Act of 1947 out of their labor relations. This result, it is submitted, is directly in the face of public policy. This company resisted such a demand in 1948 only by its willingness to suffer strike rather than put the law of the land on the shelf. Duly elected legislators are as much the representatives of organized labor as any agents sent to a collective-bargaining table. Indeed, they are more so, being constituted representatives, and the Constitution, as the basic law of the land, being the underlying foundation of all contractual dealing. In a conflict of requirements of these two sets of representatives, there can be no question which is overriding. Such demands by labor unions should be declared unfair labor practices, and forbidden.

3. *Inclusion of plant guards in a bargaining unit of production and maintenance workers.*—Experience has uniformly demonstrated the impossibility of the maintenance of plant safety and discipline through men themselves subject to union disciplinary measures. This essential function of industrial operations should not be crippled by a conflict of loyalties. The 1947 act forbade the National Labor Relations Board to certify a unit combining rank-and-file employees with plant guards, but in units functioning under old certifications, or without certification by NLRB, unions have proven adamant to requests that it be agreed plant guards be excluded from the unit.

4. *Retention of bargaining rights by unions not qualifying before NLRB.*—The employer is now faced with an insoluble dilemma if confronted with a union which has not and will not qualify with NLRB. If he bona fide believes it

represents a majority of his work force and negotiates a contract, even if he has taken the precaution of certification by an impartial tribunal, though one lacking legal jurisdiction, as a State labor relations board, he may then, in midterm (see Kaiser-Frazer Parts Corp., 80 NLRB 158, case No. 20–RC–233) find a rival certified to him by NLRB, and be under a double obligation, his legally enforceable contract with one, his legal duty to bargain with another.

5. *Demands for check-off of union dues by unions not entitled to union security provisions.*—The Labor-Management Relations Act of 1947 forbade union-security provisions in contracts except after determination of employee sentiment by NLRB measures. Nonqualifying unions were unable to resort to those measures. to justify union-security demands. However, with parties free to agree on check-off of union dues, amicably, and to make the check-off renewable automatically from year to year, maintenance of membership by unions was a foregone conclusion. Few men, the cost of whose union membership was deducted from wages by check-off anyhow, would bother to terminate membership. Thus the act's silence on one point effectively defeated its own declared policy in another section, and unions not qualifying before NLRB are as strong in membership as ever, through check-off. The very freedom of employee sentiment which the act purported to protect has thus been sacrificed.

We would very much appreciate the committee's consideration of these points.

Respectfully yours,

Magnetic Metals Co.,
D. C. Langworthy, *Treasurer.*

Illinois Association of Merchandise Warehousemen,
Chicago 5, Ill., March 16, 1949.

Committee on Education and Labor,
House of Representatives, Washington, D. C.

Gentlemen: We are opposed to the proposed labor-relations bill; we urge that it be defeated and that the present Taft-Hartley law remain in effect as passed by the last Congress.

The Taft-Hartley law should not be changed. It has resulted in a diminution of strikes and man-days lost due to strikes, and it has improved the relations between employer and his employees. It has equalized the rights of employers and employees, which the National Labor Relations Act, as originally passed, had not done.

The new bill restricts the ban on secondary boycotts and on jurisdictional strikes without any justification. The restrictions as contained in the Taft-Hartley law should remain. The public and third persons should not be involved because of a dispute between a union and an employer or because of a dispute between two unions.

The provision of the closed shop should not be removed. The right to work should not be limited to only members of a participating union. The right not to belong to a labor union is as important as is the right to belong to one under our system of government.

The proposed legislation would eliminate a number of proper safeguards now contained in the Taft-Hartley law. All of these should be retained and may only be done by a retention of the Taft-Hartley law as it now reads.

Among these provisions which should be continued is the requirement that labor unions and their representatives file affidavits of non-Communist affiliation. The National Labor Relations Act gives the labor unions and their representatives certain rights which they may exercise against employers. It is no more than right, therefore, that unions and their representatives should be required to file affidavits that they are not affiliated with an organization which advocates the overthrow of existing governments by force.

The right of free speech on the part of the employer should be retained. Labor unions and their representatives under the National Labor Relations Act have had full freedom in this regard, but unfortunately the employer has not had such freedom until the Taft-Hartley law was enacted. He should have such freedom so long as he uses no threat or coercion and makes no promises of any benefit.

The definition of collective bargaining as contained in the Taft-Hartley law should by all means be retained. Employers should have freedom to reject a proposal made by a labor union and should not be required to make a counter proposal if the exigencies of his business dictate that he follow that course.

Economic strikers who have quit their jobs to enforce their demands and who have been permanently replaced should in all fairness lose the right to vote in an election in the plant in which they quit their employment.

One of the principal objections to the original National Labor Relations Act was that it was one-sided. It imposed no restrictions on labor unions and their representatives. The Taft-Hartley law equalized that condition. Unfair labor practices may be continued by both employers and employees and should be subject to the remedial processes of the National Labor Relations Board. It would be tragic to remove the restrictions upon labor-union' conduct or to limit those restrictions to the few which are contained in the proposed legislation.

Employer should be free from continual organization in his plant. There should be a time when a union may not petition for an election; and, therefore, the restricting of elections to one a year as contained in the Taft-Hartley law should be continued. So also should be continued the provision that an employer may himself file a petition for an election, even though but one union is seeking representation. Prior to the enactment of the Taft-Hartley law, when but one union sought representation, the employer was absolutely helpless in the matter and could not bring matters to a finality by himself filing a petition. The union, if its representatives believe that they could not muster a majority, continued the agitation in the employer's plant and refrained from filing a petition for certification, resulting in continued agitation in the employer's plant and disruption of his business.

There should be a limitation upon the filing of charges, and the 6-month provision as contained in the Taft-Hartley law should be retained. Under past practices, prior to the Taft-Hartley law, charges could have been filed and not disposed of; and finally, when a complaint was issued because of an alleged unfair labor practice, such charges, no matter how old, had been added to the charge which resulted in the complaint being issued. In many cases, evidence available at the time of the filing of the earlier charges was no longer available.

Suits in the Federal courts by and against labor unions should be retained. In years gone by, labor unions looked upon an agreement with an employer as merely a scrap of paper. Under the Taft-Hartley law, such a contract has achieved the dignity to which it is entitled and has obligated labor unions to change their thinking with respect to the efficacy to such a document.

The right of an employer to adjust a grievance with an employee directly, without the interference of the union should be retained, and the provision of the Taft-Hartley law in that regard should be continued.

The 60-day cooling-off period prior to the termination date of an agreement for the purpose of negotiating charges should be retained. Labor unions should not be empowered to strike without giving the employer an opportunity to consider their demands. In the interest of harmonious relations between an employer and his employee, the existing provision in the Taft-Hartley law should be continued.

We believe that the Taft-Hartley law has not been in effect long enough to justify any change being made. We believe that much of the agitation against it is ill-founded and that, after an experience of several years more, most of the objections now existing against the Taft-Hartley law will be found to have been unfounded.

Very truly yours,

WARD CASTLE, *President.*

NATIONAL LABOR RELATIONS ACT OF 1949

MONDAY, MARCH 21, 1949

House of Representatives,
Special Subcommittee of the
Committee on Education and Labor,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., Hon. Augustine B. Kelley (chairman) presiding.

Mr. Kelley. The meeting will please be in order. The Chair wishes to read into the record an excerpt from a letter received from the Crucible Steel Co. of America. The Chair has a purpose in reading this. It is signed by Mr. French, assistant to the president, who appeared before this subcommittee. He said he—

> appreciated the intelligent and very evident interest shown by the members of the committee in the very important issues which were involved in the testimony.

He continues, in his letter to me dated March 18, 1949:

> It is a pleasant experience for a citizen to be treated in such a very pleasant and courteous fashion, and I believe that more citizens would be interested in testifying as to their opinions on proposed legislation, if they realized that Members of Congress are most interested in learning the sincere viewpoint of the electorate.
>
> Would you please be so good as to transmit my thanks to the other members of the committee, in case this is practical.

Mr. Kelley. The first witness this morning is Mr. James Carey, secretary-treasurer of the Congress of Industrial Organizations.

TESTIMONY OF JAMES B. CAREY, SECRETARY-TREASURER, CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Carey. Chairman Kelley and members of the committee, my name is James B. Carey. I am secretary-treasurer of the Congress of Industrial Relations. Mr. Arthur J. Goldberg, general counsel of the CIO and the United Steelworkers of America, has prepared a detailed and documented analysis dealing with the experience of the CIO under the Wagner Act and the Taft-Hartley Act and also containing our observations relating to H. R. 2032. I ask leave of the committee to file and to include in the record this statement and analysis of our general counsel. On behalf of the entire membership of the Congress of Industrial Organizations I strongly urge that the committee report out H. R. 2032 with the minor technical amendments contained in general counsel Goldberg's statement which has been filed with the committee.

In view of the detailed analysis of the law which has been presented to the committee by our general counsel I would like to confine myself to certain more general propositions. In the first place, I should point out that this committee is not considering the present law in a vacuum. Last November we had an election. In that election the issue which loomed largest and which was discussed most extensively was the legislative history of the Eightieth Congress. The Democratic Party went to the people to denounce the record of that Congress and to urge the people to repudiate the record of that Congress.

But the Democratic Party went to the people on no mere negative program of repudiating the Congress which had so wantonly disregarded the needs of our people.

In the recent elections the Democratic Party proposed a concrete program of social legislation to which the name the Fair Deal has been given.

Of all the issues involved in the record of the Eightieth Congress the most high-lighted was the labor issue. Through the length and breadth of the land the Taft-Hartley Act—the most prominent work of the Eightieth Congress—was debated and discussed. The Democrats made that law an issue. The Republicans defended it.

The people have spoken. They have made it clear that the Taft-Hartley Act is not sound labor legislation and that it must be erased from the statute books in the public interest. It seems hardly necessary to stress this matter before this committee. I am confident that the members of this committee are fully aware of the key significance of the Taft-Hartley Act in the recently concluded election.

Today the second-guessers and the Monday-morning quarterbacks are busy manufacturing tortured reasons to explain that the Taft-Hartley Act had nothing to do with the elections. They have even trotted out new polls in their desperate anxiety to misrepresent the popular will with respect to the Taft-Hartley Act. They are again using this discredited device.

Some of those soothsayers go further than merely attempting to misrepresent the attitude of the general public. They have even dared to suggest that union members, by and large, actually favor the Taft-Hartley Act. This is simply not true.

Make no mistake about it. The workers of this land are determined to see this law go. They are not fooled by loaded questionnaires prepared by the well-paid lobbyists of powerful corporations and monopolies. They are not taken in by fast-talking radio commentators who assume that union members are incapable of reasoning for themselves. They cannot be stampeded or intimidated by propaganda and employer pressure to surrender their convictions.

The workers of this land know this law and know what it means. They have seen the law in operation. They have seen how it has destroyed harmonious collective bargaining relations. They have seen how it has served as an incentive to induce employers to provoke strikes.

They have seen what the law has meant in terms of employer attacks on established contract standards.

In the 20 months in which that law has been on the books the workers of this country have learned some bitter lessons about labor relations.

They have learned what it means to have free collective bargaining destroyed by arbitrary restrictions and regulations. They profoundly resent a law which prevents them from agreeing with their employers on matters such as pensions, welfare funds, check-off and union security. They have seen the various groups in our national life who pay the greatest lip service to freedom of contract, hypocritically support measures which in the labor field make these concepts a fiction.

They have experienced one-sided injunctions and have asked themselves whether the oppressive old days are to return when the Government stacked the cards against them in their efforts to secure a better life through collective bargaining.

They have seen the entire collective bargaining process turned into an obstacle course of technicality, legalism and ambiguity.

They have seen employers revert overnight from attitudes of cooperation and good will to arbitrary, arrogant and antiunion positions.

They have seen the grievance machinery transformed from a device to promote harmony and good relations into a cold automaton which can only say "No."

They have seen the very arguments about the rights of the individual which were used to combat the 8-hour law, minimum wage laws and collective bargaining under the Wagner Act, again used to justify exploitation and individual bargaining.

They have looked at the clock of history and seen under their very eyes how it was turned back by the reactionaries in our country who never remember and who never learn.

I say to you that it is a piece of disgraceful deception to contend that the workers of this country have any illusions about the Taft-Hartley Act.

The workers of this land demand that this law and all its works be eliminated and that the administration bill reenacting the Wagner Act, with certain amendments, be restored as the law of the land.

The issue before this committee is not limited to its domestic aspect. The Taft-Hartley Act has had a terrific impact on our foreign relations. It is unfortunate that our foreign relations are considered by many persons merely a struggle against totalitarianism. The struggle with totalitarianism is part of the larger field of aiding the world to recover the economic balance that alone will assure ourselves of decency, peace, and the opportunity to provide our people with a higher standard of living. The Taft-Hartley Act has provided a main obstacle in this endeavor of ours.

This committee and the Congress must understand that the struggle with communism is taking place at the level of the workingman throughout the world and nowhere else. American labor has been engaged in the effort to point out to the workers of other countries that an atmosphere of free speech, free press, and free assembly is the most conducive to human happiness and well-being. The Communist Party, therefore, seizes upon the Taft-Hartley Act as a concrete illustration that the forces of reaction in America are gradually destroying the American labor movement. There is not any question about that. I have been in Europe on many occasions. Three of my journeys carried me into the Soviet Union. I know what is happening.

The Communists use the Taft-Hartley Act as a major vehicle for propaganda that is directed toward preventing the American labor movement from giving any leadership to the workers of other lands. A great deal of my time in Europe when I go over there is devoted to an attempted defense of our democratic way of life. I do not have, however, the opportunity to discuss these things until after the Communist Party has had its full opportunity of publicizing the Taft-

Hartley law among workers everywhere, as evidence of the reaction in this country.

Briefly stated, the real bona fide labor leader of Europe and his associates have difficulty in understanding how the American people can aid them, when they cannot even defend themselves against the conspiracy of American big business-men and the reactionary Eightieth Congress that produced the Taft-Hartley law.

All over the world millions upon millions of men who have dedicated themselves to the view that human beings can have abundance with freedom, are looking at the United States. Any failure or half-hearted contribution by the Eighty-first Congress to dispose of the Taft-Hartley law for all time, will give aid and comfort only to the Communists. It will provide corresponding discouragement for the anti-Communist leaders in the labor movements of this and other lands.

We cannot let these men down. We cannot talk out of one side of our mouth in foreign affairs and out of another side in the domestic field. By reenacting the administration bill we will tell these millions whose eyes are upon us that we mean what we say and that we are fully prepared in a domestic field to carry out the promises of our policies in the foreign field.

I should like, in conclusion, to read a message to the chairman of the committee from President Murray whose illness prevents him from being here today:

> Dear Congressman Lesinski: Your committee now has under consideration your bill, H. R. 2032, to repeal the Taft-Hartley Act and to reenact the Wagner Act with certain amendments. I strongly urge that this committee take favorable action on this legislation as rapidly as possible.
>
> The Taft-Hartley Act was passed in an atmosphere of prejudice and hysteria. The reactionary sponsors of that law successfully gambled on the emotionalism which was drummed up in connection with the postwar wage strikes. In addition to the appeal to prejudice the Taft-Hartley forces were helped by certain other factors.
>
> They recognized that few laymen would be in a position to analyze and expose the trickery and complex legalism which riddled the law. They hoped—and they were successful in this—that the very complexity of the new law and its confusing character would make it difficult to refute its promises and to uncover its traps.
>
> They were also aware of other things. They knew that only those intimately familiar with the labor scene and with the experience of employer practices in the Nation's factories, mines, and shops would be able to perceive how many of the innocent-sounding provisions of the law would work out in practice. They treated the law as though it were a series of doctrinaire pronouncements divorced from the reality of industrial life.
>
> We both know that these enemies of sound labor relations today have been stripped of their weapons. All our people recognize today that the Taft-Hartley Act permitted our labor policy to become party to emotionalism, hysteria, and bias.
>
> Almost 2 years of the Taft-Hartley Act and the gradual elimination of the tensions brought by a postwar period have brought understanding and wisdom.
>
> The working people of our country and the labor organizations which represent them have achieved a truly remarkable victory in the realm of education and enlightenment. They have brought home to all of our people the iniquities of this law. They have made it clear that the law represents the triumph of organized antiunionism and its congressional spokesmen. By dint of patient explanation and education we have made the people of our land understand the bitter lesson which this law has taught us, that it is a deadly weapon, loaded against labor.
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> The members of this committee are fresh from the people. Some of them have themselves experienced the iniquities of this law. You who have been through an election, who have debated this law on the hustings, know that the vast majority of people of good will in this land have no use for the law and have come to recognize its dangerous effects.

This is a mighty achievement, this process whereby the issues involved in labor legislation have been removed from the realm of abuse, emotion, and prejudice into the realm of logic and understanding.

It is a fine thing for the public welfare and good government when reason protects our voters against the assaults of unreason and bias. I am confident that you will give your approval to the legislation under consideration because your committee embodies this new approach of fairness and reason.

Sincerely yours,

PHILIP MURRAY,
President, Congress of Industrial Organizations.

Mr. Chairman, will Mr. Goldberg's statement be part of the record as requested?

Mr. KELLEY. Without objection, it will be placed in the record.

Mr. CAREY. Thank you, sir.

(Mr. Goldberg's statement will be found in the appendix following the close of today's testimony. See p. 1367.)

Mr. KELLEY. The Chair wishes to announce that we have as guests some distinguished gentlemen from Italy, Mr. Claudio Rocchi, head of the political and economic section of the Italian Republican Party, and Giovanni Canini, vice secretary of Italy's largest union confederation, sitting over at my left. They are here as guests of the ECA.

Mr. Bailey?

Mr. BAILEY. Mr. Carey, on page 2 of your formal presentation, I want to read from the fourth or fifth paragraph down:

> They have learned what it means to have free collective bargaining destroyed by arbitrary restrictions and regulations.

Would you mind for the benefit of the committee to relate some of those arbitrary restrictions and regulations?

Mr. CAREY. The arbitrary restrictions made complicated or actually prohibited by the Taft-Hartley amendments to the Wagner Act, such important subjects as welfare funds, questions of union security, and many other questions, including pensions and check-off and such, and make it difficult, and, in fact, impossible to negotiate in an atmosphere of free collective bargaining those provisions that were becoming the growing practice in American industry brought about through bargaining between management and labor.

Mr. BAILEY. Going ahead to the next paragraph, you say:

> They have experienced one-sided injunctions and have asked themselves whether the oppressive old days are to return when the Government stacked the cards against them in their efforts to secure a better life through collective bargaining.

Are you referring there to the practice following the First World War, where not only the Government, but big business as well, started out to break all the labor organizations, and fairly well succeeded in the early twenty's? I remember it led to an armed march of the miners in West Virginia, as the result of issuing mandatory injunctions and injunctions in ex parte proceedings. Is that what you mean?

Mr. CAREY. That is correct, sir. And I might say in the law as we understand it the only mandatory injunctions are directed against unions.

Mr. BAILEY. And not against the employer?

Mr. CAREY. There are no mandatory injunctions directed against the employer under this legislation.

Mr. BAILEY. And further to the bottom of the page, you say:

> They have seen employers revert overnight from attitudes of cooperation and good will to arbitrary, arrogant, and anti-union positions.

In that connection, I would like to remind you of the cross-examination of Mr. Wilson, of General Electric, when he appeared before the committee last week. I read into the record a paragraph from the existing contract between the UEW and General Electric, a paragraph that provided for the arbitration of all points on which they could not reach amicable settlement. It pointed to the fact that in two instances in which they had agreed to arbitration, after the arbitration award had been granted, they went to court to have the arbitration award set aside.

There is no redress from the employees in a case of that kind. That is a flagrant, unfair labor practice on the part of General Electric, and there was nothing that the employees could do about it. They could not get an injunction against the company for practicing unfair proceedings.

Mr. CAREY. Yes. Our office receives considerable mail indicating the extent to which employers who in the past had fair records in dealing with labor, now under this law become extremely difficult to deal with. In fact, we even have some employers who, after finding that it is better to get along with their unions, make an effort to make it appear almost a crime for management to establish harmonious relations.

Mr. BAILEY. You recall, Mr. Carey, in the agitation leading up to the passage of the Taft-Hartley Act, their war cry was "Joint responsibility under contract."

Mr. CAREY. Yes.

Mr. BAILEY. In this instance that I recited, the General Electric openly violated the contract because they could get away with it under the provisions of the Taft-Hartley Act.

Mr. CAREY. Yes; and there was another war cry, and that other one was also designed by the publicity representatives of the National Association of Manufacturers, that the fight must be labor unions against the public interest. And I might offer for the record a document of the National Association of Manufacturers published on June 25, 1946, where they set forth their whole program in agitating for the enactment of antilabor legislation, in which they contend that the Case bill did not go far enough. They set forth the use of the publicity mediums of the United States. And we have the record indicating the extent of expenditures made by the NAM to create the hysteria to bring about the enactment of the Taft-Hartley law.

They cited in this communication signed by the then president of the National Association of Manufacturers their success in having OPA destroyed. They even state in this that—

> We also knew that the public was strongly in favor of extending price controls without restrictions.

They say:

> At first businessmen * * * were reluctant to testify for industry at the House hearing on OPA. By the time of the Senate hearing, however, NAM's vigorous campaign had raised such public question about the desirability of OPA that Senators were overwhelmed with requests by industry to appear in opposition. Thus NAM's willingness to fight industry's battle was the action that really broke the ice and kept OPA from being extended unamended for a year.

Then they go on to say:

> The fight for labor legislation presented a different problem. Superficially it might appear that management, through the NAM, should have become the foremost sponsor of the Case bill, since it contained many constructive provisions. As a matter of fact, the core of the Case bill grew out of the recommendations of the management's allegation to the President's labor-management conference last fall—a meeting in which NAM played a leading role.
>
> Although NAM constantly pointed out the merits of the Case bill, both in formal testimony before congressional committees and to Members of Congress individually, it was decided that NAM should not spearhead the fight * * *.

Then it gave the reasons. And then they set forth the program they had in bringing about the enactment of the antilabor legislation.

It would seem, Mr. Chairman, that in view of this and the other activities of the NAM, they certainly should be required, as labor organizations and other groups are required, to register as people interested in directing the course of legislation and seeking enactment of legislation.

Mr. KELLEY. Without objection, it will be accepted and made a part of the record.

(The communication referred to is as follows:)

NATIONAL ASSOCIATION OF MANUFACTURERS,
New York 20, N. Y., June 25, 1946.

PRESIDENT'S REPORT

To the Board of Directors of Member Companies in the NAM:

Political expedience dominates the councils of the Nation today. Industry must repulse demagogic attacks on our enterprise system, by adhering to common purposes, policies, and strategy.

Exercising its responsibility for leadership of industry in this cause, NAM presents herewith a statement of our policy and strategy on the two major issues facing the American public today—the extension of OPA's price controls, and the placing of responsibilities on labor unions that are commensurate with their power.

NAM investigations have shown that price control is not a means of preventing inflation, but simply of disguising it. In fact, by restricting production, price controls actually have been feeding the flames, leading us toward a more serious inflation than would have occurred if controls were abandoned quickly.

There was a tendency within industry to blame this upon poor administration of the act, but NAM's study showed that with more than 8,000,000 items to be controlled even the best administration could not fail to have the effect of restricting production.

For these reasons, and because NAM is convinced that the principle of price control is inconsistent with the peacetime operation of our entreprise system, NAM concluded that it had no alternative except outright opposition to any extension of OPA. We realized that prices might go up temporarily if price controls were eliminated, because the inflation disguised by Government subsidies, black markets, deterioration of quality and other offshoots of OPA would become immediately apparent. We knew, however, that this would be true whether price control were eliminated in 1946, 1947, or at any subsequent time. We also knew that the public was strongly in favor of extending price controls without restrictions. We knew that the left-wingers—and many others who had not studied this problem exhaustively—would heap abuse upon us. But we felt strongly that the long-range interest of the American public must be placed ahead of any transitory public relations advantages for NAM.

At first businessmen, even though their production was being stifled by price controls, were reluctant to testify for industry at the House hearing on OPA. By the time of the Senate hearing, however, NAM's vigorous campaign had raised such public question about the desirability of OPA that Senators were overwhelmed with requests by industry to appear in opposition. Thus NAM's willingness to fight industry's battle was the action that really broke the ice and kept OPA from being extended unamended for a year.

The fight for labor legislation presented a different problem. Superficially it might appear that management, through the NAM, should have become the foremost sponsor of the Case bill, since it contained many constructive provisions. As a matter of fact, the core of the Case bill grew out of the recommendations of the management delegation to the President's Labor-Management Conference last fall—a meeting in which NAM played a leading role.

Although NAM constantly pointed out the merits of the Case bill, both in formal testimony before congressional committees and to Members of Congress individually, it was decided that NAM should not spearhead the fight for the Case bill for two reasons. First, though the Case bill would have been a long step in the right direction, it alone would not have brought about the full measure of industrial peace which our country so desperately seeks. If NAM had vigorously advocated the Case bill, a continuation of the vicious labor situation in this country after its enactment would have justified serious loss of confidence by the public in the recommendations advanced by management.

Secondly, today's issue is a struggle between organized labor on the one hand and the public interest on the other. If NAM had plugged for the Case bill with the fanfare of newspaper advertising, radio broadcasts, and widespread public relations efforts, after the fashion of our OPA fight, it would only have confused the issue in the minds of the people, leading them to believe that today's conflict is between organized labor and management, which it most certainly is not.

The President, placing the will of the CIO above the will of the people, vetoed the Case bill. This should demonstrate the need for vigorous teamwork by industry if this battle ever is to be won. Moreover, the fact that the House and Senate passed the Case bill in the first place dramatizes the fact that this is basically a battle between powerful labor leaders and the public interest.

It does not always take full-page advertisements and network radio programs to get results. For four long years NAM has worked vigorously for legislation which would inject some reason into the operation of the myriad Government agencies which have sprung up in the past decade. In many cases these agencies have been acting as prosecutor, judge, and jury, following rules of evidence and juridical conduct of their own contrivance.

Many organization—notably the American Bar Association—joined with NAM in the fight. The recent passage of the adminishrative law bill by Congress is, indeed, an encouraging conclusion to NAM's efforts, and evidence of the soundness of the strategy pursued.

There are many battles still to be won in our over-all struggle against the creeping tide of compulsory statism. The battle to reduce huge Federal expenditures is at hand. The battle for labor laws written in the public interest remains to be fought again. You and your directors are needed in this fight. The stakes are freedom itself.

Sincerely yours,

R. R. Wason, *President.*

Many manufacturers throughout the Nation, conscious of the vigorous public leadership which NAM has contributed to the fight to end OPA's price controls on manufactured goods, have asked me why NAM has not used the same dramatic technique in its advocacy of the Case bill. This report seeks to give an unequivocal response to such an inquiry.

The report has been sent to other officials of your company for verbal presentation to your board of directors. Because the subjects are of such keen interest to industry, it is felt that you, too, will want to review this report. It is our purpose to extend this practice, and to send you periodically similar discussions of NAM policy and strategy on major matters. Your comments on the desirability of this procedure will be much appreciated.

R. R. W.

Mr. Bailey. I have one more question, Mr. Carey. On page 3 of your presentation you say:

> The issue before this committee is not limited to its domestic aspects. The Taft-Hartley Act has had a terrific impact on foreign relations.

In this connection, I listened in on a radio forum last week in which I believe you participated, along with President Green, and there was considerable said about the necessity for making labor unions strong because they were the first line of defense against communism. I notice you have touched on it in this paragraph.

I have only about a minute and a half left. I would like for you to take the time to enlarge on that. That is on page 3, about half way down the page.

Mr. CAREY. As I stated in my testimony, I have traveled extensively in Europe, and I had three visits to the Soviet Union. There I studied the structure of the trade-unions and found they were regulated by government, their right to strike was limited, and the miserable conditions under which the people live in that country was ample evidence of the nature of their unions. The Taft-Hartley Act, with its provisions, is only an attempt to sabotage the American trade-unions, to make the unions instruments of Government, to limit the right of workers to withdraw their contributions to an enterprise, and to regulate the internal affairs of a union. It is difficult to explain to a worker in Europe that the American Congress is willing to assist and help workers in other countries improve their standards of living and at the same time attempt to suppress the democratic rights of the people, the workers, in forming their unions. It is hypocrisy for people to condemn them and at the same time sponsor legislation to create the same conditions that exist in Europe under the pretext of governing the American trade-unions.

So, the American Federation of Labor and the CIO, and all the other unions, without exception, are opposed to the vicious, punitive legislation of the Taft-Hartley law.

Mr. BAILEY. That is all.

Mr. KELLEY. You have 9 minutes, Mr. Irving.

Mr. IRVING. Mr. Carey, of course it has been testified here that the NAM had nothing to do with the subject matter in this bill. I think last Friday it was testified to. Do you have any comment to make on that?

Mr. CAREY. This letter, Congressman, indicated the plan they had in mind, and it provided the explanation to the employers, as to how the NAM was going to bring about the enactment of the antilabor legislation. In fact, we recognized that, and we heard about the letter. We did not read that letter in any of the newspapers of this country. It was part of this great conspiracy, so we took the simple device of sending the NAM a letter and requesting a copy of that communication. We told them we were aware of its contents, and we received it, and we are still looking for a time when the newspapers of this country, and the commentators, will investigate the real source of the Taft-Hartley amendments, and how they were brought about.

The NAM, through all its members, indicated the attitude it would take, and set forth in detail the amount, the millions of dollars they had spent in the publicity campaigns, how they sent material to teachers in the schools of our country explaining the need for this labor legislation in the public interest, and how their lawyers assisted in drafting the provisions, and whipped up the hysteria in this country. They are incorrect in saying they had a small part or no part in the enactment of this kind of legislation.

Mr. IRVING. From my own experience, I know there was information among the employers long before this act was adopted, or even the work begun on it, and the attitude was that they were going to teach labor a lesson, and were going to take care of them very shortly. I know that from my own experience. One thing that we have confronting us in this committee is the testimony of many employers and many other people that the act has been helpful and has been good, and it has increased the membership and wages have gone up higher than before the adoption of the act, and so forth. I have tried to explain my views on the matter, that the act has never fully been used for reasons that, at first, no one could understand the act, and no lawyer knew what it meant. We have a very fine labor lawyer in my district, and he is recognized as one of the outstanding labor lawyers in the country, and he could not interpret the many things in the act.

Then, I believe that the campaign, along in the early part of 1948, the word went out to soften up on the Taft-Hartley, the workings of it, and not to put it into full use.

Then, of course, after November 2, there was a great deal of thought given to the fact that the act might be repealed.

Could you say whether this act has been fully used, and what your opinions are as to why it has been more or less negative to a certain extent, although I realize it has hurt many unions in many places?

Mr. Carey. Mr. Congressman, I agree with you that this act has not been fully used. It was apparently designed to provide an opportunity when labor is in difficulty, growing out of mass unemployment, and to make it weaker than our economy will permit labor to be today, and we will feel the terrific impact of this legislation, fully enforced; however, I would not care to indicate that this law, as it is administered today, is a mild bit of legislation.

We hear statements made that labor is faring very well under this legislation, but that is just not so. This legislation makes it extremely difficult to organize new workers. I have heard statements about comparing the number of elections that were won today by labor as against before the Taft-Hartley. A great number of those elections are elections that are required under these amendments covering workers already organized. We are not making the headway in organizing new workers in other plants which have been unorganized that we have made before, but Counsel Goldberg, on page 3 of his brief, indicates the number of elections in which the number of people participated, and the year before the Taft-Hartley, and in the first year of the Taft-Hartley operations, which indicates the terrific beating that workers are taking today under the way the Taft-Hartley Act is being administered. I stated earlier in my testimony, or in reply to a question, that the chief counsel of the National Labor Relations Board is making it a virtual crime for workers, through their unions, to get along with employers. I am sure that Senator Taft would take issue with that, in his way of interpreting the law. He contends that the agreement arrived at between the longshoremen on the west coast and the longshoremen's employer association is illegal and against the law because of the hiring-hall provisions of that agreement. They had had a long struggle there, in part brought about by the hysteria created, that gave comfort to some of the longshoremen employers who wanted to weaken the employees; but the real issue there was a decent collective-bargaining contract that would provide relations between the employers' association and the union. Finally, through the help of the National CIO office, we worked out a sound agreement between the Warehousemen's Union and the employers' association. We have stability guaranteed by that collective-bargaining contract, underwritten by the national CIO in that particular area.

Mr. Denham has decided that it is unfair to have management and labor get along together, so he has decided to reopen a hearing, a hearing that was first called for in the early stages of this dispute by a petition from the employers' association. And now the employers' association wants to have that petition, that charge, dismissed; and Denham wants to reopen it and declare that that contract is not in accordance wih the law.

May I read for the record a letter addressed to Robert N. Denham, Esq., general counsel, National Labor Relations Board, Washington, D. C., under date of March 17, 1949, in regard to the International Longshoremen's Union, case No. 20CB19, and so forth.

> DEAR MR. DENHAM: The shipping industry on the Pacific coast is now operating under collective-bargaining agreements recently negotiated which have so far operated successfully. It would be extremely unfortunate from the standpoint both of the industry and of the public if the present harmonious employer-union relationships were to be upset by an order of the National Labor Relations Board requiring a change in hiring practices. Waterfront Employers' Association of the Pacific Coast and the Pacific-American Shipowners' Association therefore join with the International Longshoremen and Warehousemen's Union and the National Union of Marine Cooks and Stewards in asking that the proceedings against those two unions now pending before the Board be dismissed.
>
> Very truly yours,
>
> WATERFRONT EMPLOYERS' ASSOCIATION OF THE PACIFIC COAST.
> PACIFIC-AMERICAN SHIPOWNERS' ASSOCIATION.

Signed by Brobeck, Phleger, and Harrison.

Mr. KELLEY. The gentleman's time has expired.

Mr. IRVING. Thank you?

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. I am sorry I missed your testimony, Mr. Carey, and for that reason I will refrain from discussing or going into that part of it.

However, I would like to ask you a question or two. You perhaps have read the testimony of Mr. Morgan, and some of the other witnesses who have disclosed the persons responsible for the Taft-Hartley law, I presume; have you not?

Mr. CAREY. Yes, sir.

Mr. PERKINS. And, from a study of that testimony, I believe the record is uncontradicted that labor receives no consideration at any time through the—I mean when the act was being written by the Eightieth Congress; is that true?

Mr. CAREY. That is true. And, furthermore, Mr. Congressman, labor was indicted under that arrangement. These very same people a short time ago were considered soldiers of the production line; and today these workers and their unions are considered enemies of our Nation, and the law is an insult to the dignity of every working man in this country.

I also might say, Mr. Chairman, that that legislation and the procedure under which it was drafted destroys the confidence of the American people in our democratic processes, and it creates ill feeling on the part of workers as to the processes of our Congress, when agents of employers can come down and usurp the role of legislators in drafting and presenting legislation of that nature. We sometimes wonder whether or not this country is moving in a direction of having corrupt legal procedures.

Mr. Perkins. And I also presume that you read Mr. Morgan's statement where the Republican National Committee paid him $7,500 for his technical services in the drafting of the Taft-Hartley law, and where he further stated that Representative Halleck, from Indiana, and ex-Representative Hartley determined the policies, and he, just from a technician's standpoint, provided the language for those policies.

Mr. Carey. Yes, sir; that is true. I also read that.

Mr. Perkins. That is all.

Mr. Kelley. Mr. Jacobs?

Mr. Jacobs. Mr. Carey, I have a question here. I am like the fellow who was looking for an honest man with a lantern a good many centuries ago; I have had a searchlight out trying to find an answer to the question in regard to the Taft-Hartley law, under section 8 (b) (4) (D) as to jurisdictional disputes between crafts, which is forbidden as an unfair labor practice—that is, forbidden to labor unions as an unfair labor practice—and under section 10 (k) there is a provision for an award to be made in a craft dispute.

The question that I want to ask in regard to those two sections is whether or not there is any provision in the Taft-Hartley law where an award can be enforced by the union to which it was made; that is, the union that won the award?

Mr. Carey. Sir, that is one of the reasons why the Taft-Hartley amendments to the Wagner Act are not sound labor legislation, because those provisions can only be understood by a lawyer, and I have difficulty, quite frankly, in even following the paragraphs titled or numbered 10 (c), (b) subsection 259, and the various other devices put in there, which I have stated was designed to create confusion.

Quite frankly, I have heard a great deal about the large number of jurisdictional disputes in the labor movement, and it was cited that most of them are in the building-construction field. Most generally, it is a hazy field as to whether you import or export building materials across State lines, and the law is not designed to cover the building-construction field. There were a great number of provisions put in that law; and, quite frankly, they lifted the worst provisions out of the 237 pieces of antilabor legislation that was put in the hopper of the Eightieth Congress, and designed as highly complicated, confusing, and unworkable propositions.

We made studies and provided a very detailed report, and presented it in the record prepared by our general counsel; and, I think, perhaps the lawyers can have a considerable amount of fun. In fact, I might say, Congressman, there are people today who are building a career out of these Taft-Hartley amendments. They get paid to do nothing else but serve corporations, to use this Taft-Hartley bill, and bring out the "sleepers" that it contains. Jerry Reilly is one, and we have a great number of others who have a lifelong career under the lawyers' full-employment bill in this kind of legislation.

Mr. Jacobs. I take it you are not familiar with any such provision where such a law could be enforced?

Mr. CAREY. It is not enforceable, as we understand. One lawyer might say it is enforceable, and another might say it is not; but, as we understand, it is not enforceable under the Taft-Hartley law.

Mr. JACOBS. That is all.

Mr. KELLEY. Mr. Wier?

Mr. WIER. Mr. Carey, it has come to my attention during the 6 weeks that we have been listening to arguments about labor relations, both under this act and the Wage and Hour Act, that this country has a problem to solve in its economic field—up to this time it has not been solved—and that is the inequality between the millions of workers south of Mason and Dixon's line, and those millions above Mason and Dixon's line, where you have two different standards of living.

A great deal has been said about the Taft-Hartley Act and what it has done in labor relations.

In the last 3 or 4 years, your national organization and your international organization have done considerable work south of Mason and Dixon's line, attempting by contracts and collective bargaining to raise the standards of those millions of people. Have you had success in that field?

Mr. CAREY. We have had success in a measure, despite the operations of the Taft-Hartley provisions of the law. That makes it virtually impossible in some areas, and difficult in most areas; but, I might say it is not just in the South; it is in many parts of this country where, through the provisions of this law, the Government appears, and is, in many instances, behind the employers in preventing the free organization of workers.

A textile-workers' representative will appear and give detailed testimony regarding the efforts to organize in the South, and the obstacles confronting them as contained in this law.

Mr. WIER. Were you having some success up to the enactment of the Taft-Hartley Act in your relationships, not only as to the workers but as to the community and as to the people of the South, in the operations of organizing workers?

Mr. CAREY. Yes, sir; I might say that, despite the activity of the NAM, the workers of this country and the union representatives do not believe that the attitude expressed by the NAM and those that appeared in support of the Taft-Hartley law before congressional committees seeking further amendments represent, by and large, the attitude of the American employers. We were having throughout this country, through the order of democratic process and collective bargaining under the Wagner Act, an improving relationship with the American employers; we had growing organizations in the South, and a greater degree of national unity brought about through the accomplishments of labor and management working together, and eliminating our economic problems.

Mr. WIER. Would you agree with the evidence which has been presented to this committee in that field that the process of organization of the workers and the collective bargaining has improved the living and economic conditions considerably in the South?

Mr. CAREY. It has, yes, sir; but it has a long way to go as yet.

Mr. WIER. In the last 2 years, or the last year and a half of the Taft-Hartley Act, particularly under that clause, there was a lot of stress laid on that clause here by employer groups that reverts back to the right of free speech by both parties since the enactment of the Taft-Hartley Act.

Have your organization groups encountered a revival of free speech on the part of the employer, or what is your reaction to this free speech interpretation of Denham in the Taft-Hartley Act? Is it free speech?

Mr. CAREY. Mr. Congressman, anyone who reads the American newspapers, or who would review the reports of the NAM, would see that it indicates the employers have enjoyed free speech beyond any question in this country. They have pretty much influenced the editorial policies as well as the news columns of our papers, and they have employer spokesmen on the radio today, day in and day out, and they have had free speech in their contacts with the workers, and there has been no question of it at any time.

Mr. JACOBS. Will you yield to a question?

Mr. WIER. Yes.

Mr. JACOBS. Was one of those commentators Fulton Lewis?

Mr. CAREY. I would say the one I had in mind was Fulton Lewis. I read the report received from the textile workers indicating their experience under the Taft-Hartley provisions and also the change that has taken place from the Wagner Act days to the Taft-Hartley bill.

> Since June 1947, opportunities for the organization of unorganized textile plants have decreased noticeably. In the 18 months that preceded the act, the Textile Workers Union of America participated in 337 elections for 127,419 workers. Of these, we won 174 elections for 63,034 workers and lost 165 elections in plants employing 64,385 workers.
>
> But since June 1947 we have participated in only 205 elections covering 65,444 workers. Of these, we won 122 elections covering 24,046 workers, and we have lost elections in 83 textile plants employing 41,398 workers.

And this is at a time when this union has increased its organizational activity and its efforts in organizing the workers in the textile mills of the South.

Mr. WIER. Let me ask you this as a final question, Mr. Carey:

It is only by experience that we get the answer. You cannot battle legislation or acts of life. Do you have plenty of activity now in your organization to attempt to interpret and process questionable acts, as well as the law, under the rules and regulations of the Labor Board? What has been the experience of the CIO generally in attempting to get action and process complaints, grievances, and unfair labor practice charges against an employer through the National Labor Relations Board?

Mr. CAREY. If the complaint that is sought is directed against an employer, it is almost an impossible proposition to receive action by the Board.

Mr. WIER. Why?

Mr. CAREY. They contend that the reason the delay is extended is because there are so many cases before the National Labor Relations Board at the present time, and they are required under the law to process and give priority to the employer complaints, and they do just that.

Mr. WIER. Does the law say that?

Mr. CAREY. The law says that—at least, it is administered in that way. There are certain cases required under the law where the question of boycott is involved, and other matters of that nature, that it be done that way. So the long delay makes the Board, in the opinion of the workers, not an impartial Government agency as designed, but to protect the employers that are interested in preventing organization of unorganized workers. The Board, as has been administered under the Taft-Hartley law, is a vicious instrument to do injury to the labor movement, and the chief counsel of that Board, Counsel Denham, looks upon his position as being just that. He himself admits the unfairness, but he contends he cannot do anything about it. He says it is true, it is unfair, but he has to carry out the provisions of the law, regardless of what that may do to the labor-relations situation. In fact, in talking with Denham about this longshoremen's situation, he admits that it would be better for the Board to stay out of the case on the west coast, where the relationship to stabilize the situation has been brought about through collective bargaining, but he contended to me that he has to enforce the law, and the law takes priority over the objections that the management and the union have in that instance, and his action may result in a labor dispute out on the west coast, where collective bargaining under the agreement has about reached harmonious relationships.

Mr. Kelley. The gentleman's time has expired?

Mr. Smith?

Mr. Smith. You are a representative of the CIO?

Mr. Carey. Yes, sir, and I am secretary-treasurer of the Congress of Industrial Organizations.

Mr. Smith. And anything you say represents the opinion of the international CIO?

Mr. Carey. Yes, sir.

Mr. Smith. How many international officers and people who are on the international pay roll are here in the room this morning?

Mr. Carey. Those that are expected to testify, sir, and perhaps some additional ones. In fact, most of them who are here will appear as witnesses, but I have no accurate number of the people who are here.

Mr. Smith. This gentleman is not going to testify, is he?

Mr. Carey. He is a staff assistant, our counsel, Arthur Goldberg. I might say that he is here available to answer any questions you may have.

Mr. Goldberg. I believe the Congressman was not here to hear my response to a question by the chairman of the committee. I said I would be glad to answer any questions, but there were so many witnesses—however, I would be glad either to testify or not to testify.

Mr. Smith. I do not care how many witnesses are here; that is your right, but there has been a good deal of attention paid here in the past about Mr. Wilson bringing down three or four of his employees, and that was what I was talking about. If you want to bring a hundred, it is all right with me.

Mr. Carey. Mr. Congressman, I have no objection to Mr. Wilson bringing down his associates. My objection to what Mr. Wilson said is quite different than his presence here.

Mr. Smith. I am putting it simply on a qualitative basis as to how many people come here to represent——

Mr. Carey. I do not think, Congressman, I made any statement suggesting the employer representatives be limited; in fact, I might say there has never been a time in the history of the labor movement where the workers objected to the employers being represented, and there has never been a case where a worker was fired because he joined an association of employers. The employers have free activity to engage in the activities they are engaged in, and we are asking the Government to protect the rights of workers to engage in that same free activity of self-association without interference.

Mr. SMITH. And you do not object to the employer having the right of free speech?

Mr. CAREY. We certainly do not; but I object to the people implying the employers were ever denied the right of free speech.

Mr. SMITH. Do you believe in the hiring halls?

Mr. CAREY. I certainly do, sir.

Mr. SMITH. That is a policy of the CIO?

Mr. CAREY. No, sir; that happens to be a method found by the employers and by the unions to meet the situation peculiar to the waterfront problems, and if the employers and the unions find that the most desirable way to meet their problems, I do not think those of us who are not involved in those particular difficulties should impose our views.

Mr. SMITH. You are familiar with the bill under consideration here now, I believe?

Mr. CAREY. Yes, sir.

Mr. SMITH. Do you know who wrote it?

Mr. CAREY. I have an idea.

Mr. SMITH. Who?

Mr. CAREY. I think the National Association of Manufacturers did most of the work, associated with——

Mr. SMITH. I am talking about the present bill, the Lesinski bill.

Mr. CAREY. The Lesinski bill was written to meet the commitments made to the people of this Nation in the last campaign. The Lesinski bill is not a complicated or difficult bill.

Mr. SMITH. Did you have anything to do with the writing of it?

Mr. CAREY. I made speeches all over the country——

Mr. SMITH. I asked you whether you had anything to do with the writing of the present Lesinski bill.

Mr. CAREY. No, sir.

Mr. SMITH. Do you know where it was put together?

Mr. CAREY. I have an idea it was put together in the administration circles.

Mr. SMITH. Which is their right, is it not?

Mr. CAREY. I would think so, certainly; but, sir, may I point out that there is quite a difference between hiring lawyers, working for nongovernmental organizations involved in the preparation of legislation, as against having people associated with government prepare legislation.

Mr. SMITH. I imagine that is rather a matter of personal opinion. Do you believe in jurisdictional strikes?

Mr. CAREY. No, sir.

Mr. SMITH. Do you believe in secondary boycotts?

Mr. CAREY. No, sir.

Mr. SMITH. Do you believe in financial reports of unions?

Mr. CAREY. Pardon?

Mr. SMITH. Do you believe in financial reports of unions to their members?

Mr. CAREY. They all make them. Certainly, I do.

Mr. SMITH. Do you think that is all right in the field of legislation?

Mr. Carey. No, sir.

Mr. Smith. You do not think that is right?

Mr. Carey. No, sir, it is unnecessary. I am required under the law to make a detailed financial report, and I have been doing it for years.

Mr. Smith. Do you mean to tell me every member of the CIO union throughout this country received a copy of your financial statements?

Mr. Carey. No, sir, no more than every citizen of the United States gets a copy of the budget of our Government; but I do say this, sir——

Mr. Smith. That is available, though, is it not?

Mr. Carey. And so are the reports.

I am required to make the report to the executive board, the members of the CIO, in such a way they are easy enough for them to understand, and I have been doing it, and I might point out the business administration union in this country—and I cite an example—CIO is superior to the business enterprises and it would be no difficulty to look into it to see where or whether there is any manipulation of funds. One thing we are proud of is that you, or any other member of this committee, can cite a racketeer in the CIO, and I might cite instances where other groups which receive less attention than labor unions, could not produce as good a record as that.

Mr. Smith. Do you believe in the closed shop?

Mr. Carey. Certainly. I believe that every citizen of the United States, every person living in the United States, should be a citizen, and I believe they should have all the rights and privileges, and I certainly believe every one who accepts the benefits of collective bargaining should be a member of the union; and I think through the operations of that provision management would be dealing with the union where all the workers affected by the actions of the union would be able to give expression and have a voice in the affairs of the organization.

And may I add, Congressman, that the simple reply to your questions about jurisdictional strikes and boycotts, I would not want that to be misunderstood to mean that you can abolish boycotts or jurisdictional strikes by legislation any more than you can abolish divorces by legislation, and bring about the elimination of head colds by passing a law. There are some situations that have to be dealt with on a practical and human basis.

There are some boycotts that are justified and should be engaged in, and there are some that should not be engaged in; but like patent disputes, it would be unfortunate of this Congress to say, "We hereby outlaw disputes growing out of disputes over patents."

Mr. Smith. You think the Eightieth Congress was out of step with public opinion in this country?

Mr. Carey. I think the Eightieth Congress was out of step with public opinion of this country, and I think a great mistake was made when they interpreted editorials as representing the ideas of the people. I think they are particularly out of step if they think the people want any provisions of the Taft-Hartley Act.

Mr. Smith. Do you think the Seventy-ninth Congress was out of step?

Mr. Carey. Yes, sir; and I think——

Mr. Smith. And if the Eighty-first does not repeal the Taft-Hartley they will still be out of step?

Mr. CAREY. Yes, sir. I think they will not redeem the confidence of the people if they do not repeal the Taft-Hartley Act and restore the Wagner Act, with a few amendments brought about after consideration.

That is all.

Mr. KELLEY. Mr. Carey, what do you think about placing the Mediation and Conciliation Service in the Department of Labor—do you think it should be there, or should be an independent agency?

Mr. CAREY. Sir, as an administrator—and I am required to assist in the administration of the affairs of a free and substantial organization—I would say that they should have the Conciliation Service under the direction of a department of the Government, and under the direction of a Cabinet member, as I would suggest every agency of Government should have some orderly process in dealing with questions like the question of authority on the floor. It is question, I think, which has been kicked about and made a political football. Certainly the Conciliation Service made a splendid contribution to this country under the Department of Labor. Congress, in its wisdom, placed it there in the first instance, and I think that is where it properly belongs. I do not think an employer, at the present time, as head of the Conciliation Service, is sufficiently familiar with it to say that could not be conducted in a very beneficial way. I think the Department of Labor would be the proper place to have the Conciliation Service, and we could have a splendid record of achievement for that branch in that way.

However, the CIO believes that is a matter to be dealt with by the administration.

And I might point this out: It might be a jurisdictional dispute of the kind raised just previously, and I do not think the Taft-Hartley Act governs it, however.

Mr. KELLEY. Of course, one of the things the Eightieth Congress did was to weaken the Labor Department, and practically destroy the Conciliation Service as it existed. The proper approach would have been for it to strengthen it instead of to weaken it; is that not right?

Mr. CAREY. That is particularly true, because in the world today there is a campaign going on to destroy the confidence of working people in democratic institutions, and during that period the Eightieth Congress should have directed its activities toward strengthening the Department of Labor, and thereby strengthening the confidence of the American people in the Government.

We set forth on pages 33 and 34 material regarding that particular question in the brief prepared by Arthur Goldberg.

Mr. KELLEY. Did you read the report of the Committee on Executive Expenditures in the Eightieth Congress, when they had Mr. Denham before them, and they discovered Mr. Denham was taking jurisdiction over the smallest of companies in the United States where they had labor disputes, in companies with three or four employees, and he had decided that it would come under his jurisdiction because the articles which they bought to sell were bought outside of the State? There was a great deal of surprise manifested by that committee at the time, but it just goes to show that on one side of its mouth the Congress was talking about curbing the authority and the jurisdiction of administrators, and then, out of the other side of its mouth, it gave to Mr. Denham, chief counsel, more authority and more jurisdiction than had been given before to any Administrator, and they did not discover that until after the bill was written. Are you familiar with that?

Mr. CAREY. I am, sir, and Denham goes even further, beyond the broad discretionary powers he has under the law, and commits abuse after abuse, and he is, I understand, one who believes he is a czar of management-labor relations in this country.

Mr. KELLEY. He is, under the bill; there is no appeal, is there?

Mr. CAREY. But there is no need in our democracy for such a thing as that. Czars are quite foreign to our concept of our way of life. The people should live together.

Mr. KELLEY. One of the purposes of the Taft-Hartley bill that was told to us so frequently when we were considering the bill in the committee, and I think it has appeared in the newspapers, and the commentators have expressed an opinion about it, was that the purpose of the bill was to free the rank and file members of labor unions from the influence of their labor officials or labor leaders.

Mr. CAREY. Yes.

Mr. KELLEY. The elections that were held under the Taft-Hartley bill for decision on the union shop definitely proved that not to be true, because about 98 percent of all of the elections—and they had to be elections of the majority of the membership, and not of those present—98 percent voted for the union shop, which certainly was convincing argument enough that the rank and file members were satisfied with their leadership.

Mr. CAREY. Yes, sir; and it is suprising too for a labor leader to give expressions on matters pertaining to labor, a labor leader has to win an election supervised by the Government; but Gerard Reilly or Charles E. Wilson, or anyone else, can come down and express views about labor situations and internal matters of trade-unions without having the kind of credentials a labor leader is required to have and I think by and large even Senator Taft would admit that that provision about shop elections is a mistake and should be removed. He has already stated that. And I think a 98 percent vote in Federal-conducted elections would be sufficient indication of hypocrisy involved in this kind of legislation as to whether workers need protection from their unions. The workers in this country pretty much support their unions and by and large the workers in this country honor and respect the labor leaders, and you could put in a goldfish bowl all the difficulties that go on because of labor leaders, and I say that from my own personal knowledge. You can be sure if there were any difficulties, Westbrook Pegler would have published them and they would have been contained in a great number of papers in the country.

Mr. KELLEY. Is that not true with a great number of members of organization, and even nonorganized groups, that they followed some leadership in the days before labor organizations became so widespread, and the open shop was the prevailing thing in industry?

Who controlled those men? The industry bosses did. They followed that leadership. If they do not follow the leadership of their own group, they will follow leadership of subversive groups. Do you think that is true?

Mr. CAREY. I do.

Mr. KELLEY. That is all the questions I have.

Mr. Irving. Will you yield?

Mr. Kelley. Yes. I have a minute left.

Mr. Irving. There is one thing that has been bothering me, and that is at the time of the passage of the bill and veto of the President, and so forth, he predicted the bill would lead to strikes and dissension. It has been brought out that these results have not come about. My opinion is that labor members and labor leaders in general are law-abiding citizens, and they thought the best way to handle the situation, rather than to involve themselves in things like that, was to exercise their constitutional rights and try to change the Congress and the lawmakers, and that is the reason for those particular results not developing, and there is a possibility if the law stays on the books, and unemployment becomes prevalent, that we may have more of that situation.

Do you agree that possibly that was the attitude of labor, that they were going to go about this in a constitutional manner and try to eliminate the law—or the worst features of it—by electing more reasonable people to the Congress of the United States?

Mr. Carey. Yes, sir; and they still have that idea in mind. I might say there has been a great deal of misinformation put out that the Taft-Hartley law is responsible for the splendid relationship that exists, say, in the steel industry and other industries of mass production, in mass production industries, and they take credit for that; but the contract negotiated in the steel industry that brought about and guaranteed the harmonious relationship between management and labor was a 2-year contract negotiated before the Taft-Hartley Act and, in fact, the Taft-Hartley Act would make illegal the negotiations of that same contract today, because it would prohibit the same kind of security provisions that is in that contract.

I would like to indicate a feeling of gratitude as an American citizen to the American workers in their patience in following the proper procedures in dealing with their problems, because they should be commended and I think the American working force in this country have a record of producing in war and in peace beyond any other section of the American society.

You take the legal profession, the medical profession, or the educational profession, or any other, and they would not have a record of production similar to the American mass-production worker in this country, and I think they deserve not antilabor legislation but a better approach in assisting them and meeting their problems.

Mr. Kelley. The Chair wishes to announce that we have some distinguished gentlemen who came in as guests, and I am going to introduce them to the audience and the committee:

Mr. Claudio Rocchi, Mr. Giovanni Canini, and Mr. Pasquale Montanaro, who are leaders of the Italian labor movement.

Also Mr. Giulio Pastore, representative of the Italian Government.

Will you gentlemen please rise? [Applause.]

Mr. Velde, do you have any questions?

Mr. Velde. I have no questions.

Mr. Kelley. That is all for Mr. Carey and Mr. Goldberg.

Mr. Goldberg, do you want to make a statement?

Mr. Goldberg. Mr. Chairman, I do not have a statement, but I should like to sit here with Mr. McDonald, the secretary-treasurer of the

United Steelworkers of America, with your permission and, as I said, I would be glad to answer any questions.

Mr. KELLEY. I want to thank you, Mr. Carey, for appearing this morning.

Mr. CAREY. Thank you very much.

Mr. KELLEY. We will now hear from Mr. Buckmaster, president of the United Rubber Workers.

May I present Mr. G. L. Patterson, general counsel for the United Rubber Workers, who will accompany Mr. Buckmaster.

You may proceed, Mr. Buckmaster.

TESTIMONY OF L. S. BUCKMASTER, PRESIDENT, UNITED RUBBER, CORK, LINOLEUM, AND PLASTIC WORKERS OF AMERICA, CIO

Mr. BUCKMASTER. Mr. Chairman and gentlemen of the committee, my name is L. S. Buckmaster. Since September 1945 I have been and am now president of the United Rubber, Cork, Linoleum and Plastic Workers of America, International Union, which is affiliated with the Congress of Industrial Organizations. I am also a vice president of the CIO, and a member of the executive board of the Congress of Industrial Organizations.

At the outset of my statement concerning legislation which is pending before the Congress of the United States, I want to express my sincere appreciation for this opportunity to express my views.

The Congress of the United States is considering bills which have been introduced in both the Senate and the House of Representatives to repeal the Taft-Hartley law and reenact the Wagner Act with certain amendments. The organization which I am privileged to represent expressed its opposition to the passage of the Taft-Hartley law by appearing before the Senate Labor Committee at the time that law was being considered by the Congress. Our opposition to the passage of the Taft-Hartley law was based primarily upon the ground that the Taft-Hartley Act would hamper and eventually destroy free collective bargaining, that it was unworkable, and that it undertook to punish labor by the imposition of unreasonable and unwarranted penalties and restrictions. Two years of experience with the Taft-Hartley law has more than confirmed the views which my organization expressed when that law was under consideration by the Congress.

The views which I am going to present to you here today are based upon the experience of a union which has not felt any of the crushing blows of the Taft-Hartley law that some unions have. The rubber workers' union has been able to utilize the facilities of the National Labor Relations Board because our organization filed the required financial statements and affidavits within 90 days after the effective date of the Taft-Hartley Act on August 23, 1947. Consequently, the rubber workers' union has been able to petition for certification of representatives, to intervene in cases filed before the National Labor Relations Board by rival organizations, and to file unfair-labor-practice charges. Except for one unfair labor charge filed by an individual against one of our local unions, which was dismissed, the rubber workers' union has not been charged with unfair labor practices. This union was a party defendant to a lawsuit filed by one employer for the recovery of $500,000 because certain individual employees of a local union were claimed by the company to have engaged in unauthorized strike action 1 hour before the 60-day notice period required by the Taft-Hartley law had expired. Fortunately that suit was voluntarily dismissed by the employer in the interest of promoting better relationships. This union has not been on the receiving end of any injunction issued under the Taft-Hartley law. These things are mentioned to you so that you will know that the views which I express are founded upon careful consideration of the effect the Taft-Hartley law has had upon collective bargaining and industrial relations and not because the rubber workers' union has suffered from the many penalties that it might have suffered under the Taft-Hartley law.

The mere fact that we have not suffered the penalties of injunctions, unfair-labor-practice charges, or claims for damages does not mean that we have not felt severely the impact of this law. On the contrary, almost every function of our organization has been hampered and made more difficult by it. We have experienced the effect of these useless restrictions in the attempted organization of unorganized workers, in the actual process of collective bargaining, in the administration of collective bargaining agreements, and in the administration of the international union and the local unions.

Because of the fear that this punitive law has created in the minds of many workers, which I shall discuss more fully later, it is far more difficult to persuade employees of the advantages of self-organization and collective bargaining.

In the actual process of collective bargaining we find repeated instances of employers injecting the provisions of the law into the labor contract. In this connection, I might say that the technicalities created by the Taft-Hartley law encourage many employers to insist upon additional restrictions which the law doesn't require.

The impact of the law is also apparent in the handling of union affairs. It didn't require a law to make this union publish its financial standing. Long before the Taft-Hartley law was passed we furnished to our members and the public a quarterly and yearly report of all our receipts and disbursements. The requirements of the Taft-Hartley law respecting financial reports have taken an endless amount of time of local union officers, international representatives, and international officers, which might have been used to a much better advantage in the handling of labor-management problems and in the creation of improved labor relationships.

The law has also operated to disrupt peaceful relationships. In one case where we had enjoyed a collective-bargaining relationship over a period of 10 years or more, we had to take the time and spend in excess of $1,000 in the defense of a claim that a craft union should be carved out of the long-established industrial unit. An election was ordered; the result was a tie. So the question is still unsettled, rivalry prevails in the plant, relations are seriously affected and will likely continue to be. Why? Only because the Taft-Hartley law encourages a carving up of established and stable bargaining units.

It is my considered judgment that the Congress of the United States will make a great contribution to the public welfare and to the establishment of sound labor-management relationships by promptly repealing the Taft-Hartley Act and reenacting the Wagner Act with the amendments which have been proposed in the administration bill. In an economy such as ours free collective bargaining is essential. So long as the Taft-Hartley Act remains on the statute books, free collective bargaining is impossible.

The administration bill takes into account the fact that labor organizations consist of human beings and consequently make mistakes. Machinery is provided by the amendments to the Wagner Act contained in the administration bill to handle the several abuses of which some labor organizations have been guilty. The administration bill contemplates the use of machinery to correct situations which result in interference with interstate commerce. The administration bill does not undertake to punish labor as the Taft-Hartley Act does.

An attempt has been made by certain representatives of industry in their testimony before this committee and the Senate Committee on Labor and Public Welfare to create the impression that the Taft-Hartley Act has made labor leaders more responsible. One witness pointed to several concessions that were made by his company in negotiations with the Rubber Workers Union in 1948. An inference at least was created that this union would not have negotiated with that company except for the existence of the Taft-Hartley Act. In order to keep the record straight, I should like to say that the Rubber Workers negotiated a wage increase with the big-four rubber companies in 1948. We negotiated to improve vacations, severance-pay provisions, and other improvements. We succeeded in doing this in spite of, not because of, the Taft-Hartley Act. The fact of the matter is that we could have engaged lawfully in strike action against the big-four rubber companies in 1948 instead of following the procedure of tedious and prolonged collective bargaining and that strike action could have been lawfully taken because the required notices in the Taft-Hartley Act had been given and our contracts could have been canceled. It was not the Taft-Hartley Act that brought about a settlement with the big-four rubber companies which employ in excess of 100,000 people whom we represent, but it was because we bargained out our differences to a conclusion. We could have struck those plants lawfully in spite of all of the restrictions of the Taft-Hartley Act. Under these circumstances it cannot be said in connection with the settlements we made in the rubber industry in 1948 that the union was made more responsible because of the Taft-Hartley Act.

This subcommittee might also be interested in knowing that in 1946 and in 1947 we negotiated wage settlements and other improvements with the same big-four rubber companies without strike action and before there was any Taft-Hartley Act to create this so-called responsibility.

The Taft-Hartley Act is a bad law because it hampers and restricts collective bargaining, because it is not designed to correct some abuses of organized labor but is calculated to punish and destroy organized labor. If you gentlemen had had the experience of sitting around the collective bargaining table with four of the big rubber companies in 1946 and 1947 and then again in 1948, as I did, you could make a comparison; you could see how collective bargaining was hampered. Prior to the passage of the Taft-Hartley Act we had established a rather broad pattern of maintenance of membership and automatic check-off of union dues. In 1948 the same companies which had previously granted maintenance-of-membership and automatic check-off clauses in collective bargaining, could not grant them even though they wanted to. The law had stepped in and imposed needless and unnecessary strait-jackets upon both the union and the employer. The company could not grant a maintenance-of-membership provision because we had not petitioned for elections to be conducted in 41 plants scattered all over the United States from coast to coast among a hundred thousand employees. Moreover, the laws of some States in which plants were located were more restrictive and as you know the Taft-Hartley law surrenders to the State laws on union and security matters. Since these elections had not been conducted we could not enter into the same kind of a contract we did before even though the labor-management relationships under the maintenance-of-membership arrangements had improved substantially in the years immediately prior to the passage of the Taft-Hartley Act.

Moreover, the automatic check-off could no longer be granted because of the restrictions on this subject, despite the fact that the automatic check-off had become a satisfactory arrangement.

Untold difficulty was encountered in the collective-bargaining process because the law provided that individual employees who were enjoying the benefits of collective bargaining but were having a free ride could short-circuit the established grievance procedure and settle their own grievances. On this subject a tremendous amount of time, effort, and energy was expended to come within the provisions of the law and yet preserve grievance procedures which had been carefully worked out over a period of time.

The uncertainty of the law with respect to notice of termination of contracts created endless problems. Over a period of several years the rubber industry and the rubber workers' union had agreed that the general wage scale should not be subject to arbitration and that this subject could be opened for negotiation when conditions warranted doing so. The rubber industry recognized for years that the union had a right to strike over the general wage scale if we got into a disagreement when that subject was reopened during the life of the contract. The fact of the matter is that since VJ-day there has been no major strike in the rubber industry over a disagreement on the general wage scale during the life of an agreement, even though such strikes could have been conducted.

Compare this record with what has happened in industries where wages are frozen for the life of the agreement. You find that considerable strike action occurs the moment those contracts expire. Where the right to strike over a wage dispute was preserved under a wage reopening clause of the labor contract, few, if any, strikes occurred. Where the wage scale is frozen for a long period of time and the right to strike over a general wage demand is suspended for the duration of the agreement, strikes result as soon as the agreement permits.

Section 8 (d) (4) of the Taft-Hartley Act, in my opinion, which casts considerable doubt upon the legality of strike action until the agreement expires, contributes to industrial disturbance and encourages strikes.

The uncertainty of the notice provisions of the Taft-Hartley Act created grave doubts whether we could lawfully strike under a wage-reopening clause if the remainder of the contract continued in effect. Based upon the history of collective bargaining in the rubber industry, it should be quite apparent that this provision of the Taft-Hartley

Act will eventually operate to encourage strikes at the end of contracts rather than eliminate them.

The provision requiring an election to authorize the union to negotiate a union-security provision encourages strikes. The most serious strike we had in the rubber industry since the passage of the Taft-Hartley Act was because one of our local unions won an election by an overwhelming majority authorizing union security and the employer had refused to grant it thereafter.

I have found a deep-seated resentment among hundreds of the members of the rubber workers' union to the encouragement which the Taft-Hartley Act gives to the use of injunctions. This is particularly true since the law authorizes one man, the general counsel of the NLRB, to seek injunctions against unions on behalf of the Government. We all know that an injunction never settles anything in connection with a labor dispute. It only creates a legal contest, the effect of which is to engender resentments and hatreds which exist for many months and even years after the dispute is settled. The injunction discourages collective bargaining and arbitration, which, after all, are the means by which industrial disputes are ultimately settled.

It has always been shocking to me that a destructive statute such as the Taft-Hartley Act should have been passed immediately after World War II. The act made it appear as though organized labor should be punished severely, probably destroyed, after an unprecedented job of productivity which it had done during the war years. Labor and management had learned a lot of things as a result of their experience during the war. Union security had been a national policy. The Taft-Hartley law made union security as difficult as possible. Automatic check-off during the war was a national policy so far as the rubber industry was concerned. The Taft-Hartley law made an automatic check-off a crime. Labor and management were encouraged to set up sensible grievance procedures during the war.

The Taft-Hartley Act encouraged injunctions. Labor and management were encouraged to set up arbitration procedures. The Taft-Hartley Act did nothing to encourage its continuance. All of the know-how which labor and management had gained during the war years to attain sensible, sound, stabilized industrial relations were scrapped by the philosophy, purpose, and effect of the Taft-Hartley Act.

There is one broad general aspect of the Taft-Hartley Act which I believe deserves comment. I do not know whether the Members of Congress have perceived this fact or not. Those of us, however, who are close to the labor-management scene know that it exists. For years the workers felt that the Government policy was to encourage the process of collective bargaining. The passage of the Taft-Hartley Act has created a fear—a dangerous fear, I think. The publicity given to the Taft-Hartley Act and its administration has confused the minds of the workers of this country. They feel that collective bargaining is no longer encouraged as a national policy. They feel that the national policy is to discourage collective bargaining. The things that they hear most about, the things that they see printed, are those things which indicate that the Government is punishing unions, issuing injunctions against unions, and discouraging collective bargaining.

The workers of this country have the feeling that the protections which were afforded them by the Wagner Act no longer exist. We know that, in our economy as it is constituted today, chaos would exist in labor-management relations if collective bargaining were not well established. The administration bill undertakes to reestablish the national policy of encouraging collective bargaining. It imposes upon employers and labor unions certain restrictions which are not intended to punish either management or labor but are designed and intended to create machinery for the handling of disputes so that the commerce of our country will not be interfered with.

There is another aspect of the Taft-Hartley law to which our attention should be directed. Section 13 of title I provides—

> Nothing in this act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

The supporters of the Taft-Hartley law frequently referred to this section in their effort to show how fair to labor the Taft-Hartley Act is.

In their frequent references to this alleged preservation of the right to strike, they conveniently omitted any reference to a booby trap in another section of the law which makes the right to strike a farce or a sham.

The Taft-Hartley Act contains a booby trap in the representation section. I refer you to section 9 (c) (3), which contains the simple sentence, "Employees on strike who are not entitled to reinstatement shall not be entitled to vote." I am sure that other witnesses have referred to this provision. The right to strike set out so boldly in section 13 is rendered meaningless by the sentence just quoted from section 9 (c) (3).

Where employees decide that strike action is necessary to gain their economic demands, even where they have complied with all of the detailed procedure required by the Taft-Hartley Act, they can lose their jobs permanently. Assuming that a union has done all of the things required by the law and has followed meticulously all of the notice requirements and has terminated its contractual relationship with the employer and it is unable to negotiate a satisfactory wage settlement or is unable to negotiate satisfactorily a new labor contract, employees who go on strike do so at their own risk.

The sentence contained in section 9 (c) (3) has been interpreted by the National Labor Relations Board in the Pipe Machinery Co. case to mean that an employer may advise economic strikers during their strike that if they do not return to work on or before a date fixed by the employer they will be replaced by permanent employees. Furthermore, the striking employees are prohibited by the law from engaging in mass picketing to prevent strikebreakers from taking their jobs. Consequently, the right to strike under the Taft-Hartley Act has become a nullity, a hollow right, a right which does not actually exist.

In addition to all of the other reasons which have been given to show that the Taft-Hartley law is a bad law, this indirect invasion and destruction of the right to strike should be enough to justify the repeal of the law.

Gentlemen, there is no democratic substitute for free collective bargaining. Without free collective bargaining, you have either domination of labor-management relations by Government or by management. I have always felt that collective bargaining is the great bulwark of democracy in an industrial economy such as ours. The Taft-Hartley law threatens to undermine and will eventually destroy collective bargaining.

Before the Taft-Hartley law, organized labor performed a production job during the recent war which stands as a monument to the effectiveness of free collective bargaining. After the war and before the Taft-Hartley law was passed, industry, labor, and the public enjoyed a period of prosperity unequaled in the history of our country because labor was free and collective bargaining was free.

This Eighty-first Congress will make a monumental contribution to the public welfare by passing the administration bill.

That completes, Mr. Chairman, the prepared statement which I have.

Mr. Bailey (presiding). Mr. Buckmaster, on page 8 of your presentation, speaking of the booby trap in the representation section of the Taft-Hartley Act—that is, section 9 (c) (3)—do you not think that employers in many instances have taken advantage, and will in the future if the Taft-Hartley Act remains on the statute book, take advantage of this clause which says employees on strike who are not entitled to reinstatement shall not be entitled to vote? Do you not think that that will be used as a strikebreaking provision in case we have increased unemployment in this country?

Mr. Buckmaster. Mr. Chairman, I think very definitely that will be used. I think, as has been stated by other witnesses, that industry generally did not attempt to put into effect all of the restrictive provisions of the Taft-Hartley Act for pretty well-known reasons. But there have been some few exceptions in that record; that is, we know that in the oil-workers' strike, in the typographical-union difficulties, and in the packinghouse-workers' strike, we did find there employers who were quite willing to take full advantage of these provisions which I have mentioned here, and to try to destroy the unions involved in those situations. And I am firmly convinced that, if this law is permitted to remain on the statute books, there will be more and more employers, with the encouragement of organizations like the NAM, who will take full advantage of the vicious provisions of this law. I think they are just holding back, and have been holding back until a favorable time came. I have reasons to believe that.

Mr. Bailey. Will you not agree that the recent decision by Mr. Denham, of the National Labor Relations Board, in which their ruling was to the effect that men employed in a plant that was struck were denied the right to participate in a collective-bargaining election, but giving the same right to the employees who have been brought in, who might be referred to as strikebreakers, giving them the right to vote, that this is an effective means to destroy all labor unions?

Mr. Buckmaster. I think very definitely it is. Now, the fact that they have not used it yet in this country to any great extent does not mean that they cannot use it, and the way has been paved for them to use it.

Mr. Bailey. In other words, their attempt to regulate has resulted in the power to destroy; is that right?

Mr. Buckmaster. That is what I firmly believe, Mr. Congressman. I think these two provisions to which I made reference there, hooked together in a strike situation, can be used to destroy any labor union, no matter how powerful it is, because if the rules on mass picketing as they have been interpreted by the legal counsel are enforced, then no union can prevent strikebreakers from being employed to take the place of people who are out on strike. And then, if they enforce the other provisions, when it comes to a settlement of the situation, that settlement might be brought about in many ways, because we have decertification proceedings instituted by the strikebreakers and rule out the union which has held the bargaining right, and the people who are on strike, contrary to the way it is under the old Wagner Act, no longer retain their status as employees, because they have been permanently replaced. Under the old Wagner Act, as I understand it, people out on a legitimate strike, where they are not out in violation of the law, retain their status as employees, and they were entitled to the protection of the Government in getting back on their job after the strike is settled.

That would no longer be the case under this law. They lose their rights as employees and thereby lose their employment if the employer sees fit to make use of that. That is all he has to do.

Mr. BAILEY. Mr. Irving?

Mr. IRVING. Mr. Buckmaster, on page 10 of your statement, I notice the paragraph in the middle of the page which says:

> The provision requiring an election to authorize the union to negotiate a union-security provision encourages strikes.

Do you not think that, if the employees are bound by that election, the employer should be bound by it, too?

Mr. BUCKMASTER. I certainly do, if it is to accomplish any good purpose.

Mr. IRVING. In order to be fair—and these fellows are supposed to be fair—if the employees participate in the election and have to be bound by the results, I think it would be fair that the employer be bound by the results, too, instead of having this provision to defeat the union shop security provision after the election has been held.

Mr. BUCKMASTER. I think that, if this provision of the law was intended to have any good purpose, then, in accordance with the principles of majority rule which we observe in this country, they should be compelled to observe the results of this election. That provision has created a lot of trouble, as I have pointed out. I mentioned only one instance where it gave us a great deal of difficulty, but the people, because this law is hard to understand, get the idea that if they participate in an election on the union-security question before a Government agency, and if they win out by an overwhelming majority, which they nearly always do, then that should mean something, that should bring some benefit to them. But it is just a hollow victory. It does not mean anything. And then, when the employer goes against their understanding of their right to enjoy this union security, that immediately creates a conflict between the employer and the people in the union, and no amount of explanation can make those people in our union understand that that was just a sham and did not mean anything and that they did not gain anything by going out and voting that day.

Now, the American people like to believe, when they participate in an election directed by their Government, that it is going to mean something and is not just going to be a picked skeleton without any meat on its bones.

Mr. IRVING. In other words, you would think that this November 2d election would mean something?

Mr. BUCKMASTER. Some people, I think, believe that that does not mean anything, either. But we think it does.

Mr. IRVING. In other words, that provision, then, is just another one of the one-sided provisions that protect the employers and do not protect the employees, as I understand it.

Mr. BUCKMASTER. It is not only one-sided, but it is another one of those provisions which, without accomplishing any purpose for either labor or management, takes a lot of the time of our representatives and our local union officers and our shop stewards, preparing for those things. And it also takes money.

Mr. IRVING. And it is discouraging to union members and union officials, too, I imagine.

Mr. BUCKMASTER. It is discouraging.

Mr. IRVING. I know you are not a building tradesman, and I see none on the schedule as witnesses here. But I understand that Senator Taft was dubious about the building and construction industry being covered by the law. But it has been pretty well covered either by Mr. Denham or the language of the law, anyway. To my knowledge, there has been only one election held in the building and construction industry, and that was up in Pennsylvania. Of course, the election resulted in a union shop, or whatever you might call it. They found it very impractical to go on construction jobs and hold elections where an employee might be working for one contractor today and another one tomorrow and another one the next day.

However, the effects of the law have been felt definitely in the construction industry.

My understanding of the law—and I am getting into the craft, although perhaps you do not understand it from the point of view of that industry, but I notice you mentioned it in your statement—is that if eight laborers were on a job doing carpenter work or boilermaking work, they would be the only ones entitled to vote in that election. And naturally, if they wanted that work, they would all vote for their having jurisdiction over that work. It seems to me that that is a rather unusual procedure for settling jurisdictional disputes in any industry. It is very unfair, of course.

Mr BUCKMASTER. I think it is, too. You refer to this reference I made to the act's encouraging the carving out of craft unions, out of established bargaining units.

Mr. IRVING. Yes; I refer to that. Of course, the crafts are already carved out in the building trades. But it sets up a confusion there. As I understand it, any craft that happens to be on the work are the only ones entitled to vote on that work, or whether they have jurisdiction over that work.

Mr. BUCKMASTER. That is right.

Mr. IRVING. And, from a selfish point of view, if one union or even just a few employees who happened to be on that work wanted the work of another craft, they could win it by this so-called election. That is my understanding of it.

Mr. BUCKMASTER. That creates many problems in the administration of that plant, in that relationship between all the employees and the employer.

Mr. Irving. Then, again, if the employer wanted to take advantage of the economic situation whereby he was employing a lower grade of craft, he could do that very successfully.

Mr. Buckmaster. I suppose so.

Mr. Irving. Or, if he favored another craft, even though the rates were comparable, he could show discrimination in favor of one craft over the other, if he happens to have a personal dislike for that craft or its representatives or for any other reason, or if one had more pressure or more strength than the other. It does not seem to me that it solves the situation that it is supposed to solve in any manner.

It think that is all.

Mr. Kelley (presiding). Mr. McConnell?

Mr. McConnell. I did not get an opportunity to hear your testimony. I just wanted to ask you one or two questions. I notice here you say the Taft-Hartley Act is a bad law because it hampers and restricts collective bargaining, because it is not designed to correct some abuses of organized labor.

Would you mind naming them?

Mr. Buckmaster. What I mean by the statement is that in my opinion the primary purpose of the law is not just to correct abuses, as many of its proponents have said, but it is to punish organized labor. I understand that you could get another meaning out of it.

Mr. McConnell. That is right. Yes; I did. I wondered what you meant there.

Mr. Buckmaster. But it does set out to correct some so-called abuses. But I do not believe that is the purpose of the law. It was widely publicized that that was the main purpose of the law, just to correct abuses.

Mr. McConnell. Do you favor the enactment of H. R. 2032?

Mr. Buckmaster. Yes; I do. I understand that that bill preserves the rights which labor had under the Wagner Act, and that that bill does offer machinery, or set up machinery, which will help to correct labor disputes, and that it also helps to correct some of the so-called abuses by labor, in a more effective manner than does the Taft-Hartley Act. That is, I do not think you can correct these abuses of labor by getting out injunctions. You can set up some other machinery which would be much more effective and much more democratic.

Mr. McConnell. Do you think the President has the inherent power, as the Attorney General states, through the injunctive process or possibly some type of military process, to enforce a sort of truce in a national-emergency strike?

Mr. Buckmaster. Not being a lawyer, I would hesitate to venture an opinion on that. When lawyers fall out about it, I do not think I should venture into that field, because I am a layman. I do not know. I think there has been a lot of controversy about it.

Mr. McConnell. All right, sir. That is all. Thank you.

Mr. Kelley. Thank you very much, Mr. Buckmaster.

Mr. Buckmaster. Thank you.

Mr. Kelley. If there be no objection, I offer for inclusion in the record statements by Clark C. Sorenson, director of personnel, Harris-Seybold Co., of Cleveland, Ohio; Farrell Dobbs, national chairman of the Socialist Workers Party; Donald L. Jordan, president of the Johnson-Carper Furniture Co., of Roanoke, Va.; John C. Juras, president of the Iroquois Foundry Co., of Racine, Wis.; Tyre Taylor, general counsel, Southern States Industrial Council; L. B. Bewley, chairman of the legislative committee, Associated Industries of Alabama; E. J. Kessler, representing the personnel directors' club of the Manufacturers Association of Lancaster City and County, Pa.; Harold W. Story, vice president, Allis-Chalmers Manufacturing Co.; and A. F. Whitney, president, Brotherhood of Railway Trainmen; also letters from Bryant H. Prentice, Jr., general personnel manager, Kraft Foods Co., Chicago; Joe Wood, an employee of Paragon Electric Co., Two Rivers, Wis.; and Harry W. Naubert, personnel manager, St. Paul & Tacoma Lumber Co., Tacoma, Wash.

Without objection, they will be inserted in the appendix following the close of today's record.[1]

This committee will stand in recess until 1:45 p. m., when the first witness will be Mr. David McDonald.

(Whereupon, at 12:15 p. m., a recess was taken until 1:45 p. m. of the same day.)

AFTERNOON SESSION

(Pursuant to recess, the subcommittee reconvened at 1:45 p. m.)

Mr. KELLEY. The meeting will please come to order, and we will hear Mr. David J. McDonald.

Mr. GOLDBERG. Mr. Chairman, I will appear with Mr. McDonald, if there is no objection.

Mr. KELLEY. That will be all right.

TESTIMONY OF DAVID J. McDONALD, SECRETARY-TREASURER, ACCOMPANIED BY ARTHUR GOLDBERG, GENERAL COUNSEL, UNITED STEELWORKERS OF AMERICA

Mr. McDONALD. My name is David J. McDonald. I am secretary-treasurer of the United Steelworkers of America, an organization representing almost a million members in the basic steel and steel-fabric industries, on whose behalf I am appearing today. I urge you to act favorably on H. R. 2032, the bill which is before you and which repeals the Taft-Hartley Act and reenacts the Wagner Act with certain amendments.

There has been filed with the committee by Arthur J. Goldberg, who is general counsel of my union, the United Steelworkers of America, a detailed analysis of the Taft-Hartley Act and of our experience under the act. He has also presented for the committee an analysis of the Wagner Act and the amendments which the bill adds to the act. In addition, he has proposed certain technical changes in the bill.

Since this detailed statement has been filed, I will not burden the committee with any elaborate exposition of the evils of the Taft-Hartley Act and the advantages to all of our people of the Wagner Act with the proposed amendments.

I think there is a tendency to overlook the fact that the Taft-Hartley Act and the Wagner Act are based upon fundamentally different philosophies.

I think we in America must choose between the philosophy of the Wagner Act and the philosophy of the Taft-Hartley Act.

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[1] See index for page numbers.

I would go a step further; I think we in America have chosen.

We have chosen the philosophy of the Wagner Act. This choice is plainly reflected in the recent election. It is reflected in the growing resentment of people everywhere over the continued failure of Congress to act upon the mandate of the election and erase the Taft-Hartley Act from the books.

Those who would divert our labor policy from the path of the Wagner Act either do not understand or misrepresent the nature and scope of that act. I am convinced that they have completely ignored or concealed the magnificent contribution of the Wagner Act to the making of a better America.

Let me tell you something about the law and the way the law has operated in the struggle to unionize the steel industry.

Organization of the steel industry began in 1936 when the Steelworkers Organizing Committee, of which I was also secretary-treasurer, was formed.

This was not the first time that efforts were made to unionize the steel industry.

The Homestead strike of 1892 was followed by the adoption of a policy on the part of Big Steel against unions.

Two historic efforts were made to turn back this policy and bring the benefits of unionism to the basic steel industry. Both of these efforts were made under the leadership of the old Amalgamated Association of Iron, Steel and Tin Workers.

The first unionization campaign occurred in 1908–09 when, after a 14-month strike, unionism was eliminated from the entire basic steel industry.

Ten years later in 1919 the second attempt to unionize the industry took place.

The third attempt to unionize the industry took place after the Wagner Act was passed. Sometimes it is difficult to realize how new industrial unionism is in our basic steel industry.

Think of it. Organization commenced in 1936 in the basic steel industry. By the time the Taft-Hartley Act was passed in 1947, the Steelworkers Union held collective-bargaining contracts with over 2,000 employers covering over 1,000,000 employees.

In 1935 and 1936, the basic minimum common labor rate in the industry was 47 cents per hour.

Before the Taft-Hartley Act was passed, the Steelworkers Union had negotiated general increases totaling 55½ cents an hour with only one major strike. It has, in addition, received inequity increases which averaged more than 6½ cents per hour. It raised the common labor rate before the Taft-Hartley Act from 47 cents per hour to $1.09 per hour.

Under the Wagner Act the union secured contractual overtime. It obtained for its membership shift differentials for the second and third shifts. It obtained in many establishments holiday pay.

Prior to the Wagner Act vacations were usually no more than 1 week after 5 years of service, if any vacation at all was granted. Under the Wagner Act a vacation program was worked out under which employees received 1 week's vacation for 1 year's service, 2 weeks for 5 years' service, and 3 weeks for 25 years' service. In addition, the Wagner Act made possible such gains as reporting pay and severance allowances.

Today, as a result of the Wagner Act, workers in our industry enjoy a system of seniority. The old evil system under which supervisors bought and sold jobs for a price has been abolished.

Today every worker knows what his rights are, and those rights are protected through a grievance procedure and arbitration machinery. Thousands of grievances are filed every year and disposed of in an orderly and fair fashion.

In an agreement with the United States Steel Corp. and the other basic steel companies, we have provided for arbitration machinery for the life of the agreement. This arbitration procedure is a model of its kind and marks a great step forward in labor-management cooperation in the interest of industrial peace. Similar arrangements are in effect with the Aluminum Co. of America and thousands of other companies.

As a result of the Wagner Act and as a result of the organization of our great union, it was possible for the union and the employers in the industry to agree upon a program for the elimination of wage-rate inequities and the orderly classification of jobs. This pioneering program has converted a chaotic and an inequitable wage structure into one based on reason and fairness.

Bear in mind that the benefits which I have described, and others as well, have been achieved throughout the entire basic steel industry with the exception of only two companies. These companies have from the beginning fought the U. S. S. W. Union and resisted bona fide unionism.

Let me make clear just how the Wagner Act has operated to promote the growth of our union.

The Wagner Act has two major parts: one dealing with unfair labor practices and the other dealing with industrial elections.

The unfair labor practice provisions are very simple. They outlaw company unions; they forbid discrimination because of union activity; they require collective bargaining, and they prohibit employer interference with and restraint of the right to self-organization.

Every one of these provisions has served an important purpose in the unionization of the steel industry. The coercion provisions, for example, have operated to take away form employers a method of forcing employees out of unions or discouraging self-organization.

Most valuable have been the provisions against company unions. The most effective weapon which was used to fight bona fide unionism was the company union or the employee representation plan. Virtually every major producer in the industry fought to beat down the threat of unionism with a company union.

The prohibition on discrimination gave men the courage to join unions. It made them confident that if the employer discriminated against them or blacklisted them, redress would be furnished by their Government.

The utility of the collective-bargaining provisions is too obvious for comment. It was these provisions which, as interpreted by the Supreme Court, led many employers in the industry to agree to sign collective-bargaining contracts.

The election provisions were no less important that the unfair labor practice provisions in bringing unionism to the basic steel industries. It was under these election provisions that polls were made in virtually all of the establishments in Little Steel. It was under these provisions that the largest and most far-flung industrial elections that were ever held on the face of the earth were conducted.

Are all these accomplishments something to be ignored, repudiated, or put aside?

On the contrary, it is these accomplishments which emphasize that this law is indispensable to a sound and free America.

I would like to digress here just a moment from my prepared statement to bring to your attention the agreement between Carnegie-Illinois Steel Corp., and the United Steelworkers of America, CIO, for the production and maintenance employees, dated April 22, 1947, at Pittsburgh, Pa., which was exactly 2 months before the Taft-Hartley Act went into effect.

This is a joint agreement arrived at through collective bargaining and, incidentally, these sections were proposed originally by management. I will not read it all. I will just point out some high lights, and submit it if I may.

> The company and the union encouraged the highest possible degree of friendly, cooperative relationships between their respective representatives at all levels and with and between all employees. The officers of the company and the union realized that this goal depends on more than words in a labor agreement; that it depends primarily on attitudes between people in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based on proper understanding of and regard for the respective rights and responsibilities of both the company and the union. They believe also that proper attitudes are of major importance in the local plant where day-to-day operations and administration of this agreement demands fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that company and union officials, whose duties involved negotiation of this agreement, are not antiunion or anticompany, but are sincerely concerned with the best interests and well-being of the business and all employees.

That is in a labor agreement. In the next paragraph of that section, it reads:

> Accordingly, the company and the union, as evidence of attitude and intent, have agreed that during the life of this agreement officials of their respective organizations shall meet on the third Tuesday of each third month from the date of this agreement, in the city of Pittsburgh, Pa.

Quarterly meetings, we called them, where the top management of the United States Steel Corp. sits down with the officers of the steelworkers' union to appraise the operations of the agreement, and to meet and discuss their mutual problems. It is an atmosphere we have been working to create in America, and which we did create jointly before the passage of the Taft-Hartley Act.

This goes on and says:

> By such an arrangement the parties are afforded concrete evidence of a sincere attempt to accomplish the goal of cooperative good industrial relations and of their purpose to find ways to overcome difficulties or influences interfering with the attainment of their goal.
>
> By such arrangement the parties believe that they, as men of good will with sound purpose, may best protect private enterprise and its efficiency in the interests of all, as well as the legitimate interest of their respective organizations within the framework of a democratic society in which regard for fact and fairness is essential.

Unfortunately, however, we have not been able to follow through on all our quarterly meetings. We have only had two of them since the date of the enactment, April 22, 1947, and the basic reason is that there has been so much confusion brought about by the Taft-Hartley it can be embarrassing for both sides to get together.

We have also been required to spend so much of our time on joint conferences and taking care of problems brought about by the Taft-Hartley Act that we have been unable to find adequate time to meet the situation or to get into the problem which we should discuss, as is indicated in this agreement.

This is not only in existence with Carnegie Steel Corp., but it is also in existence with every subsidiary of the basic steel corporations.

And, gentlemen, in putting my organization firmly behind the administration bill, I do so because it embodies the basic principles of the Wagner Act, because the Taft-Hartley Act nullifies so many of these principles, and because the Taft-Hartley Act threatens to make possible low standards and depression.

In putting my organization behind the administration bill, I do so knowing that it represents the objective of our entire membership. My duties bring me into contact with that membership throughout the length and breadth of the land. I have discussed the Taft-Hartley Act and the Wagner Act with members of our organization in all parts of the country. I know the thinking of these men, and I tell you that they are resolutely determined that the administration bill become the law of the land.

In my capacity as secretary-treasurer of the union, I have had an oportunity to observe at close range the workings of the Taft-Hartley Act. Let me briefly summarize what we of organized labor have experienced.

We have found in plant after plant that the Taft-Hartley Act has interfered with free collective bargaining. We have found that even among employers of good will the act has created serious obstacles to harmony and to mutual agreement on important matters in the collective-bargaining field.

I have mentioned previously this business of check-off cards, and how the Taft-Hartley Act is delaying us. This is the sort of thing we have gotten into, when we should be using our time to better advantage.

Here is the type of check-off cards which, because of the Taft-Hartley Act and little Taft-Hartley acts, we have to literally negotiate with hundreds of employers.

Here is one, our Form 500, which must be signed in several places by a worker, authorizing the deduction of union dues. The top half has to be signed, the bottom half has to be signed, and there is still another section on the back.

Special information must be given because of the requirements of the Taft-Hartley Act, and it took us—believe me—it took us 11 months to get an agreement on this check-off form with the basic steel industries.

We negotiated originally with the United States Steel Corp., and our lawyers and myself, and our other representatives, had to visit hundreds and hundreds of companies to negotiate either similar check-off cards, or some other card which fit the purposes.

That is one.

Here is another one, check-off card, Form 501. This is for use only in the States of Georgia, North Carolina, Tennessee, and Virginia.

Here is one, check-off, Form 502, to be used by members of local unions in the State of Arkansas. Sometimes it is the same company which is involved.

Here is one for local unions in the State of Iowa.

Here is one for local unions in the State of Michigan.

Here is another form, 100E, to be used for new members obtained in local unions covered by the agreement negotiated before June 23, 1947.

And then here is one for all members in local unions where new agreements are being signed after June 23, 1947.

Here is another form, 100F, which we use down in one particular company in Philadelphia, the Baldwin Locomotive Works.

And here is one for the Aluminum Co., and so on, and so forth.

It meant hours and months of meetings and conferences. Before that it was a very simple matter. We did not have to use the time of management in industry, nor our own time to go into the awfully detailed ramifications. We agreed, as representatives of the employees, that a check-off provision would be incorporated in the collective-bargaining agreement, and that was that. And, believe me, this takes effort on the part of the men employed in the mill to see to it that a million people are contacted and signed up. And it certainly takes up some of the time of management of the mills. The country is crying for steel, and the fellows have to divert their activities to do this sort of job.

(The documents referred to were received and filed for reference.)

Mr. McDonald. We have found that the complexities and the legalisms of the Taft-Hartley Act have created greater and greater difficulties in collective bargaining.

A most significant result of this law, in my opinion, has been that it has armed employers with new weapons against organization. It has placed the employer in a position of being a powerful competitor of the union in the organizing process. In practical effect the law has changed Federal policy from one of encouraging self-organization into one of discouraging self-organization.

Every industry has within it a group of employers who are bitter enemies of the union representing the employees in that industry. These employers frequently are regarded by other employers in the industry as chiselers determined to drive down standards and to engage in unfair methods of competition. Some industries have many such employers and others have few. In our industry we have our quota of such employers. The Taft-Hartley Act has given these employers a new lease on life.

They are encouraged to provoke strikes because the law gives them so many strike-breaking weapons. The statute turns over to these employers a new incentive for wrecking the established collective-bargaining relations and reverting to individual bargaining. The activities of these employers who have never surrendered their hope of restoring open-shop conditions to certain sections of our industry are a constant threat to employers who are determined to live in peace with the union, which I have already mentioned. The example of their antiunionism inevitably corrupts the relationship between other employers and the union.

The Taft-Hartley Act has been a triumph for those employers, but it must be a short-lived triumph if we are to avoid repetition of such evils as the Little Steel strike and the Memorial Day massacre.

The Taft-Hartley Act, in my opinion, ignores every fundamental principle which a sound labor statute should embody. It is elementary that a labor statute should be clear and simple so that those who are to live under it can understand its terms and be guided by its rules.

The Taft-Hartley Act is not clear and it is not simple. Every provision is ambiguous. Ever since the law was passed, it has been impossible to obtain a simple statement as to what the law means, as to what is permitted under it and what is prohibited. I know this from my own experience. It was difficult to get any sort of agreement—which I have already mentioned—on the type of check-off card which is permitted under the law. It was difficult to get any sort of agreement on the scope of the law, on the question of whether certain types of union security were permitted and a host of other questions.

It is not only that each provision of the law is confusing. All of the provisions of the law taken together form a complex and bewildering mass. It is not a labor law. It is written like a lease or a mortgage.

A good labor-relations law must rest upon the principle that he governs best who governs least. It should leave to the parties a maximum scope for free dealing, unhampered by arbitrary restrictions such as those which are containing in the Taft-Hartley Act.

Sound labor-relations laws must deal with representative situations and not with the quirks, the unusual, and the unrepresentative. The Taft-Hartley Act is a heterogeneous collection of provisions dealing with unusual and unrepresentative situations. These provisions are so broad, however, as to make unlawful completely legitimate and desirable activities on the part of labor unions.

Finally, a sound labor law must be consistent. It cannot pretend to encourage self-organization on the one hand and on the other place in the hands of employers effective means for completely destroying self-organization.

The Taft-Hartley Act violates these and other basic principles of sound labor legislation which are embodied in the Wagner Act. I trust that this committee will act favorably on this bill. Under this bill the principles of the Wagner Act are restored and under this bill labor and industry can enter into a new era of industrial peace and achieve a sound and workable system of labor relations.

I have here a few copies of the audit report of the United Steelworkers of America. It is a complete break-down, simply put together, and is a statement of the financial operations of the United Steelworkers of America. It was made by Main & Co., certified public accountants, Pittsburgh, Pa. They are one of the outstanding accounting firms in America.

(The document referred to was received and filed for reference.)

Mr. McDonald. This we did: We started this in 1942 and incidentally if you gentlemen who have been around here for a number of years will go back to your files you will find a copy of the financial statement of the United Steelworkers of America in those files. We send them to every Member of Congress, as well as to our membership.

That is the regular audit report which we do voluntarily.

Now, however—and I want to specifically bring this matter to your attention—there is another financial report which, I think, all labor unions are required to file, and which very few people pay any attention to—that is, I should say they do not know about it; they pay attention to it of course, but they do not know about it.

We are required by the tax laws, the Federal laws, to submit once each year to the Internal Revenue Department a complete accounting of all of our financial activities, not alone for the international union, but for every local union of the United Steelworkers of America. Each union is required to do that. We notify all of our locals once each year, and we gather up these complete financial details, and we submit them to the collector of internal revenue in the city of Pittsburgh for proper filing here in Washington. We are required to do that, and we gladly comply with that law. This, of course, is not the Taft-Hartley; this is the Federal statute on taxation, the Internal Revenue Department.

Thank you, gentlemen.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. I would like to inquire if when Mr. Goldberg appeared here with Mr. Carey at the morning session, he submitted for inclusion in the record this formal statement?

Mr. GOLDBERG. I did, Congressman Bailey, with the permission of the chairman. That was offered into the record.

Mr. BAILEY. In that case, I would like to ask you a question.

In your rather exhaustive analysis of the Taft-Hartley law you finally arrived at the conclusion that the law was unwise and unworkable. Page 9 of your formal presentation.

Mr. GOLDBERG. I think that is a fair inference from the statement I filed.

Mr. BAILEY. I am reading now from your statement:

> As a matter of fact, there are increasing signs that employers recognize that the law was unsound and unwise. An editorial in Business Week of December 18, 1948, a prominent organ of the business community, acknowledged that "Few businessmen are wasting time deploring the eminent doom of the Taft-Hartley Act." This periodical concedes that the law is an unsound law. Summing up it states:
>
> "What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate from one which could destroy.
>
> "Given a few million unemployed in America, given an administration in Washington which was not prounion—and the Taft-Hartley Act conceivably could wreck the labor movement.
>
> "These are the provisions that could do it: (1) Picketing can be restrained by injunction; (2) employers can petition for a collective-bargaining election; (3) strikers can be held ineligible to vote—while the strike replacements cast the only ballots; and (4) if the outcome of this is a 'no-union' vote, the Government must certify and enforce it.
>
> "Any time there is a surplus labor pool from which an employer can hire at least token strike-replacements, these four provisions, linked together, presumably can destroy a union."

Would you care to comment on those four proposals made in this editorial?

Mr. GOLDBERG. I think this editorial represents one of the significant admissions that has been made by spokesmen of business of the potential behind the Taft-Hartley Act.

The thing that is important to me is that we have only had 9 or 10 unfair-labor-practice cases decided under the Taft-Hartley Act. You see, most of the business under the Board, under the Taft-Hartley Act, has been with representation cases. It is only now, as you may have noticed in the press, that the unfair-labor-practice cases, the cases that go to the vitals of the Taft-Hartley Act, are now being processed.

This demonstrates—and a careful reading of the Taft-Hartley Act can prove—that there is present in the Taft-Hartley Act the mechanism by which the traditional rights of American labor, which employers pay lip-service to as a part of our enterprise system, can be destroyed.

Let me illustrate it very simply: Part of the example that is contained here, which is an example which is used in the Senate, and which even Senator Taft had to admit was a correct statement of the law—it can be demonstrated under the Taft-Hartley Act that any illegal strike can be converted into a legal strike. The Taft-Hartley Act contains a provision that if you have a perfectly legal strike, and the men are out on strike for their economic demands, for wages, hours, or working conditions, that if you have a petition for an election filed by the group of men who have been hired as strikebreakers in that plant, the only people who can vote in such an election are strikebreakers, and the strikers cannot cast any ballots.

That is in the law. If you count the strikebreakers' votes, and you do not count the strikers' votes, it is perfectly obvious as to who is going to win the election. The strikebreakers are going to win that election. If they win the election through some sort of organization they may choose to organize that moment, and the Board has to certify, and that moment a strike gains that certification, it is illegal, so that the strikers who started out with a perfectly legal strike can no longer strike; their strike is illegal, and what has been a legal strike turns out to be an illegal strike.

Now, the injunctional provision against that strike then is a 10 (1) injunction, a mandatory injunction. In other words, the Board must enjoin that strike. The general counsel must come in and get an injunction because it is an injunction against the Board's certification, and you have what this article points out.

Mr. BAILEY. Will you permit an interruption?

Mr. GOLDBERG. Surely.

Mr. BAILEY. You make the Government a strike-breaking concern?

Mr. GOLDBERG. And you give the Government no discretion in the matter. The Government must break that strike. So I think, Congressman Bailey, we should note this. This article and the illustration I have given is not solely given by Business Week. Even Senator Taft, one of the authors of the law, has admitted, if you will look at the record of the Senate hearing, that this is a result which cannot come about under the Taft-Hartley Act and that this result cannot be defended by anyone who is interested in fair treatment for people who work for a living.

Mr. BAILEY. That is all, Mr. Chairman.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. Naturally, much of the testimony has been repetitious. I have tried to pick out occasionally some specific point that I thought had not been touched upon. I notice that you refer, Mr. McDonald, to State laws similar to the Taft-Hartley law. Would you say in a great many instances that they are due to the confirmation of the State legislatures in passing these laws?

Mr. MCDONALD. This climate has been created by the Taft-Hartley Act being in existence, and a lot of State legislatures are sort of parroting the Federal Congress in enacting equally iniquitous, if not more iniquitous, laws.

Mr. IRVING. I brought this subject up because in the hearings on the minimum wage law, we had a number of agricultural groups testifying against the minimum wage and fair labor standards and also as proponents of Taft-Hartley. I noticed a piece in this morning's paper where the mayors, I believe, and managers of business organizations of many cities have stated that there were agricultural oligarchies in control of most of the State legislatures, and that they had maintained archaic legislation and laws which prevented the cities from advancing and taking care of their business in a proper way. I thought that possibly had something to do with the laws that they are passing in various States. The legislatures are made up of many rural people who misunderstand or are misinformed about these subjects.

Mr. McDONALD. I think that is absolutely true, that a lot of these people from rural areas are not informed about these subjects. I do not know anything that is more difficult to get over to the public at large than labor's story. I recall specifically that when Mr. Goldberg testified before the Senate committee on the Thomas-Lesinski bill, his paper amounted to 112 pages, and there were two little paragraphs carried by the news services. It is most difficult for us to get our point of view across to these rural groups, and it is equally easy for those who want to continue such laws as the Taft-Hartley law to get their point of view across.

The lobby spends millions of dollars in State legislatures. They have all sorts of brochures, and so on, which are fed not only to the State legislatures, but to the public at large in those areas, that completely distort the situation and completely distort labor's point of view. It is mere selfishness on the part of those people.

Mr. IRVING. In your general view, is it true that there has been a distinct effort to keep labor and the farmers and other people apart?

Mr. McDONALD. I think so. I think undoubtedly there has been a distinct effort to create the divergence of opinion between labor-union members and working men who are not even labor-union members and the farming population.

Mr. IRVING. And where these people do find out the facts, they are sympathetic?

Mr. McDONALD. That is right.

Mr. IRVING. I know that they are subject to a barrage of propaganda. I happen to have lived on a farm myself for a number of years, and I got the Farm Journal, I believe, that was, I think, sponsored or published by Mr. Pugh of the Sun Oil Co. I never read any more of an antilabor publication than that one.

Mr. McDONALD. That is right, Mr. Congressman. Those things go on all the time.

Mr. IRVING. And, of course, it was anti-New Deal, anti-Roosevelt, and anti-every other kind of social legislation.

Mr. McDONALD. That is the sort of thing which one can expect from Mr. Pugh and a lot of people who think like him in America.

Mr. IRVING. The State legislatures are usually underpaid. The quality of men who go to make State laws sometimes is not of the highest type, and they are not always too interested in legislation they pass. I think that possibly is responsible for a good deal of the anti-closed-shop and antiunion legislation. I know it has been my experience, too, in the Middle West where we have a lot of farmers, of course, and a lot of agricultural people, and I do not condemn them or criticize them, because when they understand the situation they know that when labor is well paid, it benefits them directly.

Mr. McDONALD. I think you are absolutely correct. And insofar as the legislators are concerned, perhaps there ought to be a CIO of legislators, so that we could get them wage increases and some other benefits.

Mr. IRVING. I will say the State laws do not always represent the actual ideas of the whole population of a State.

Mr. McDONALD. That is right.

Mr. IRVING. I think that is all.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. Nothing, Mr. Chairman. I will give my time to Mr. Jacobs.

Mr KELLEY. Mr. Jacobs?

Mr. JACOBS. In regard to union decertification, Mr. Goldberg, is there not one more step in that process, that in the event the decertification election results in no union, the employer is relieved from negotiating?

Mr. GOLDBERG. For a year's time. If the union is decertified, he does not have to deal with any union for 1 year. We can all see what the consequences of that might be. There would be no protection for the employees in the plant.

Mr. JACOBS. Now, coming back to these editorials. I was quite interested in that. I have a habit of cutting them out and saving them a lot of times. Are you familiar with the editorial of Life magazine on November 29 of last year?

Mr. GOLDBERG. I do not remember it specifically, Congressman Jacobs.

Mr. JACOBS. Well, since we are in it, maybe we should just as well read some of that into the record at this time. It is an editorial of Life magazine, November 29, 1948:

> The truth is that labor as a whole doesn't mind the T-H Act as it has worked out during the present period of relatively full employment. What it does fear is that the law might have a different effect in a time of rising unemployment when a loose labor market could conceivably enable management to take advantage of certain Taft-Hartley gimmicks to bust the unions. * * * Under the Wagner Act when you went on strike, you * * * had * * * a vote (in representation elections) but now you lose your vote. In a loose labor market, the loss might be disastrous. An entire union local might be permanently replaced by nonunion men, and a local would thus lose any right to vote on its own fate.

Are you familiar with the article in Fortune magazine of November? These came out right after the election.

Mr. GOLDBERG. I might say it is the first time I have heard Life magazine talk as I talk, but I agree with the statement made in Life.

Mr. JACOBS. If you get Life magazine right after the election and read it, you will find that statement appearing in an editorial.

Mr. GOLDBERG. I think the date, Congressman, is rather significant. That was a November date. Business Week is December. I wonder if they are getting some courage now and not making those same statements?

Mr. Jacobs. In the November edition of Fortune magazine there is this citation:

> In straight economic disputes, strikers permanently replaced by nonunion men are ineligible to vote in NLRB elections. The reason hit hard at the stubborn trade-union notion that the worker has the property right to his job. And where the labor market is loose, it gives the employer a handy weapon over any union that calls such a strike. The reintroduction of injunctions; the outlawing of secondary boycotts; the NLRB decision giving State laws precedence over Federal—all indicate how rapidly gains won by labor can be taken away.

Now, I think that while we are reading into the record these statements, perhaps it might be well to call this to our attention. I wonder if you read this? In 1947, I do not have the exact date here, a quotation from Westbrook Pegler on the closed shop said this. I cannot give you the exact date, but I have the article here if anyone wants to see it:

> The closed shop was a method of compelling workers to join unions for their own immediate good, for the good of them all. It was a way to prevent employers from bringing in temporarily distressed hands to undercut the going wages and to force the free riders, or slackers, to pay into the union treasuries a fair price for the benefits and wages which the unions had won or claimed to have won.

I might say that while I do not have the exact quotation, at the close of that article he warned against the abolition of closed shop. This was while Taft-Hartley was being considered.

Now, having gotten that into the record, I would like to ask Mr. McDonald this question: You mentioned Iowa in regard to check-off cards. Was not Iowa the State that enacted a law whereby you had to get the worker's wife's signature before you could have the check-off?

Mr. McDonald. Yes. There are several of them. In Iowa you must have your wife sign, and then you must go to a notary public and swear to your signature.

Mr. Jacobs. The folks who were up here from my State in support of the Taft-Hartley Act came back after it was enacted and issued a joint manifesto in which they said that the Taft-Hartley law has emancipated the worker from the union boss. I think that if we are objective we probably will admit that there are some union officials who do not carry on in an exemplary fashion. I do not mean you but there are some that do not.

I would like to direct this question to Mr. Goldberg. Is there anything in the Taft-Hartley law that prevents, in your judgment, a union official from exercising his economic power to oppress a member of his union, like depriving him of union status, and so forth?

Mr. Goldberg. No. I do not find anything in the statute that relates to that.

Mr. Jacobs. Then you would not agree with the statement that it has been enacted for the purpose of emancipating the worker from the domination of the union officials?

Mr. Goldberg. I think that was propaganda. That was not really a statement. That was propaganda under which the law was attempted to be sold.

Mr. Jacobs. You are familiar, are you not, Mr. Goldberg, with the fact, though, that there are situations where union officers have used power that has been invested in them by, we will say, turning and withdrawing the union status by revocation of charters, and so forth?

Mr. Goldberg. I am sure that union people are human beings and there are as many malcontents among union officers as there are among any class of officials who represent people. I do not think they are all perfect.

Mr. JACOBS. In other words, you find human nature pretty much the same wherever you go?

Mr. GOLDBERG. That is correct.

Mr. JACOBS. Are you familiar with the investigation that the American Civil Liberties Union made here about 6 years ago in regard to democracy in trade-unions?

Mr. GOLDBERG. In a general way, Congressman, I am. I believe I read about it at the time.

Mr. JACOBS. You never read the article itself?

Mr. GOLDBERG. I probably did read the article at the time it was published.

Mr. JACOBS. I see. It is in pamphlet form.

Mr. GOLDBERG. Yes.

Mr. JACOBS. From what you recall of that, do you feel that the findings and recommendations of the American Civil Liberties Union were fairly objective?

Mr. GOLDBERG. I do not quarrel with the objectivity of the article. I think my quarrel at the time—I could not call it a quarrel, but my point of disagreement—was that perhaps you take situations like that and you distort them out of all proportion to their occurrence in the union field. I think maybe they were devoting themselves to a particular study, but I think by and large those are unrepresentative situations.

Mr. JACOBS. In other words, you feel that they are exceptional when viewed in the background of the entire labor union?

Mr. GOLDBERG. That is correct.

Mr. JACOBS. Do you not feel it would be proper for some rather broad, corrective legislation to be passed, such as requiring unions to elect their officers by ballot rather than to permit the international union to put a local union under trusteeship and hold it under trusteeship over a number of years?

Mr. GOLDBERG. Of course, I do not believe that every time you have an abuse, you need legislation.

Mr. JACOBS. I do not think so, either.

Mr. GOLDBERG. I think the force of public opinion in the few cases that exist of that character can be brought to bear and correct the situation, and I think, by the way, since the publication of that article—if I recall correctly, it was some years ago—the few situations which existed have been corrected.

Now, by and large—I speak out of some knowledge here, because I have copies of all the constitutions of the CIO unions—we have some 40 unions. Every one of those unions provides for regular, periodic elections, democratically conducted, every one, without exception. There is not a union in the CIO that does not provide it. We would not charter a union that did not provide for democratic elections, and we would revoke charters of unions that attempted to prevent democratic elections.

Mr. JACOBS. In the instance that I was speaking about, where they abused it the most, they have a very democratic constitution and bylaws. They just do not follow it.

Mr. Goldberg. You know, the local unions themselves are given a great deal of responsibility.

Mr. Jacobs. If it happens to be a union that controls the work pretty generally, do you not think the members might be coerced into not exercising their rights of free election?

Mr. Goldberg. I think ultimately the people have to be the guardians of their own liberties.

Mr. Jacobs. Then you feel that no legislation should be enacted along that line at all?

Mr. Goldberg. I feel this way. Congressman. It is a pretty broad statement to say no legislation should be enacted. But I would say that the unrepresentative situation, in my opinion, is not an appropriate technique for legislating a sound system of labor relations. That is what happened when the Taft-Hartley Act was enacted. We got a few unrepresentative situations, and then a statute was enacted which caused hardship in a lot of representative situations.

Mr. Jacobs. Now, let us analyze that a minute. I do not know whether it would be true or not. But I have heard, or read, and I have never heard it denied, of one union where over half of the local officers were appointed by the international. I do not know whether this is true or not. But it has never been denied as far as I know.

Now, let us take the majority of organizations. They elect their officers. I think that is true.

Mr. Goldberg. That is true.

Mr. Jacobs. As a matter of fact, in a lot of them, the members would not hold still very long if they could not elect them.

Mr. Goldberg. Mr. McDonald can testify to all that.

Mr. Jacobs. But there is the case where the union officers have a sufficient amount of power because of contracts with employers. I know of some that have international contracts, not through the local, but international contracts, who exercise a great deal of power, and they deny the right of election. I could cite one case in particular that I know about where for over 16 years members were denied the right to elect their officers. And there was a tremendous feeling in that local union. Now, where is it going to hurt the union that does elect its officers? If you elect the officers in your organization, you are not going to be affected by it at all. If we just merely stood by and said that you shall follow your constitution and have an election, and if you do not, there may be an appeal to the Board, it is not going to affect your organization. But it is going to help this other organization over there, where they do not.

Now, in view of that, what is your objection to it?

Mr. Goldberg. Of course, I think that question with propriety ought to be perhaps directed at the union involved.

Mr. Jacobs. They would say no. There is no question about that.

Mr. Goldberg. But again, I say that if there is a union—and I have heard some small percentage of unions may have committed an abuse of that character—we get into a statute in which we attempt to regulate a large area of union conduct, and then we get into many, many complications that do not relate to the question of collective bargaining. The real philosophy that I have about those things is this. Perhaps we ought to study that problem that you think about and analyze what ought to be done under it. But in a collective-bargaining statute it ought not to be encumbered with a lot of other things that do not relate to promoting collective bargaining between management and labor. That is the purported purpose of this statute, and it seems to me that that is what the subject of legislation ought to deal with.

Mr. JACOBS. You may have a point there. On the other hand, we are trying to assist the union in organizing, and if we have some unions which abuse the democratic processes that have fallen into their hands by virtue of their organization, it seems to me that nothing would be simpler than for us, not to write their laws, but to say that whatever their laws are in regard to elections, they shall follow, and if they do not, there should be a simple remedy for the local to go before the Labor Board or some appropriate tribunal. I do not know whether it should be the Labor Board or not. I am at a loss as to why there should be any objection to that on the part of organizations that are democratic.

Mr. GOLDBERG. Of course, it seems to me—and I suppose this thought has occurred to you many times—that there is probably ample recourse right now for such abuses.

Mr. JACOBS. Oh, yes; there is. I have handled them myself. But it is an inadequate remedy. And you know it as a lawyer. It is a long, tedious, expensive remedy. It is usually tried before a judge who does not know anything about it. Do you not agree with that?

Mr. GOLDBERG. I was going to say that. With respect to long, tedious, and expensive remedies, proceedings before the Board such as we found last year are long, tedious, and perhaps expensive, too.

Mr. JACOBS. They have been bogged down with a lot of unnecessary representation elections, and one thing or another; is that not correct?

Mr. GOLDBERG. Yes. Maybe, however, your suggestion would bog them down with some of these things and prevent collective-bargaining cases from getting hearings.

Mr. KELLEY. I do not think they are prevalent.

Mr. JACOBS. Do you not think it would have a beneficial and salutary effect, in that many of them would start complying with their constitutions and laws, rather than not to have a complaint brought up?

Mr. GOLDBERG. Of course, I think that the open light of publicity in those isolated situations which exist is probably the best remedy.

Mr. JACOBS. Well, ordinarily that is a pretty good remedy. On the other hand, I have seen a lot of evidence in my experience where certain employers saw and liked that kind of union. Frankly, in the one I was telling you about, when they finally came out of captivity, the members were working for 34 cents an hour less than the free locals in the adjoining districts. And the people who were in charge of that local were hotsy-totsy with the employers. There were no hard feelings there at all.

Mr. GOLDBERG. I would not be surprised.

Mr. JACOBS. Under those circumstances, they did not get very much publicity. I might say this. I handled their charter case for them, and because they did not have a quarter with which to litigate it, I advanced them some money, and the leading newspaper in the community played me up on the front page and took my hide off because I happened to advance them a little bit of money when they could not even get a postage stamp to write for a document. So I do not find that the light of publicity is necessarily available to those people. In most unions where they are denied their democratic rights. I think that they are the forgotten people, to a great extent, in this whole field.

Mr. GOLDBERG. I cannot quarrel with many things that you say, Congressman, about that. But the real point of difference, if there is one, is the difficulty of encumbering a collective bargaining statute with collateral consideration. I think when you approach it fundamentally, that was the big mistake that was made in the Taft-Hartley Act. They took a fairly simple statute, and as all of the labor witnesses have testified, they made it so complicated that they cannot understand it, with collateral things, and I think that is a danger.

Mr. JACOBS. I think I can agree with you. In other words, I have often expressed it in this manner, and I believe you as a lawyer will agree with me, that all the Wagner law ever did was to wipe out an exception in the common law whereby the common-law principle of duress was made applicable to the labor contract, and by exception it was not applicable to the labor contract in the past. And that was about what the Wagner Act did, and about all it did. That was relatively very simple legislation that was brought in. Now here is another fundamental principle, the fundamental principle of the right of men when they form a union to govern themselves, and if we give the right to them, I believe we are warranted to make a simple law that says that they have a right to select their officers and appeal to the appropriate tribunal to enforce that right. I do not think that it will have to be used in so many cases, but I have seen men broken on the rack who were denied those rights. And I might observe to you that one of the weapons that was used, that when the suit was brought, not only for the right to elect officers but to collect back money that had been taken out of the treasury and carried off, criminally taken, the international president revoked the pensions of the old members of that local union——

Mr. BAILEY. Will the gentleman yield?

Mr. JACOBS. Yes.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. I would like to ask if he thinks the mass of the voters in the Republican Party have anything to do with determining the policy of the party?

Mr. JACOBS. It is all right with me if they never get elected.

Mr. KELLEY. The gentleman has 1 minute remaining.

Mr. GOLDBERG. May I point this out, Congressman Jacobs?

Mr. JACOBS. Yes.

Mr. GOLDBERG. You know the hostility and the bitterness that was engendered in the Taft-Hartley Act by singling out labor for repressive measures. Now, there is this possibility. If you take your concept and develop it——

Mr. JACOBS. May I ask you one question at that point? Do you think the suggestion I have made with regard to requiring elections according to the laws of the union is antilabor? Do you consider it so?

Mr. GOLDBERG. No. I think every good union has precisely what you suggest.

Mr. JACOBS. Do you consider that suggestion as being antilabor?

Mr. GOLDBERG. I have not said that.

Mr. JACOBS. I know you have not. But I am asking you, do you?

Mr. GOLDBERG. I said this, that labor people could properly resent being singled out in the field of voluntary associations for abuses that might exist in many voluntary associations, and maybe this is a problem that ought to be considered generally.

Mr. JACOBS. You may be right.

Mr. GOLDBERG. There are all kinds of voluntary associations in which labor unions form an important part.

Mr. JACOBS. We do know, do we not, that the man's membership in the union is of more value to him economically than his membership in any other organization except his Government?

Mr. GOLDBERG. I think it is very valuable.

Mr. KELLEY. Your time has expired.

Mr. Burke?

Mr. BURKE. I would like to pursue this line of discussion just a little further. That is, this matter of administratorship and trusteeship, and so on, of local unions. Now, I want to say in the beginning that I quite agree with you that a labor-management relations act should not be burdened down with collateral provisions, just muddying the waters, particularly as it applies to the inner organizational structure of the unions. But I would like to address myself, as long as this discussion has been going on this way, to the status of the workingman in this particular type of thing. I believe it was Mr. McDonald who testified that in the CIO there are some 48 constitutions that he has read, and they all provide for elections. Likewise, they also provide that where there is malfeasance in office, for the option of the international executive board to step in and take over until such time as the matter is straightened out; is that correct?

Mr. McDONALD. Yes; that is correct. In the United Steelworkers of America we have such a provision. We exercise it on very rare occasions, and then only after undue provocation. Sometimes a fellow defaults in some manner or fashion of a very serious nature, and we have to take over custodianship for a short time. But on the general subject of democratic procedure in our organization, we have at least 50,000 elected officers in the United Steelworkers of America. We have 2,500 local unions. We have a minimum of 20 officers and officials in each of those local unions.

Mr. BURKE. I quite agree that administratorship and trusteeship, which ever name we prefer to call it by, is not desired. The international officers who might be called upon to use it do not care to use it, and the constitution usually limits them in its use; is that not correct?

Mr. McDONALD. That is correct. We do not want to use it. Sometimes for the protection of men who form that local union, we must exercise it.

Mr. BURKE. Then it derives the right of the use of that administratorship from the locals themselves; in other words, they themselves make their constitution and make their bylaws and give the officers that right?

Mr. McDONALD. That is right, Mr. Burke.

Mr. BURKE. Now, on the subject of the Taft-Hartley Act itself, I admit I am in a little deep water with a lot of these legalistic arguments. But I think on the over-all general principle, I have felt since the time the Taft-Hartley Act was first introduced in Congress, when the Taft bill and the Hartley bill were introduced, that those bills were intended to accomplish the purpose of destroying labor unions where they could and minimizing the collective-bargaining power where it was not possible to destroy the union, and they did it in two ways. First of all, the bills drawn were obviously in an atmosphere, or climate, of hatred and desire for retaliation. But they attempted to accomplish their purpose, as I saw it, in two ways. One was the legalistic way that you have been talking about, setting up a veritable mine field of booby traps, legalistic booby traps, for labor unions; and the other is this. I feel that propaganda was written right into the law. I feel that on the subject that you talked about on the matter of financial reports of unions, it is true, is it not, that unions have been required to make these financial reports to the Government for several years?

Mr. McDONALD. Yes, Mr. Burke. In my testimony I attempted to describe that process. All unions under the Federal taxation laws are required to file financial reports with the Department of Internal Revenue, the international unions as such, the local unions as such, and we do it. I imagine that every union in America does it. That is not under the Taft-Hartley Act, sir.

Mr. BURKE. Is is not true that labor unions generally have felt that as far as financial statements were concerned, the only place that they cared to conceal or in any way keep from the public is the case of a small, struggling, weak, newly organized organization, so that the employer, by not having that knowledge, would not be in a position to tear them down?

Mr. McDONALD. Yes, I think that is correct, sir.

Mr. BURKE. That is all, Mr. Chairman.

Mr. KELLEY. Mr. Wier?

Mr. WIER. I want to follow this along a little bit here. Mr. McDonald, you represent a very large, substantial organization; is that not true? It is one of the largest in the country?

Mr. McDONALD. I think so, the United Steelworkers of America.

Mr. WIER. You have, I presume, 8,000 or 9,000 unions scattered from Maine to California and from the Canadian border to the Mexican border; is that correct?

Mr. McDONALD. From Nova Scotia to California and from Vancouver to Florida, about 2,500 local unions.

Mr. WIER. The laws under which all of these unions and the laws under which the international officers function are drawn up at duly constituted conventions of all those locals, is that not correct?

Mr. McDONALD. That is correct, sir, and our last convention had about 3,300 delegates in attendance.

Mr. WIER. And those laws and policies that are set up by conventions are for all the local unions and officials?

Mr. McDONALD. The constitution covers all the locals of the United Steelworkers of America. It is the general body of law that guides us. For purposes of our collective bargaining process, we have another body selected by the membership at large called an international policy committee, which has to do with the making of wage scales, agreements, and so forth.

Mr. WIER. Now, I anticipate that there is not a representative sitting out here today in a large labor organization who has not had the same experiences that perhaps you as president of the Steelworkers have had in our democratic functions and policymaking of our international and local unions. I think you will agree that the war cry of the mass of the voters was for union responsibility; is that not correct, at the time of the Taft-Hartley Act? Was it a demand by employers for union responsibility?

Mr. McDONALD. They attempted to propagandize the people of America that union responsibility was a required thing, when, as a matter of fact, union responsibility in my associations with unions has always been an active and existing thing.

Mr. WIER. And I think that you perhaps have experienced the same problem that practically every other international union has experienced, and that is in some communities, where you have a local union operating under your constitution and bylaws, a group of officers will be elected who feel that they are on a level with the international and sometimes on a higher level.

Mr. McDONALD. Yes, of course. We select the paid representatives of the United Steelworkers of America from the most skillful men who arise in the local unions.

Mr. WIER. When one of these local unions—and this is a point that is involved—when one of those local unions, whether it is in Pittsburgh, Milwaukee, San Francisco, or San Antonio, takes it upon itself through its elected officials to start declaring policy and start to experiment in their own philosophy with the welfare of 2,000 or 3,000 people, and flaunt the advice, the policies and the laws of the international union, and to some degree the membership of their own unions, what remedy is there to apply to acts of irresponsibility like that?

Mr. McDONALD. We have a procedure of thorough investigation. Usually that matter is brought to our attention by the complaint of a member or the complaint of a representative of an organization. We send several of our elected representatives, members of our international executive board, into the area, make a thorough and complete study of the situation, bring all parties at interest into a meeting, render a decision as to what remedial steps shall be taken, and if either side involved in a local controversy does not like that decision, it may appeal to the meeting of the international executive board for adjudication of their point of view. We have a thorough and completely democratic, exhaustive procedure which goes all the way to an appeal to the international convention.

Mr. WIER. Now, this same set of officers that you are having difficulty with in San Antonio, Tex., has violated your contract on two occasions and continues to tell the international about their rights under the international. The question I want to ask you is this. Do you feel that your international or any international should not take it upon itself to clean that situation up, and outlaw it?

Mr. McDONALD. Of course, sir, it is an absolute responsibility. An international union such as the Steelworkers Union must give complete protection to every single member, and a thoroughly irresponsible action on the part of an officer or a group of local union officers in San Antonio, Tex., may not have only a bad effect upon those who are employed in that immediate plant, but it may have a bad effect upon members of the organization, employees, in some other plant. Suppose they did something which completely distorted the existing wage scale, or breached the contract in some violent fashion; it might certainly have an effect upon the competitive situation of that employer as regards another employer. We would have to be extremely careful about that.

Mr. WIER. Let me ask you this question. If, for example, within the provisions of the proposed law before this committee there was a citation by which the local union reserved this right of autonomy and it was mandatory for that union to hold an election in which the same officers would be reelected by the membership, what would happen in your international and local unions?

Mr. MCDONALD. If you did that and we had a Federal law to that effect, we could possibly have complete turmoil. We would have absolutely no supervision. We would not be able to control inequitable situations. You would make it possible for racketeers to take over the United Steelworkers of America, chiselers of all kinds and descriptions to get control, and you would destroy the very basis, I believe, or the germs of destruction would be planted in an organization. We would have a tremendous policing job if they could simply defy the law and the constitution of the organization, defy the general wage policy of the organization. Nothing but confusion and turmoil would be the end result.

Mr. WIER. One more point. You represent a large organization in the heavy industries, and one of the points that has been brought out here by management has been this question of the elimination of foremen and supervisors. What has been your experience under the Taft-Hartley Act of drawing a line of demarcation between those eligible in your group and those who, it is maintained by the Taft-Hartley Act, cannot be members and represented by your local? Have you had any trouble with that?

Mr. MCDONALD. We have had a few difficulties in that situation, but I think that it is a problem which can easily be resolved by joint agreement between management and labor. With a number of the important steel companies, we have agreed upon a line of demarkation, and some of the companies have approached the problem in a very sensible fashion, and there is no dispute at all existing. In other situations, you find companies chiseling and trying to lower and lower and lower the line of what is a foreman or what is a supervisor, the idea being to take away people from the bargaining unit, and constantly remove them.

Mr. WIER. I was just going to ask you that last question.

Mr. KELLEY. You have 1 minute remaining.

Mr. WIER. I have just one question.

In your negotiations recently, since the Taft-Hartley Act, did that provision of the Taft-Hartley Act remove from your former membership a substantial number of workers who formerly were covered under an agreement with management?

Mr. MCDONALD. I do not think it did insofar as basic steel is concerned. You see, sir, most of our agreements which are now in existence were negotiated before the enactment of the Taft-Hartley Act. The basic steel agreement with the United States Steel Corp. was enacted on April 22, 1947, and practically all the other agreements came into being on or about that date.

Mr. KELLEY. The gentleman's time has expired.

Mr. McConnell?

Mr. McCONNELL. I was interested in your statement that the Government should keep out of labor-management relations. I noticed also it says here that a good labor law must rest upon the principle that "He governs best who governs least."

Mr. McDONALD. Yes, sir.

Mr. McCONNELL. That is a very good principle. Now, I do not know how far you are willing to carry it. What labor laws with the Government involved in them would you repeal, then?

Mr. McDONALD. I beg your pardon, Mr. McConnell?

Mr. McCONNELL. How many Government laws dealing with labor would you repeal, then? How far would you follow that principle?

Mr. McDONALD. Let us get rid of the Taft-Hartley Act at this time, and I will be satisfied, at least until that measure is out.

Mr. McCONNELL. In other words, you only want to follow your principle a certain tiny distance; is that right?

Mr. McDONALD. No. I think that is an awfully long distance, to get rid of the Taft-Hartley law. I think it is a law that is an iniquitous thing. It is designed to smash labor unions. It has no right to be on the statute books of the Federal Government. It is designed to depress the standards and conditions of the working people of America, and right now I will settle for that one—getting rid of it.

Mr. McCONNELL. But you would not change any other labor law? You would leave the Government in them?

Mr. McDONALD. We are dealing in this situation with a labor-relations law. There are certain laws——

Mr. McCONNELL. They are all labor-relations laws. They all affect labor relations. I do not know a labor law that does not.

Mr. McDONALD. This is the law which has to do with the labor relations between employers and employees, Mr. McConnell.

Mr. McCONNELL. They all affect relationships between employees and employers. Now, how far would you go? You just want to repeal one?

Mr. McDONALD. I want to repeal right now the Taft-Hartley law.

Mr. McCONNELL. That is the only one you want to repeal?

Mr. McDONALD. That is correct, sir.

Mr. McCONNELL. Then suppose we alter that statement just a little and say that you only want to have the Government in certain types of labor-management relationships.

Mr. McDONALD. No. I think my statement is very applicable. A good labor-relations law must rest upon the principle that he governs best who governs least. And I am talking about the Wagner Act being that sort of law.

Mr. McCONNELL. You would have to have a Government that governed least, then, if that is the case. When you talk about free labor, I am willing to consider the principle of free labor, but let us follow it all the way through. How far are we going to go on that? How free should labor and management be in their relationships?

Mr. McDONALD. Just as free as the Wagner Act, plus the several amendment to which we have agreed, permit it to go.

Mr. McCONNELL. I have heard the advocates of many types of laws in different fields who would bring the Government into the relationship of individuals, and I believe your organization is one of those that advocates legislation to bring the Government into many of our fields.

Mr. McDonald. Oh, yes.

Mr. McConnell. Setting up more and more Government agencies to regulate the economic lives, and so on, of our people. Now, how far do we want to go on this "least government" idea?

Mr. McDonald. Those which we advocate are those which are designed to help those who are least able to help themselves.

Mr. McConnell. In other words, you do want the Government to come into various parts of the labor-management relations field?

Mr. McDonald. To the point that labor-management relations—to the extent of the Wagner Act plus the amendments which we have instituted, plus providing some protection to those people who need protection.

Mr. McConnell. But other laws have an effect on labor-management relationships. Now, you do not mind them being in there? You just have a distinction here; is that correct? It is not a general statement, but a statement that is of a certain particular distinctive type?

Mr. McDonald. In this situation, it refers to the Wagner Act.

Mr. McConnell. Are you opposed to every single provision in the Taft-Hartley law?

Mr. McDonald. I am opposed to all those provisions in the Taft-Hartley law which have a restrictive, or bad, influence upon decent labor-management relationships. And we have filed already with this committee a statement of 127 pages. We have filed another statement with the Senate of 112 pages, which specifically spells out our objectives step by step.

Mr. McConnell. All right. Now, are you opposed to every single provision in the Taft-Hartley Act?

Mr. McDonald. I do not think that I could properly answer that with a yes-or-no answer. I can only answer it in the way that I have indicated by saying that those sections which are iniquitous, we want to get rid of. If there is any section which is any good at all, from our point of view, all right, we will let it stay in.

Mr. McConnell. Don't you know?

Mr. McDonald. Of course, I know, sir.

Mr. McConnell. Then tell me what provisions are not bad in the Taft-Hartley Act. Let us get at it another way.

Mr. McDonald. How in the world, Mr. McConnell, can I pick those out? Every provision in the Taft-Hartley Act is related to some other provision. I just cannot talk in a vacuum on this thing, and I certainly, sir, cannot attempt to quote verbatim 239 pages of testimony.

Mr. McConnell. Are there any good provisions to be preserved in the Taft-Hartley Act? I just want to get at this from every angle.

Mr. McDonald. I want the Thomas-Lesinski bill, and I do not want the Taft-Hartley Act.

Mr. McConnell. Are there any provisions that you would preserve in the Taft-Hartley Act?

Mr. McDonald. I do not think so. The whole idea is basically wrong; the whole genesis is wrong. It was conceived in sin, and it should die.

Mr. McConnell. In other words, you are so completely against it that you could not change your opinion in any way? You are opposed to the whole act?

Mr. McDONALD. Sir, if I were permitted to use the language I am thinking perhaps you would understand.

Mr. McCONNELL. That is what I meant.

Mr. McDONALD. It does no confounded good, and you can supply any adjective which you desire in place of "confounded."

Mr. McCONNELL. In other words, your mind is as closed in that respect as the minds of labor leaders were closed when we were even asking them for suggestions before the Taft-Hartley Act was written; right?

Mr. McDONALD. We have made certain suggestions. My mind is not closed. I hope I never have a closed mind.

Mr. McCONNELL. You said you wanted no part of the act.

Mr. McDONALD. That is right.

Mr. McCONNELL. It is entirely evil. So that is a closed mind.

Mr. McDONALD. I disagree with you, sir. I am sorry.

Mr. McCONNELL. Now, how about coercion? Are employers the only ones who coerce people?

Mr. McDONALD. Oh, no. Employers are not the only ones who coerce people.

Mr. McCONNELL. Do unions coerce people?

Mr. McDONALD. No.

Mr. McCONNELL. Do they coerce employees in any way, or union members?

Mr. McDONALD. Not to my knowledge. The United Steelworkers of America, which I represent——

Mr. McCONNELL. In other words, the employer is the only one who ever coerces anyone?

Mr. McDONALD. Oh, no. I would not say that. I think there are a lot of bodies in America which coerce people at times.

Mr. McCONNELL. And unions never coerce any workers?

Mr. McDONALD. The United Steelworkers of America opposes coercion in every manner or fashion by an employer and by anybody else.

Mr. McCONNELL. So do I. That is right. But you are going to take it out as far as the union is concerned in the law? You are going to say that it is not an unfair labor practice for a union to coerce a union member or employee, but it is an unfair labor practice for an employer to coerce a worker.

Mr. McDONALD. That is right.

Mr. McCONNELL. But it is not an unfair practice for a union or a union leader or any of his workers or any union member to coerce another employee? You are going to drop that out?

Mr. McDONALD. We do not coerce people. It has no place in the act.

Mr. McCONNELL. But employers do?

Mr. McDONALD. Some employers do.

Mr. McCONNELL. And no union or union leaders or no union members coerce any other worker?

Mr. McDONALD. We do not engage in any coercive activities whatever.

Mr. McCONNELL. But the employer does?

Mr. McDONALD. Some do. Not all.

I do not know whether you were here, Mr. McConnell, when I read that statement from the existing agreement with the United States Steel Corp.

Mr. McConnell. You say you are for H. R. 2032?

Mr. McDonald. That is right, sir.

Mr. McConnell. What is your opinion about the inherent right of the President in national emergencies, to compel the employees to maintain the status quo?

Mr. McDonald. That is a very involved legal problem, and if it is all right with you, Mr. McConnell and Mr. Kelley, I would like to defer that to Mr. Goldberg.

Mr. McConnell. That would be perfectly all right. I understand that. I would like to ask Mr. Goldberg to do that.

Mr. Kelley. You have one-half minute to answer it.

Mr. Goldberg. Mr. Congressman, our position with respect to that is this. We do not think that there is any inherent power in the President to injunctions. We have stated that very emphatically, and that is our position. We think that the provision in the statute that calls for the President to ask the parties to observe the status quo is within the power of the President. It is given by the Congress. And I can tell you for the CIO that we will carry out the wishes of the President.

Mr. Kelley. The gentleman's time has expired.

Mr. Smith?

Mr. Smith. I yield my time to Mr. McConnell.

Mr. Kelley. You have 10 minutes more, Mr. McConnell.

Mr. McConnell. I would like to ask you a little more in that connection. The Attorney General, who is the top legal man in the administration, has stated that the President does have the inherent power. That might involve the injunctive process or it might involve seizure or some type of military process. And you disagree with that, definitely?

Mr. Goldberg. I am exercising my prerogative as a lawyer to disagree with the Attorney General in that respect.

Mr. McConnell. Now, assuming that the Attorney General is correct and acts on that presumption, is it not likely that you would have this happen? I will read that section on page 17 of the act:

> After a Presidential proclamation has been issued under section 301, and until 5 days have elapsed after the report has been made by the board appointed under this section, the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute unless a change therein is agreed to by the parties.

If the President should have this inherent power which could force the parties to continue or resume work, do you not have there a real slave labor provision?

Mr. Goldberg. I do not think so, because I think it is very apparent from this bill, and particularly the references to the Norris-LaGuardia and Clayton Acts that no power exists to get an injunction. That being so, this provision is a public policy declaration in the traditional American way in which the President, with the exercise of his high powers and high prestige as President, calls upon the parties to maintain the status quo, and I have indicated to you, Congressman, that as a matter of policy, the CIO, which has considered this provision, will carry out its obligations to the public and to the President of the United States.

Mr. McConnell. What do you think of the saving provision section in that connection, section 404? It says:

> Nothing in this act shall be construed to require an individual employee to render labor or service without his consent.

Of course, it does not say anything in this act about the inherent powers of the President. If he should exercise it, does that saving process amount to anything?

Mr. Goldberg. Of course, Congressman, you never say anything in legislation about the inherent powers of the President. Whatever inherent powers the President has, he has under the Constitution.

Mr. McConnell. Yes.

Mr. Goldberg. But as I understand this statute, which is the statute we are considering, it says that the provisions of the Norris-LaGuardia Act shall apply to all of the provisions of this act, except provisions to enforce labor board orders, under section 10 of the act. And I think it is perfectly consistent. As I read the statute, it does not contain any slave-labor provisions or any provisions comparable to those in the Taft-Hartley Act which prevented people from striking under a Government injunction.

Mr. McConnell. My own personal opinion would be, for what it is worth, that I would be very sure of that section before giving approval of H. R. 2032.

Mr. Goldberg. Let us look, Congressman, at section 401. I do not know how the drafters of the statute could state it more plainly:

> "An act to amend the Judicial Code and to define and limit the jurisdiction of the courts sitting in equity, and for other purposes" (Norris-LaGuardia Act), approved March 24, 1932. * * * And sections 6 and 20 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (Clayton Act) * * * are continued in full force and effect in accordance with the provisions of such acts; except that the provision of such act and such sections shall not be construed to be applicable with respect to section 10 of the National Labor Relations Act.

I say, as a lawyer reading that section, that it very plainly says that no one can get an injunction except under section 10 of the National Labor Relations Act, which is the provision that called for the circuit court of appeals to enforce board orders. And I frankly am not very much concerned with this opinion that the Attorney General gave, because I think that the statute vitiates any possibility of any exercise of so-called inherent powers to get injunctions in this type of situation.

Now, whatever constitutional powers there are in the President's office, he has by virtue of the Constitution, and there is nothing that could legislatively be done to take them away.

Mr. McConnell. I am just pointing it out as a caution to you, because other lawyers have made that statement to me. I am not a lawyer, but other lawyers have stated that they view that with some distrust.

I have no further questions.

Mr. Kelley. Mr. Smith, you have 5 minutes remaining.

Mr. Smith. I have no questions.

Mr. Kelley. Mr. Werdel?

Mr. Werdel. I have only one question I want to ask.

Mr. Goldberg, did you go to school at the University of California at Berkeley?

Mr. GOLDBERG. No. I went to school at Northwestern.

Mr. WERDEL. As I view this national emergency situation, in the event of labor disputes there is a possibility in my mind about four procedures. One would be compulsory arbitration with Government enforcement. That is Hitlerism. Certainly we would not like that.

Mr. GOLDBERG. I would agree with you, Congressman.

Mr. WERDEL. The second would be the Government's taking over plants, which we do not like.

Mr. GOLDBERG. Yes.

Mr. WERDEL. The third is the limited use of injunctions for a cooling off period. That is what some of us tried to put in the Taft-Hartley Act, which you do not agree with.

Mr. GOLDBERG. Not only do I not agree with it, but it has been demonstrated that it will not work.

Mr. WERDEL. Let us assume that we would get into a difficult situation where the workers in an important industry believe that they are correct, and the management believes that it is correct, and they square off. Do you believe that the provision of the Lesinski measure will be adequate to settle it?

Mr. GOLDERG. Yes, Congressman, and I will tell you why. We had the most curious situation during the war, where we had no restrictive legislation of this particular type. The labor organizations and the business organizations of this country agreed upon a policy at that time of no strikes. That was an agreement. And it worked very effectively, as we know.

Now, you have heard a declaration from me which does not represent my personal declaration; it represents the declaration of the CIO, that, having endorsed this bill, we are going to abide by it. I read the testimony—unfortunately, I was not present—of President Green, what President Green said, that he would comply with the spirit of this statute on maintaining the status quo when the President called upon us in any situation which is covered by the statute. That is a real national emergency. That does not mean any strike is a national emergency, as we all know. And we would not want to classify every strike as a national emergency.

I say again, using the best way, which is the way of publicity and voluntary action, we will have far better results in coping with real national emergencies than we would have if we attempted to enjoin people into compliance. And I say that not argumentatively. I say that with all the sincerity I can command.

Mr. WERDEL. That is all.

Mr. KELLEY. Mr. McDonald, I believe in your statement you said that the philosophies of the two bills, or the two acts, are entirely different.

Mr. McDONALD. Yes, sir.

Mr. KELLEY. The Wagner Act had a philosophy entirely different from that of the Taft-Hartley Act. I presume the difference was that they were founded on different premises.

Mr. McDONALD. That is right, sir.

Mr. KELLEY. Would you care to explain that?

Mr. McDONALD. I believe that the Wagner Act was designed to encourage the organization of men into labor unions of their own choosing. I believe that the Taft-Hartley Act was designed to prevent the organizing of men into labor unions of their own choosing, and I further believe that the Taft-Hartley Act's basic design is aimed at the destruction of those labor unions.

Mr. KELLEY. I assume, then, that the Wagner Act started out on the premise that labor and management could be friendly.

Mr. MCDONALD. Yes, sir.

Mr. KELLEY. And the Taft-Hartley Act assumes that labor and management are enemies.

Mr. MCDONALD. I think it is Marxian, really, in concept, in that it creates a definite distinction. It attempts to create a class conflict in America. The Wagner Act attempted to do just the opposite. It encouraged friendly relationships, as indicated, Mr. Kelley, by the type of relationships we have been aiming for in the steel industry, as I indicated in the statement that I read to you.

Mr. KELLEY. It has been stated repeatedly in the last 2 or 3 years that the rank and file of the membership of organized labor did not know anything about the Taft-Hartley Act, and that a lot of them were satisfied with it. The only people that were grumbling about it were the labor leaders. Now, have you ever taken a poll of the membership of the steel workers to determine how the rank and file felt about it?

Mr. MCDONALD. We have not sent out a questionnaire, such as some companies have sent out. But I have been in almost every district of the United Steelworkers of America since this law was enacted; I have been in district conferences with fellows right out of the mill. I have been in local union meetings, and the records are replete with statements from those fellows as to what an awful thing this Taft-Hartley Act is. As a matter of fact, I came back from St. Louis to be here. I attended a district conference in St. Louis, Mo., on Saturday. And there I talked with fellows who have come out of the mills. They came to me, I did not need to seek them out, saying, "When are we going to get rid of this thing, Dave?" explaining how it was affecting them adversely in their plants.

Everybody is confused. Management is confused. The negotiating committees are confused, by the ambiguity of the act. They do not know what they can do and what they cannot do. And as a result, I do not know when these fellows in these local situations will be able to get agreements renegotiated. Things of that sort are bothering them all the time.

Senator Taft would say that the act means one thing. Mr. Hartley would say that it means something else, and so on and so forth. We have a great new body of law being built up by the National Labor Relations Board. Everybody is mixed up and confused about this time. And that goes right down to our local union people.

Mr. KELLEY. It is my experience, and I rub shoulders with a great many of them.

Mr. MCDONALD. Yes, of course you do, sir. You come from an industrial area, and you have reason to contact these people.

Mr. KELLEY. I find this, also; they feel that the Federal Government has selected them out as a group and legislated against them.

Mr. MCDONALD. That is right.

Mr. KELLEY. And restricted their liberty.

Mr. MCDONALD. That is correct, sir. They feel that the Federal Government is lined up with unfair employers to beat down their wages and destroy their working conditions. And you, sir, you know full well what conditions were in western Pennsylvania, just to cite one section of the country, a few years back, before unions came into being. I think perhaps with your own eyes you saw the degradation to which working men were forced in the coal mines and in steel mills and every place else.

Mr. KELLEY. I do not think I could ever wipe out that memory.

Mr. McDONALD. No, sir; I am sure I cannot. If I seem to be heated a bit, it is because I can remember them very distinctly, the thud of falling iron pots on steelworkers' heads and coal miners' heads. We have wiped that out in America, and let us never go back there. Let us get rid of this iniquitous Taft-Hartley Act, which can be used by unfair employers whenever they so choose, to again start the club-swinging and the shooting and the rioting and that sort of thing. Reenact the Wagner Act with these few provisions which we have suggested so as to restore the climate that we have been working to build in America, as outlined in that Carnegie-Illinois agreement, friendly, cooperative relationships. Make this democratic capitalistic system of ours really work.

Mr. KELLEY. That is all, Mr. McDonald and Mr. Goldberg. Thank you very much.

Mr. McDONALD. Thank you very much.

Mr. KELLEY. Mr. Johnstone, of the United Automobile Workers.

Mr. Johnstone, are you going to read all your statement?

Mr. JOHNSTONE. No, I am not.

Mr. KELLEY. How about these other statements that have come along with yours?

Mr. JOHNSTONE. I am going to read about four pages, and then ad lib on it.

Mr. KELLEY. There are three statements here.

Mr. JOHNSTONE. There is only one statement, Congressman Kelley, and the rest are exhibits.

Mr. KELLEY. Do you want these inserted in the record?

Mr. JOHNSTONE. If you please.

Mr. KELLEY. All right. That will be taken care of.

You may proceed.

Mr. JOHNSTONE. Thank you.

TESTIMONY OF T. A. JOHNSTONE, ASSISTANT DIRECTOR, GENERAL MOTORS DEPARTMENT, UNITED AUTOMOBILE WORKERS, CIO

Mr. JOHNSTONE. My name is Thomas A. Johnstone. I am assistant director of the General Motors department of the UAW–CIO, an organization of over 1,000,000 members, and I speak for them today.

I would like to express the regret of the president of our organization, Mr. Walter P. Reuther; he is unable to be here today because of his injury. He is still under a doctor's care. I would like also at this time to introduce my associates. I would like to introduce our general counsel on my right, Mr. Irving Levy, and Mr. Don Montgomery, chief of our Washington bureau. As we proceed, they may participate in the discussion and answer questions. By citing the actual cases of which the UAW-CIO has first-hand knowledge, we will show you how the Taft-Hartley Act has operated and is today operating, to make industrial relations worse, not better.

First, it seems to us obvious that in enacting the Taft-Hartley Act, the Eightieth Congress mistook the symptoms of labor unrest for causes of that unrest.

The causes were, first, attempts of employers to hold down wages while prices and profits before and after taxes were rising, and, second, the action of Congress itself in prematurely destroying price controls, priorities, and allocations of scarce necessary commodities such as building materials, steel, and other items.

Profit-hungry employers and Congress together set loose a spiral of inflation. Workers' real wages, their power to buy the goods they produced, shrank faster than workers could win wage increases to catch up with rising prices.

Aided by Congress, the believers in the trickle-down theory of prosperity won out over those who believed that healthy lasting prosperity can be based only on purchasing power in the hands of wage earners, farmers, and professional people, on buying power put in their hands day by day and week by week in payment for work performed, goods produced, and service rendered.

When, as was inevitable in the postwar period of inflation, free American workers attempted to bargain peacefully and reasonably for wage increases to keep up with the soaring cost of living—and even for a small share of record-breaking profits, employers too often attempted to deny these demands and to push down the standard of living—the buying power—of their employees. Denied wage increases, these free workers had no choice but to put their economic strength against the economic strength of employers. They exercised the right to strike to which the Taft-Hartley Act later paid lip service in section 13 but denied in section 9 (c) (3) and other provisions. To the extent they succeeded—and they were not as successful as they could have been if employers had not been reimbursed for their strike losses by the carry-forward, carry-back provision of the tax laws—they protected the living standards of the Nation. Moreover, labor, by its action, toned up the very markets in which American employers and farmers must sell most of their goods if they are to be sold at all.

But Congress misread the wage disputes and the costly strikes of 1945–46—costly in terms of wages and delayed production but less so in profits. Sitting in judgment, Congress overlooked the cause, which was an inflation set loose in part by its own acts, and attempted to pin the blame on labor, to punish labor with the Taft-Hartley Act. In the words of Senator Wayne Morse, the Eightieth Congress missed the apple and hit the boy.

Today the fact that in the past 2 years many of the American people have been priced out of the market for hard and soft consumer goods, for new houses and new cars, makes it imperative that, as proposed in H. R. 2032, American wage earners be freed to bargain effectively for wage increases, for social security and pensions. They must be protected in the exercise of that right, as was done under the Wagner Act and as is proposed in H. R. 2032.

Only as this is done, along with other steps for which the American people voted last November 2, can we establish a balance among wages, prices, and profits that will make it possible for wage earners, farmers, and professional people to buy back an economically healthy share of the goods and services they produce.

Repeal of the Taft-Hartley Act and reenactment of the Wagner Act, as amended by H. R. 2032, are in the interest of farmers, manufacturers, and businessmen as much as in the interest of wage earners. Early enactment of H. R. 2032 is a practical step in restoring the market for the products of American farms and factories. Neither farmers nor businessmen can sell their goods and services at fair prices and profits unless American wage earners are able to bargain and to get enough wages and security to be good customers year in and year out at a high standard of living that rises at least as fast as technology improves.

We are a long way from that healthy balance today. Only the extra demand for ECA and the biggest peacetime military budget in history keep the market up. Should the cold war end and peace break out, we would all be faced overnight with the problems of achieving such a balance as a part of our productive process—or creating substitutes for such a balance by large public works and relief measures to be paid for out of taxes.

It is high time for Congress to restore genuinely free collective bargaining—to let labor do what it can toward achieving and maintaining the healthy economic equilibrium essential to stable prosperity.

Were the Taft-Hartley Act to remain in force, and were the Eighty-first Congress to set idly by while our economy continues another vicious cycle of a short boom and a long bust with resulting large-scale chronic mass unemployment, the full evil of the act would come into play. The act is an arsenal of weapons, made ready for the use of short-sighted, antilabor employers, whenever they deem the time right for a return to the industrial warfare of the pre-Wagner Act days.

As other witnesses have demonstrated to this committee, the Taft-Hartley Act, in its purpose, its construction, its machinery, and its administration, is a one-sided law. It is loaded to give summary action against labor and to afford employers the immunity of delay. In its attempt to prevent effective political action by workers through their unions, it is unconstitutional. It is vindictive in intent and effect. It is unfair. It is unjust. It is filled with legalistic booby traps—with whereases and aforesaids and provided-howevers. It is unworkable. It should be repealed as provided in H. R. 2032.

There are some people of good will, not too well informed about labor-management relations, who believe that the Taft-Hartley Act is good in spots. Like the addled egg served to the visiting preacher, which, he said, was good "in spots," the Taft-Hartley Act is bad in so many spots that for all practical purposes it is bad all over.

Let us dispose of it and make a fresh start, going back to the Wagner Act, which was fair in purpose, intent, and provisions, and start over again from there, with those substantial amendments provided in H. R. 2032.

By providing that the General Counsel "shall forthwith" move to obtain injunctions against labor but not against employers, the Taft-Hartley Act has been and is being used to weaken and destroy union strength and effectiveness, to put the force of the Federal Government and the courts behind strike-breaking, union-busting actions by employers, acting singly and in groups.

At this point, in passing, let me compliment the members of this committee for having done a perfect service in exposing the real authors of the Taft-Hartley Act, Mr. Gerald Morgan and others. We have personal knowledge of some of his associates.

The act expressly permits scabs to vote in National Labor Relations Board elections while expressly barring strikers from voting in such elections.

The act sets up the alien undemocratic requirement that in union-shop elections a majority, not of those voting, but a majority of all those eligible to vote, is required to legalize a union shop. And then, after such a majority has so voted, the union must still bargain with the employer to win a union shop. As has undoubtedly been pointed out by earlier witnesses, this test has not been met by any Member of Congress and probably by no members of any State legislature, county, or board, or city council in America.

All these vicious provisions and others, as applied in the 18 months since the law became effective, have had the effect, unforeseen by the act's sponsors. of bringing about in union members a renewed sense of the value of unions.

Ninety-seven percent of all union-shop elections have been won by overwhelming majorities.

Votes were cast by as high as 98 percent of the members eligible to vote in such elections.

In the Ford elections, with the Taft-Hartley Act, State laws and the Ford management placing every possible obstacle in the way, 88,943 voted to continue the union shop, the company challenged 924 and only 1,214 voted against. This was a 98 percent majority. It was a 90 percent majority of all those eligible to vote. In seven States, Ford workers were not permitted to vote because of State laws prohibiting the union shop.

Incidentally, I would like to take this opportunity to mention that General Motors, which I service day after day, makes a fine distinction between union-shop elections and representation elections, in that all of the representation elections are conducted on plant property, and the corporation offers no objection.

On April 17, 1940, there were elections conducted in 55 plants of the General Motors, and they stated to the National Labor Relations Board and went publicly on record that there was no loss in production and that there was no loss in output. They do not want the General Motors, the G-M workers, to have free and unfettered opportunity to express themselves in union-shop elections. The restrictions which apply there do not apply to representation elections.

The Taft-Hartley Act has aroused labor as never before to an active interest and participation in political action and brought about such a degree of unity among all labor with results that the Members of this Congress know. In this respect, the Taft-Hartley bazooka has backfired upon its nominal sponsors and supporters.

Perhaps the best summation of the effect of the Taft-Hartley Act was contained in an inadvertent admission by Senator Ball's watchdog committee of the Eightieth Congress.

In polite but understandable language, the watchdog committee, created by the Taft-Hartley Act itself last March, 1948, answered—industrial strife.

Concluding a study of how the act had caused 10 years of peaceful union-management relations to be broken by a strike in the Murray Corp. plant in Detroit, the committee said (from p. 177, March 1948

Report of Taft-Hartley watchdog committee created to study effects of the act):

> With passage of the Taft-Hartley Act, the company and the union each feel that its relations with the other are on the threshold of a new era.
>
> Efforts of the company to regain exclusive control of what it conceives are the rights of management and to restore a balance and equality to the bargaining relation will be vigorously resisted by the union as a challenge to its power and authority, a threat to its very existence.
>
> There is unquestionably to be a readjustment of the relations between the parties during the next few years, a new concept of the functions of union and management in the industrial economy.
>
> Achievement of this evolutionary cycle without open strife will be a severe test of collective bargaining.

The committee's conclusions in plainer language:

The Taft-Hartley Act opens the door to a "new era" very similar to the old era of 1920–37, when refusal to deal with unions was the prevailing pattern in American industry and business.

The act encourages employers to attempt "to regain exclusive control of what it conceives are the rights of management."

Unions, with four times the membership they had in the old era, will "vigorously resist" these efforts by employers, "as threats to their very existence."

The Taft-Hartley Act will thus bring about industrial strife because such a change to a "new era," frankly intended to resemble the old era, cannot come about in collective bargaining unless unions surrender to the demands of employers that they be allowed "to regain exclusive control of what they conceive to be the rights of management."

Now, we present cases within UAW experience showing the evil effects of the Taft-Hartley Act. They are typical of many. In a period of recession or depression, they would become the pattern for weakening and destroying unions and the practice of free collective bargaining that has developed since passage of the Norris-LaGuardia and Wagner Acts.

The first case shows a comparison between the speed for employers and the action for workers, in which there was real speed, yet propulsion, so far as the employers were concerned, and never-ending delay insofar as the unions were concerned. These case histories are placed side by side. One is in the Perry-Norvell Shoe case, in which 3½ months were occupied, 107 days, to be exact. The employer obtained an injunction against the picketing that was going on after a strike had been called. The trial examiner found there was no violation of the contract and dismissed the complaint; but, nevertheless, the strike was broken in 3½ months, on the basis of the employer complaint.

The other case is the Dorsey Trailers case in which a strike occurred in November 1946, and 846 days later, 2 years, 4½ months to be exact, we were and are without redress. In this case we have the story of an industrial "tobacco road." Sworn testimony shows in the Dorsey Trailers case that the chief of police and the assistant superintendent of Dorsey Trailers hied a thug to beat up a union representative for $50. The thug whom he hired subcontracted the job of beating the union representative, Jim Hardin, of our organization, to two others, for $20 apiece. The organizer was badly beaten, and he was hospitalized. One of the thugs later appeared in court and pleaded guilty for himself and one other of his helpers, and he was told by the "judge"—and I put "judge" in quotes—that he had been fined $104.50, but that his fine has been paid. We say "justice delayed is justice defied," and we have not gotten justice in that case yet.

Compare the treatment given to us in the Dorsey Trailers case with the streamlined disposition of the Perry-Norvell Shoe case, where the employer filed a complaint.

If you will turn to the next exhibit, this has to do with Dumont Laboratories, Passaic, N. J., Television producers. It is a throw-back to pre-Wagner Act, anti-union days. In this case the employer propagandized his employees under the so-called free-speech provisions of the Taft-Hartley Act, and he stated to his employees, in part:

> It is our honest belief that the restrictions that would be imposed by a union contract would not only directly affect you in connection with the matters which we have discussed, but would also directly affect the company and indirectly you as a part of Dumont by hampering efficient production and our ability to maintain and continue to improve the standards of employment that has made Dumont a good place in which to work.

That is the sort of fruit which was strewn by the so-called free-speech provision of the Taft-Hartley Act.

Today the Dumont workers are without union representation; they are without the protection of a contract; and thanks to the Taft-Hartley guaranty of free speech to employers for the intimidation of employees with poverty propaganda such as Dumont, riding the crest of the new television boom, thrust upon the Dumont workers by the employer.

Case No. 3 concerns Autopulse Corporation, Ludington, Mich. The company made threats of discharges or withdrawal of paid vacations, and made other charges to the employees prior to election. We had had 7 years of good labor relations with that organization through local 174 in Detroit, and it completely reversed its policy when it moved to Ludington, Mich. They fired workers who attended a union meeting on November 26, and workers later were told that if they voted "no," it would be easy to get paid vacations, and they would have steady work, and that if they voted "yes," immediate large lay-offs would follow, and employees would be bossed by union big shots, et cetera.

To date, 14 months after 28 employees were fired following their attendance at a local union meeting, the National Labor Relations Board has not even set a hearing on the unfair labor practice charge which we have filed. We intend to show that the act is unworkable.

In Case No. 4 we cite a situation in the Ford Motor Co. as respects the union-shop provisions of the Taft-Hartley Act. In 1947 Ford Motor Co. and our organization signed a contract providing for a union shop to continue until June 15, 1949, if and to the extent permitted by law.

And in a letter which the management sent to all hourly rated workers in February 1948 it told the workers that the union-shop clause in the 1947 contract would expire July 15, 1948. That was not strictly in accordance with the truth, unless management was speaking their minds ahead of negotiations.

The Ford Motor Co. demanded we petition for our union-shop elections on a plant-unit basis, and we have Ford plants in 25 different cities outside of Michigan, as well as the River Rouge plant.

It also told the National Labor Relations Board that elections could not be held and would not be held in the plant unless the company designated the places of balloting, a restriction which the National Labor Relations Board refused since it, and it alone, is responsible for conducting the elections.

In spite of that, we won by 88,943 affirmative votes. There were 91,081 workers who voted there, as I said earlier.

This, we say, and similar votes of confidence indicate beyond any question that workers want unions, and they want to have the union shop, and it indicates those sponsors of the Taft-Hartley Act who said workers did not want unions and did not want to have the union shop are incorrect. Today even Senator Taft would like to forget this backfiring provision of the law dealing with union-shop elections.

Case No. 5 shows that after 7 years Campbell, Wyant & Cannon Foundry, Muskegon, Mich., changed its attitude completely insofar as union security was concerned. This company had a contract with the union dating from August 31, 1941, and it provided for maintenance of membership. The check-off was incorporated in the union provisions March 18, 1946. Contract discussions began April 27, 1948, and the company objected to talking about union security and check-off at all. They refused to bargain on this issue, and they forced a strike which lasted for 79 days. At the end of those 79 days they granted the union-shop clause that had previously been in effect.

That strike, 79 days in length, shut down the Hudson Motor Car plant in Detroit, and it caused lay-offs in Ford and General Motors, all unnecessarily; but due to the encouragement lent by the provisions of the Taft-Hartley Act.

Case No. 6, the Sealed Power Corp., Muskegon, Mich.; they had union-shop and check-off provisions, but in 1948 the company objected to these provisions, even though we had an election there which showed 87 percent of the eligible employees, and 93 percent of the valid votes cast, favored the continuance of union-shop conditions in the plant.

After much delay, local 637 was able to win renewal of the union shop and check-off provisions.

Another instance of Taft-Hartley trouble-making.

Case No. 7 deals with the Packard Motor Car Co. We have had relations with Packard since the early days, since 1937, and we have had exclusive bargaining rights for all units covered.

In 1948 we were confronted in negotiations for renewal of a contract that the word "exclusive" be stricken from the contract, and certain provisions providing that an employee must take his grievance up with the company supervisor first; and then take his grievance to the union steward, but only after obtaining permission from his supervisor.

We renewed our 1948 contract without that provision, but the company is intimating it intends to renew that provision in June of 1949.

That, we submit, is an instance of the "new era," the dawn of the "new era," described in the 1948 Joint Committee on Labor-Management Relations Report.

Case No. 8 is more recent. It has to do with Frank Foundry Corp., Muncie, Ind. And in this case the management cited new laws as a reason for terminating a contract that was then in existence.

They fired two union stewards, and they refused to negotiate on plant grievances, and they have shut down the plant. They charge the union with having gone on strike, and attempted to deny unemployment compensation to the workers in that plant. The Unemployment Compensation Commission found there was no strike, but nevertheless, in spite of the fact that the State agency found no strike was called or existed, the National Labor Relations Board and the general counsel, Mr. Denham, operating under the Taft-Hartley Act, for 10 months refused to recognize a lock-out—and it is a lock-out, purely and simply—and we still have our people discharged, and no collective bargaining in that situation.

Mr. JACOBS. Pardon me, but was that Frank Foundry you were talking about?

Mr. JOHNSTONE. Yes, sir; it was.

(The material referred to was filed for reference.)

Mr. KELLEY. Mr. Powell?

Mr. POWELL. I have no questions.

Mr. KELLEY. Mr. Bailey?

Mr. BAILEY. Mr. Johnstone, I would like to ask you if you know Jerry Morgan?

Mr. JOHNSTONE. I am not privileged to have made Mr. Morgan's acquaintance, but I am privileged to know one of his associates, however.

Mr. BAILEY. You would not be referring to Gerard Reilly?

Mr. JOHNSTONE. I am referring to Gerard Reilly. We had an unfair-labor-practice charge filed against the General Motors Corp., and a hearing was held in Detroit in February of 1946, and contrary to usual practice, and contrary to usual procedure, and strange, very strange we thought, Mr. Reilly came out to conduct the hearing.

While the hearing was in progress he went out to have lunch with Mr. C. E. Wilson, the president of the General Motors Corp. He was sitting in a judicial capacity, and he thought it was proper to have lunch with Mr. Wilson. And it must have been interesting because he did not get back for the hearing that afternoon, and it was necessary that he give an explanation. He was then a member of the National Labor Relations Board. He is today getting a $3,000-a-month retainer as Washington lobbyist for the General Motors Corp.

Mr. BAILEY. I wanted to ask you if you are aware of the fact that he also represents the General Electric?

Mr. JOHNSTONE. Yes, sir; and the printing trade, as well.

Mr. BAILEY. And some other concerns?

Mr. JOHNSTONE. Yes; he is doing pretty well for himself, I think.

Mr. BAILEY. I want to ask you a question in that connection, Mr. Johnstone. As a member of the National Labor Relations Board he became familiar with all the gimmicks in the Taft-Hartley law so that when he severed his connections with the National Labor Relations Board he was an ideal man to employ as a company lobbyist?

I am wondering if that is not proof on its face that the Taft-Hartley law was written in favor of the employers, that he would be much more valuable to the employers than he would be, we will say, to a labor-union group?

Mr. JOHNSTONE. We strongly suspect that to be the case, Congressman Bailey.

Mr. BAILEY. I want to ask you just one other question. I want to speed up the hearing as much as possible.

On your presentation of case No. 1, you refer to the Perry-Norvell Shoe case, and the Dorsey Trailers case—particularly in reference to the Dorsey Trailers case. I believe the strike began on November 15, 1946, and some months or 6 weeks later, on the 17th of December 1946, the record shows that there was some violence resulting in some of the union representatives being severely beaten. And 3 or 4 days later, on the 24th of December, you filed an unfair-labor-practice charge. I note that that case is still pending, and probably will not be heard in court until probably the fall term of the United States court.

Do you mean to say that you have been unable to get any redress of grievance for this unfair-labor-practice charge?

Mr. JOHNSTONE. We have been absolutely unable to obtain any redress whatever at this time.

Mr. BAILEY. And the case has been on record for almost 3 years?

Mr. JOHNSTONE. Two and a half years; that is true.

Mr. BAILEY. Is it not true they can get a redress in mandatory proceedings—some of them, I believe, show 48 hours after the employer has asked for action they have been able to get action.

Mr. JOHNSTONE. The employer can, and he has.

Mr. BAILEY. And you cannot get it in two and a half years?

Mr. JOHNSTONE. We cannot get it in two and a half years.

Mr. BAILEY. And yet men have come in and testified the Taft-Hartley is not unfavorable to labor.

Mr. JOHNSTONE. And I would like to say those are not isolated cases. There is the J. I. Casco case, at Allison, Ala., and the Fairbanks Co. in Rome, Ga., has also refused to bargain with us.

We have shown the act is bogged down, and we have shown it is impracticable. We have at the present time an order from the National Labor Relations Board directing the General Motors Corp. to bargain with us on matters of insurance and social security. The corporation is not going to comply with the order. They have informed us on that.

Mr. BAILEY. Do you have any redress?

Mr. JOHNSTONE. We have asked the director of the seventh region of the National Labor Relations Board, Mr. Frank Bowen, what we could do, and he said we could not get action before August. And the same is true in other cases in which his attention has been called to failure of getting redress in different regions.

One of our representatives wrote the seventh region of the NLRB as to when he could expect action to be taken on a complaint, and was informed it would not be before August, at the earliest. And the same thing applies to our case.

Mr. BAILEY. In other words, action is discretionary with Mr. Denham, or whoever runs the National Labor Relations Board, to hear you whenever they get ready: is that right?

Mr. JOHNSTONE. Not only that, but I understand their staff does not permit, and the backlog of cases being what it is, they cannot get to it.

Mr. BAILEY. I believe that is all.

Mr. KELLEY. Mr. Irving?

Mr. IRVING. I would say you made a rather misstatement when you said the act has bogged down. I think it has run rather true to form, and it is carrying out the idea it was created for, and I do not see how you can expect any better results from it.

Mr. JOHNSTONE. I will accept your correction, Congressman.

Mr. IRVING. The number of cases you have cited here would simply convince any reasonable person that the effect is just exactly as predicted and is being stated here as the effect would be in labor cases.

I am interested in the fact that some people are thinking further ahead even about our economic problems and our economic situation; a few years hence, maybe not that far hence, when we stop with ECA, and when we stop with perhaps our military production, or production for the military. We have quite a few people unemployed right at the present time, and I think we should be worrying about where we are going to find jobs for a lot of people, as well as trying to take jobs away from them.

I think I have no more questions to ask, or no more statement to make at this time.

Thank you.

Mr. KELLEY. Mr. Perkins?

Mr. PERKINS. I have no questions, Mr. Chairman.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. Mr. Johnstone, I wanted to ask you about the Conciliation Service. Has your experience with the Conciliation Service been as satisfactory since they made the change, and the arbitrators are not Government employees? Do you understand what I am talking about? If you will recall a few years ago you would call for an arbitrator and you could get him from the Conciliation Service as a Government arbitrator; is that correct?

Mr. JOHNSTONE. That is true.

Mr. JACOBS. And about 1945, was it not, or about 1946, they did away with the Arbitration Section of the Conciliation Service, and the Government now will designate an independent arbitrator; is that not correct?

Mr. JOHNSTONE. I believe that to be the case, although I am not too well informed on that, and I will explain why later.

Mr. JACOBS. Has your organization used that Service enough that you would have an opinion?

Mr. JOHNSTONE. Yes; I have very definite opinions. I deal with General Motors, one of the most powerful organizations of capital the world has ever seen ,and they treat conciliators and mediators. Very frankly, conciliation has never been much of an asset in our dealings with General Motors Corp. You only get in General Motors what you are bold and big enough to take.

Mr. JACOBS. Have you used the arbitrators at all, in the Government service?

Mr. JOHNSTONE. No; we do not. We have our own arbitrator, insofar as contract provisions go, and insofar as contract negotiating, we have suggested on two late occasions that the corporation accept arbitration, and they have not done so. You will recall, I am sure, that when the Presidential Fact Finding Committee was established in late 1945 and began hearings in early 1946, that the corporation walked out on the fact-finding hearing and refused later to accept the report and recommendations.

Mr. JACOBS. Maybe Mr. Levy has had more experience along this line. I had something particular in mind, and I think your experience in General Motors has been such that it has not led you into what I want to know about.

It has been represented to me by some people, since the Government has followed the policy of designating private arbitrators rather than sending out an arbitrator from the Conciliation Service when parties want arbitration, that the experience has not been satisfactory, and that the arbitrator from a private concern does not give a firm decision, and does not feel as secure as the Government arbitrator did under the old system.

Have you had any experience along those lines?

Mr. Levy. I am sorry, but in most of the UAW contracts we have a permanent arbitrator who is chosen, so we do not call upon the Government arbitrator in either event, except in the smaller companies——

Mr. Jacobs. I thought probably in the smaller companies you had had some experience.

Mr. Levy. I personally have not.

Mr. Jacobs. I see.

One additional question in reference to the Frank Foundry: In short, you told us the company, in effect, had a lock-out, and the Indiana Unemployment Board awarded compensation; is that correct?

Mr. Johnstone. That is true.

Mr. Jacobs. Whereas the company was contending it was a strike?

Mr. Johnstone. That is also true.

Mr. Jacobs. Are you aware of the fact that the same contention was adjudicated against the company by the Appellate Court of Indiana in 1943?

Mr. Johnstone. I am not, Congressman Jacobs.

Mr. Levy. That is true.

Mr. Jacobs. I believe that is all.

Mr. Kelley. Mr. Burke?

Mr. Burke. I just have one question. I notice here you have excerpts from testimony given before the National Labor Relations Board in the case of Dorsey Trailers, and the decision of the Review Board in the case of Frank Foundry.

Have those been admitted for the record?

Mr. Johnstone. They have not, but we will offer them.

Mr. Burke. Mr. Chairman, I would like to ask that they be admitted for the record, the part of their testimony that includes excerpts from official report of proceedings before the National Labor Relations Board in the case of Dorsey Trailers, Inc., and UAW-CIO, No. 15C–1315, Dothan, Ala., June 12, 1947, and State of Indiana, Employment Security Division, Decision of Review Board, in the matter of case No. 48–LDR–2, Claimant, Irvin Anderson, et al——

Mr. Kelley. Were those the supplements you had with you?

Mr. Johnstone. We have them and we will place them in the record.

Mr. Kelley. We will accept them for the record.

(The documents referred to will be found in the appendix following the close of today's record. See index for page numbers.)

Mr. Johnstone. I would like to urge, if I might, that the members of the committee read the testimony in the Dorsey Trailers case. It is on a par with anything you could read in Tobacco Road, I can assure you.

Mr. Burke. I quite agree with you. I have read it, and that is why I wanted to be sure it was included in the record.

Mr. Kelley. Mr. Wier?

Mr. Wier. Let me ask you—due to the fact you represent a big mass production—the same question I asked Mr. McDonald, of the United Steelworkers.

I have heard it said here by quite a number of employers in mass production, and in big heavy-machinery production, that they are very much concerned with retaining the foreman section in the Taft-Hartley Act.

What has been your experience and your relations with management over the question of where a foreman starts and where he ends in trying to determine whether he is eligible for membership in your union?

Mr. Johnstone. We do not take foremen into our union. They have their own separate organization, and we have always maintained separate organizations. Our experience, insofar as foremen's authority goes, shows they have very, very little. They certainly do not make labor-relations policy, and very few of them carry it out, insofar as day-to-day dealings on the floor of the shop are concerned. All of this talk about foremen having managerial authority is so much poppycock. It does not stand up when you begin to handle grievances in one of the larger corporations. We seriously doubt if they have it, in the first place.

Mr. Wier. Let me ask you the second question.

Have you had any difficulty with the section of the Taft-Hartley Act that qualifies a professional worker?

Mr. Johnstone. No; we have not.

Mr. Wier. How far up do you go in admitting workers to membership in your union; where do you break off?

Mr. Johnstone. We do take what you might term "professional people"—by that, I presume you mean artists and designers—we have some of those under contract in General Motors, and we have some in other organizations that are under contract with the United Auto Workers; but, so far as I can tell, we have not had any great difficulty on that score.

Mr. Wier. I guess that answers that, then.

That is all.

Mr. Kelley. Mr. McConnell?

Mr. McConnell. I have no questions.

Mr. Kelley. Mr. Davenport, do you have any questions?

Mr. Davenport. No.

Mr. Kelley. Mr. Johnstone, did you say your foremen had a separate organization?

Mr. Johnstone. They have their own organizations, separate and distinct from the United Auto Workers.

Mr. Kelley. The Foreman's League here last week, I think it was, said they represented so many thousand foremen throughout the United States, and were opposed to the organization of foremen, and one of the men was from the General Motors Corp.

Mr. Johnstone. I think they have some sort of company-union organization among General Motors' foremen.

Mr. Kelley. Company unions?

Mr. Johnstone. It is a company-dominated organization, and it is designed to head off the organization of foremen by a bona fide organization.

Mr. Kelley. Certified by the National Labor Relations Board?

Mr. Johnstone. The NLRB.

Mr. Kelley. That is all, Mr. Johnstone.

Thank you very much.

Mr. Montgomery. Mr. Chairman, may we also submit for the record the other documents that were filed with you; namely, the case histories beginning with the Dorsey Trailers case and going down to the Frank Foundry case? This report of the decision of the Indiana Employment Security decision on the Frank Foundry case, and the affidavit of one John Higgins, also in that case, which may be included in the record with Mr. Johnstone's testimony.

Mr. Kelley. Without objection, they will be inserted in the record.

(The documents referred to will be found in the appendix following close of today's record. See index for page numbers.)

Mr. Kelley. We have a letter from the Modine Manufacturing Co., of Racine, Wis.: a statement from Mr. Paul M. Herzog, chairman of the National Labor Relations Board; and a statement from Philip Gelfo, president of the Associated Master Barbers and Beauticians of America, Chapter 396, Washington, D. C.

Without objection, they will be received for the record.

(The documents referred to will be found in the appendix following close of today's record. See index for page numbers.)

Mr. Kelley. Mr. O. A. Knight, of the Oil Workers International Union.

TESTIMONY OF O. A. KNIGHT, PRESIDENT, OIL WORKERS INTERNATIONAL UNION, CIO

Mr. Knight. Mr. Chairman and members of the committee, my name is O. A. Knight. I am president of the Oil Workers International Union.

Mr. Kelley. Pardon me. Are you going to read the entire statement?

Mr. Knight. No, sir; but I am about to make a statement in connection with that.

I have been the president of the Oil Workers Union since 1940, being elected to that office after serving for 4 years in the oil industry as an oil-company employee.

I have with me Mr. William Hanscom, also an oil worker of long standing, who is a member of the International Oil Workers Union.

We have prepared a brief, and we have with it an exhibit; but in the interest of expediency, and due to the lateness of the hour, I would like to forego reading the brief, and to talk extemporaneously on first of all a question just raised by Congressman Wier with respect to the impact to that section of the Taft-Hartley Act which deals with foremen and, secondly, sketch the impact upon my own organization during the few months the Taft-Hartley law has been in effect.

We have had some very unusual and disappointing experiences under the Taft-Hartley Act as it refers to that section of the act, dealing with supervisory employees.

The second page of our brief has a statement in that connection, which I would like to read in detail.

The statutory definition of a supervisor and its treatment under the act, section 2 (11), is hampering peaceful labor relations. In order to avoid collective bargaining, and to reduce the size of the bargaining unit, many employers in the country are giving their craftsmen, gang leaders, leadmen, stillmen, operators, and other workmen classifications some of the statutory duties and authorities defined in the act. We had a case involving the Wasatch Oil & Refining Co., case No. 20–R–2250, where the Board excluded a pump mechanic merely because upon his employer's recommendation one of his fellow workmen was discharged and another employee engaged. In this same case the Board also excluded the stillmen.

I was employed at the time I first became a member of this union, and historically the union has bargained for men in that category who are actually leadmen in the same classification and the same spirit as craftsmen who work with helpers—but in this same case the Board excluded stillmen for whom we have historically bargained throughout the entire industry.

As a result of this decision the Magnolia Petroleum Co., at Beaumont, Tex., filed a petition with the Board to remove stillmen, treaters, and other operators from our unit merely because these classified employees have a minor degree of direction over the work of their assistants: however, this petition was withdrawn after we seriously threatened to engage in a strike to require the company to continue to bargain with us for these people, who, incidentally, had been originally included in the group certified by the National Labor Relations Board. Certainly, if we have to strike to protect our rights of bargaining, the purposes of the act are not effectuated because of this broad exclusion. In many of our contract negotiations, employers are presently endeavoring to remove from the bargaining unit substantially all employees above the grade of a laborer or helper.

A few years ago, before the Taft-Hartley Act, the National Labor Relations Board attempted to draw the line of demarcation between supervisors and other workmen too closely. In one case involving the Texas Pipeline Co., by following the Board's original determination of a supervisor, as contended by the company, we found that the unit was composed of approximately 87 supervisors and only 72 workmen.

The Board, after consideration and upon much effort on the part of our union, broadened the scope of the unit. But, we would like to point out that the definition as now used in the act, and as is being interpreted by the Board, would probably give effect to such a ridiculous unit. Certainly, the employees under such a circumstance would have no substantial bargaining power. We have a representation case before the Board involving the Rocky Mountain Pipeline Co., a subsidiary of Continental Oil Co., where out of a unit of 52 employees, the company contended that 27—over half—were supervisors under the act. The Board decided this case in favor of the company and excluded all operators and craftsmen who had helpers, even though they had helpers only occasionally. This case is reported in 79 N. L. R. B. No. 147.

We think it important to point out that unions are free to exercise their economic right to strike to require employers to bargain with them concerning the so-called supervisors, especially leadmen, gang leaders, stillmen, drillers, and craftsmen.

With respect to these stillmen, gang leaders, straw bosses, leadmen, and other minor supervisory employees, the Board has apparently disregarded the congressional intent and looked at the definition as a means of reducing the size and effectiveness of worker organizations.

The Senate Labor Committee report preceding the passage of this act stated in part:

> In drawing an amendment to meet this situation, the committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion in that act.
>
> It has therefore distinguished between straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives.

The report further stated in discussing definitions of supervisors:

> In framing this definition the committee exercised great care, desiring that the employees herein excluded from the coverage of the act be truly supervisory.

Much debate was held on the Senate floor over this definition alone and all of the speakers clearly indicated that there was no intent to exclude anyone but genuine management supervisors.

We have discussed this problem with the executive secretary to the Board and pointed to the congressional history and legislative intent. He advised that the Board was aware of the history, but that the wording of the definition in the Act was to the contrary, and that therefore the Board was disregarding minor supervisors who are actual workmen if management designates them as supervisors.

In other words, management is the sole judge of who is a supervisor, and may exclude everyone from bargaining rights above the grade of a laborer or helper. Well over half of our membership are above these two grades. Through such an arbitrary definition and application, which is not imaginary, but is real, practically all craftsmen and operators may ultimately be excluded from the benefits of bargaining, unless they strike to protect their rights.

This problem can be and should be corrected by removing the exclusion of supervisory employees from the benefits of the Act, and is proposed in the Lesinski and Thomas bills.

From newspaper stories and from questions asked by certain members of the committee of witnesses here, it is evident that many of the people of our Nation have come to believe that the Taft-Hartley Act has not worked a hardship upon organized labor. I am here speaking for a union which has very definitely felt the full effect of the Taft-Hartley Act in a devastating and drastic way. I speak for an organization that has historically and traditionally believed in obeying the laws of the land, and which has obeyed the Taft-Hartley law in full.

In the early part of the year 1948 the Oil Workers International Union established a wage pattern in the so-called third round, at a figure of 17½ cents per hour increases in probably every company east of the Rocky Mountains.

The California contracts did not open up until some time later. In fact, they did not open up until September of 1948. Many of the companies operating east of the Rocky Mountains in the oil industry also operate west of the Rocky Mountains, and these companies east of the Rocky Mountains had instituted a 17½-cent increase that had become a general pattern everywhere except in California. Our union is well known in California; it has been in existence out there since 1917, and for over a quarter of a century there had not been a major strike in the oil industry in that entire section of the Nation.

On September 3, at midnight, the contracts from six of the major corporations and two small companies became open. Collective bargaining had been going on for a period of several months prior to that date, and the companies out there all were making an identical offer, in the sum of 12½ cents, or 5 cents an hour under the rates they had already agreed to east of the mountains, and in spite of the fact there was already existing in California a wage differential to the detriment of the California oil workers. They were receiving several cents an hour less than what was given east of the mountains even prior to the so-called third-round wages.

We had every reason to believe the companies would come through with a wage increase, but the dead-line date came around and they had not agreed to it, and many employees of the six major companies and the two smaller companies went on strike. At this point it became evident to us that not only the Taft-Hartley law was setting the stage insofar as laws were concerned, but the Taft-Hartley provisions had created an attitude in the courts and among many citizens that was not conducive to good labor relations when they had the law passed in the first place.

Four days after the strike started everything was going along in a peaceful manner, and injunctions were suddenly issued by the State courts against the Oil Workers Union, without any notice to the union, and without a hearing, and without us having an opportunity to be heard. These injunctions in every case limited the number of pickets. There were some cases where we could have four pickets on a gate, and in some instances we could have two, and everybody else was required to remain a couple of hundred yards back away from company property, from the gates of the company.

There was one case in particular where the gates were away from the extreme end, and that meant that it took them clear across the highway, where they could not get up anywhere near to do their picketing.

This same pattern of injunctions was followed by every company in the State that was on a strike. Their attitude was identical with respect to the wage increases, and in force it was expressed by the injunctions which they sought in the courts. And at almost the same time lawsuits were injected, the companies suing the union for alleged damages, and before this strike was over, we as a small organization, comparatively speaking, had been sued for over $30,000,000. In these lawsuits there was a very definite and very close resemblance to the Danbury Hatters case. The international union was named, the local union was named, and the leaders and then the lawsuits named "Doe 1" to "Doe 2,000," inclusive.

"Organization 1" to "Organization 10," inclusive.

"Organization A" to "Organization Z," inclusive, and in one extremely ridiculous case they had "Organizations Red, White, Blue, Green and Yellow," thereby making certain they had the field covered completely.

In the State of California, the law requires that when you file an answer in a lawsuit of that sort you not only pay a fee for the original person that you file for, but you pay a dollar a head on all of the John Does, and everybody else that is named; so, in order to get into the courts to properly defend our people, we had to pay thousands of dollars of financing fees, and we were a small union with a very small bank roll.

The National Labor Relations Board was not at all helpful in this situation. In fact, before I get through describing this situation I believe I can convince the members of this committee, and any fair-minded person, that the actions of the National Labor Relations Board, as it is constituted now under the Taft-Hartley Act, broke that strike, and I think I might as well go into that immediately.

Among the units involved in this case was a large Standard Oil plant at Richmond, Calif., the biggest refinery in the State, and the biggest group of men involved in this situation. Several months prior to this strike date another organization had filed a representation petition with the National Labor Relations Board. It had been laying in their files up there for months, but in the midst of the strike they ordered an election, and under those circumstances, in order to get our people in the position where they would have an opportunity to vote, we had to break our own strike and send them back to work, and in so doing, we tore the very heart out of our organization. Many of the people were not granted the opportunity to go back to work, and many have not gone back to work today, and the International Oil Workers Union is no longer the bargaining unit for that plant. A company union is the bargaining unit, exactly in accordance with the plan.

Mr. JACOBS. Was that the company union that had filed the representation?

Mr. KNIGHT. The company union had intervened. The machinists, I believe, filed it, and they did not even get a hatful of votes, and it was well known they did not have a hatful and that is why the petition had been laying up there all these months.

Directly, under the Taft-Hartley Act, there is a petition which has been discussed here, that being the mandatory requirement upon the part of the Board of processing company charges of unfair labor practices against unions. Such a case came up in a situation involving one of the plants, and the National Labor Relations Board immediately instituted action but, on the other hand, there were some very definite unfair labor practices against the union, and we were unable, and have been unable up to this date, to get any prosecutions. I would like to describe it. It was a condition such as that in Nazi Germany, in that concentration camps are involved. One of the major companies in California maintains a pipe line in the San Joaquin Valley, and they have stations scattered out about every 50 miles. They have homes for the workers for which the workers pay rent, and this group of people were on strike. The company went out and hired armed guards, big 6-foot huskies, and they put them in to guard their property, which was all right, but they were also conducting a concentration camp in each one of those areas. They would not let the workers or their families out without a permit from the plant superintendent. I have in my files, and I have submitted to the National Labor Relations Board, affidavits from three ministers who were refused opportunity to go into the plant and talk to their parishioners. The neighbors' children could not come in and play with these people's children, and they shut off the water they were paying for, and their sewers were naturally stopped.

Among the employees of the group, our steward, a man named George Arthur—understand, this is in the San Joaquin Valley, where it is hot—George Arthur was active as a union man, and he was subjected to a constant barrage of propaganda on the part of the company, exercising its free speech, and he was receiving letters, and was being contacted by foremen for two long months. The man worked day and night, and he finally went insane. He murdered his wife in that fit of insanity, and he almost murdered two of his children, and then he committed suicide under the concentration camp conditions.

We had brought this condition to the attention of the National Labor Relations Board, and submitted this unfair practice to them, and the affidavits of the ministers prior to the time this man went crazy. We asked them to prosecute an unfair charge and stop this, and they said, "Well, after all, it is mandatory that we process the charges against you. We recognize you have a charge here, but there are so many things before the Board right now that we just cannot get to it."

The Taft-Hartley Act in that instance certainly worked to the detriment not only of the people involved in that strike but to the detriment of all America, I believe.

On this question of free speech, throughout the course of this strike our people were subjected to all forms of pressure by the companies involved. Letters were sent to them, and many of them had pension rights and years of seniority, and they would set a deadline date, and say, "If you are not back by that time you will not get your pension." And, incidentally, some of the men, around 56 or 57 years of age, have never gone back to work. They had foremen calling at their homes day and night, and pressure was being put upon their wives, and every sort of unfair practice that could be instituted by companies was instituted against this group of men.

You have been discussing secondary boycotts here. I will say the oil industry was completely united in California in this situation. There was no law prohibiting them from helping each other. One spokesman was helping the group, and one company whose contract was in effect continued to operate the others by skimming the oil and spreading it out and giving it a little treatment. Another union of the CIO had a group of men manning the ships of one of these oil companies, and when they came into the docks and saw the pickets on the docks—our pickets picketing this company—they did not want to run through the picket lines, because it is part of the principles of a union man not to run through a picket line—their contracts were violated, and they are still off, and company unions are operating those ships. I think the president of that union is here and prepared to testify.

Railroad brotherhoods are in the same position. They did not want to run our pickets. And suits for millions of dollars were filed against them.

After this barrage of propaganda there were hundreds of our people cited for contempt of court. And I, myself, was cited for 60 counts of contempt, for being on the picket lines. I was not near the picket lines, but if the court had gone through with it I would have been fined $30,000 and would have had to serve 300 days in jail.

In one of these cases, although the international union had taken every possible action that it could take openly, by telegram, in the paper, and in speeches, to keep the people from getting involved in anything that might be in any way an infraction to the injunctions, the court, contrary to the condition of John L. Lewis a year ago, where he had failed to take action and therefore fined him, said, "You sent telegrams out, and therefore it is your fault." It was one of the situations where you are damned if you do and you are double-damned if you do not, under the Taft-Hartley Act.

I would venture to say there are six or seven hundred of our members right now who are not only off the job because the company failed and refused to take them back, but there is evidence of a black list in existence against them. When they attempt to find employment elsewhere all too frequently they are told, "You used to work for Union Oil or Standard, and you are one of the strikers."

In some cases they go in and they are choked off. That happened in the Coco-Cola bottling works out there. This situation, in my estimation, under the Taft-Hartley Act, was the proving ground for their plans. There is no question in my mind but what it was the intent of the oil industry, and perhaps industry generally, to use the same formula they are using in California, throughout industry, but this strike situation broke just prior to the election, and at the time we had to tell our Standard Oil people to go in, the heart of our strike was gone.

Since the election I think the employers are sitting back and saying, "We will see what Congress will do with the Taft-Hartley Act, but here is our formula, and if we still have the Taft-Hartley Act the next time our contracts roll around, then we have the weapon that will certainly kill off unions."

Had it not been for the fact that fellow members of the Oil Workers Union and other unions throughout the Nation contributed very freely of their own funds out of their own pockets, the Oil Workers Union would undoubtedly have died in the California situation. We spent over $200,000 feeding people, trying to provide legal advice for them, legal counsel to get them out of jail when they were thrown in there on trumped-up charges.

Our people were subjected to all sorts of intimidation. State and county police were used in huge numbers. Tear-gas bombs were fired at these people. Many of them are young men just back out of the armed services.

To anyone who is at all in doubt as to the effect of the Taft-Hartley law, I suggest to him that he go out to California and talk to some of the oil workers out there. Not only the law itself, and the wording of the law, but the atmosphere that is created, the willingness on the part of the companies to attack a union that had as clean a reputation as any union in America.

On the other side of this situation, in my own case, the case of my own union, I wish to point out in conclusion that the companies we deal with have no need of the help of the Federal Government in handling situations of this sort. We deal with the industry that provided the individuals who entered into the cartel arrangements with Nazi Germany; we deal with the industry that was found guilty of aiding and abetting some of Hitler's aides here in the United States. That same company tried to make restitution by firing its principal officer at the time. I think you know to whom I am referring.

This is the company that was fondest of the industry that produced the company which was found many years ago guilty of monopolistic practices and fined $1,000,000 and ordered to dissolve. This is the greatest combination of wealth and power the world knows today.

Do they have to have a Taft-Hartley Act to defend themselves against a group of working people in a situation of that sort? I think not. And I would like to suggest that this piece of vicious, punitive legislation, ostensibly designed to stop racketeering—and I do not admit that there is such in labor unions, and I have not seen any evidence of it—I suggest that it has become the sword over the heads of organized workers throughout this Nation. I believe that the evidence which we have to submit in the California situation is sufficient to prove exactly that.

I would like, if I may, to have the committee insert into the record of this hearing not only our statement, but our exhibit A, entitled "A Union-Busting Plan—Oil Trust Style."

(The booklet referred to will be found in the appendix following today's record. See p. 1508.)

Mr. Knight. Gentlemen, that completes my statement.

Mr. Kelley. Mr. Powell?

Mr. Powell. No questions.

Mr. Kelley. Mr. Bailey?

Mr. Bailey. I have just one or two questions, Mr. Knight.

Have you succeeded in processing one single unfair labor practice against employers under the provisions of the Taft-Hartley Act?

Mr. Knight. We have not succeeded in one single case.

Mr. Bailey. You have tried in a number of cases?

Mr. Knight. We have tried in several; yes.

Mr. Bailey. How does the Taft-Hartley law affect arbitration in your union?

Mr. Knight. I am very glad you asked that question. We are a union that believes in arbitration. Every one of our contracts provides for arbitration, whereby the company selects an individual, we select one, and if they are not able to settle it, they jointly pick the third. It used to be, when we had access to fairly reasonable arbitration, and at reasonable costs, that we had very few of them. But under the new system, many of the arbitrators appointed by the Government charge rather large sums. We have one case where a gentleman in Ohio charged us over $1,000 to arbitrate a case. Because of that fact, I believe, we find management increasingly unwilling to settle complaints, and increasingly willing, on the other hand, to put them into arbitration, because they know that we cannot afford arbitration. We do not have enough money. We are not a big enough union.

The net effect is that a good many of our people are beginning to say, "Well, let us not have arbitration, and let us throw out the no-strike clause so that we can settle our grievances by economic strength," working exactly in the reverse of what was the intent of some of the Congressmen, I am sure, when they voted for the Taft-Hartley Act.

We are not having luck. We are not having any success with arbitration at present. We have even had an arbitrator recently in this new atmosphere created by the Taft-Hartley Act who in effect ruled that the employer has to live up to the contract when it is convenient, but that after all, he has to operate his business. And if it is not convenient for him to live up to it and to place the right man on the job at the right time, then he can put his foremen in and let them do the work.

I would be very happy to provide the members of this committee—I do not have it with me, but I can send it up—a copy of that particular award.

Mr. BAILEY. What has been the effect of the so-called free-speech section of the Taft-Hartley Act? I believe you touched on it in your presentation.

Mr. KNIGHT. Congressman, I have seen people here in the United States subjected to a propaganda barrage on the part of oil-company officials operating under their new liberties granted to them in the so-called free-speech section of the Taft-Hartley Act. They use it unfairly, very unfairly. They made attacks against the officers of the union; they made all of these threats against the people, and they were not talking to the union officials. They were not making the threats through them. They were making them directly, by telephone call and by letter and by personal contact with the employees.

Mr. BAILEY. Do you think the employers of this country need any additional guaranty of free speech other than that guaranteed in the Constitution?

Mr. KNIGHT. I definitely do not think they need any such addition.

Mr. BAILEY. It should not be written in any statutory provision?

Mr. KNIGHT. Definitely not. I think that if you have a continuation of the liberties that they have exercised in California against my union, they are definitely going to use it in just the same manner and to the extent that sooner or later, organized labor in this Nation just will not exist except in the form of company-dominated unions.

Mr. BAILEY. Speaking of the injunction procedures, you are, of course, aware of the fact that the unions are subject to injunction proceedings.

Mr. KNIGHT. Yes, sir; very much aware of it.

Mr. BAILEY. Particularly in cases where the public interest is involved. Do you think that this section of the act will be of benefit to labor?

Mr. KNIGHT. I think from our own experience we have found out two things, in the first place that it is not operative only when the public interest is involved and, second, that it is very detrimental to labor. In the strike situation in California, for instance, there was no question of the public interest being involved; there was not any squawk on the part of the public at the time these injunctions came out. The public was not aware that they were being asked for, and neither was the union. These injunctions were granted without even giving us an opportunity of a hearing, without our being notified. The first thing we knew, there they were.

Mr. BAILEY. At that poit, may I ask you this question: Do you think that a mandatory injunction is justified in any instance without a hearing?

Mr. KNIGHT. Definitely, no. I think that people are entitled to a hearing.

Mr. BAILEY. Do you not think that any procedure written into a statute that contravenes our constitutional guarantee of the right of trial by jury is un-American?

Mr. KNIGHT. I think it is not only un-American, but unconstitutional as well, sir.

Mr. Bailey. If there was no other reason why I would oppose the Taft-Hartley bill, I would do it on that ground, that it contravenes our constitutional guaranties and has no business on the statute books.

That is all, Mr. Chairman.

Mr. Knight. I agree with you. I oppose the Taft-Hartley Act on that basis as well as on many others which I mentioned here.

Mr. Powell (presiding). Mr. Irving?

Mr. Irving. This apparently was not a case of a very, very strong union, financially and otherwise, overpowering the weak employer?

Mr. Knight. Well, the oil industry has some twenty billions of dollars. At the time we went into this strike, we had less than $40,000 of uncommitted moneys in our treasury. The oil industry has demonstrated its power throughout the world. It is doing it now. The Oil Workers International Union, although it has, without the hampering effect of the Taft-Hartley law, done a very effective job of collective bargaining, still is no match for the $20,000,000,000 Oil Trust of the United States.

Mr. Irving. There has been expressed some concern here for powerful unions working on small employers, and that they need to be protected, and I wanted to bring that out, that this is not exactly that kind of situation.

Mr. Knight. Definitely not, sir.

Mr. Irving. Also, it has been brought out here that maybe this business could not afford it; the profits were small, and they were not in shape to grant wage increases, and so forth, and that they would be forced into situations that would break the companies and put them into bankruptcy, and so forth. I wonder whether the profits of the oil companies are so low at this time that they could not afford to grant your requests?

Mr. Knight. Well, sir, the oil companies, I think, head the list of all corporations in America with respect to the profit increases over the past few years. And I may say in addition, that it is very interesting to note that by utilizing their freedom to work together, the very oil companies that we struck last year made more money last year, in spite of the strike, than they did the year before. They were selling low-grade gasoline at high prices, and it was terrific stuff. It was terrible.

Mr. Jacobs. Will the gentleman yield at that point?

Mr. Irving. Yes.

Mr. Powell. Mr. Jacobs?

Mr. Jacobs. If you will examine the report of the Chemical Banking & Trust Co. of the first week of June 1948, you will see that the first-quarter profits of the oil industry were 109 percent of what they were for the last quarter of 1947.

Mr. Knight. Yes, sir.

Mr. Irving. You were speaking of company unions, and so forth, and the practice of getting together on their wages, and so forth. I happen to know an instance where the construction work on a plant was going on and the people were locked out, or on strike, whichever you want to call it. The unions called it a lock-out and the employers called it a strike. The company for the company union, or the company, however you want to call it, had granted a 26½-cent increase for the company employees in that plant. The request for 25 cents an hour was rebuffed by this company for the construction workers, and the men were out 53 days, and finally settled for 15 cents an hour. The current topic among the members of this company union was that they could get a 26½-cent increase without striking, whereas the old-line craft unions were only able to get 15 cents an hour and were out on strike, or were locked out, for 53 days. That would tend to encourage the company unions in that fashion if they are able to come up with pretty good sized increases, where it tends to show that regular unions cannot compete with company unions in their wage agreements and wage negotiations.

I notice you said that they had gotten together on a 12½-cent-an-hour proposition there in California, and a little higher east of the Rocky Mountains. This, of course, happened to be east of the Rocky Mountains, and they were a bit averse to giving an increase of 26½ cents an hour to the employees in this particular plant. It is just a little inconsistent with their policy as you stated.

That is all.

Mr. Powell. Mr. Perkins?

Mr. Perkins. No questions.

Mr. Powell. Mr. Jacobs?

Mr. Jacobs. Mr. Knight, I take it that you have used arbitrators, and I suppose through the years you used the arbitration service that was offered by the Government.

Mr. Knight. Yes, we have.

Mr. Jacobs. And that was changed some few years ago. Can you tell me when that was?

Mr. Knight. We were using Government arbitration up until, I think, the last year. We are still using it, for that matter.

Mr. Jacobs. The Department designates private arbitrators now.

Mr. Knight. That is right. I think that change occurred about a year ago.

Mr. Jacobs. I thought it was a little longer ago than that.

Mr. Knight. It might have been a little longer ago than that.

Mr. Jacobs. What has been your experience, aside from the expense, as to whether or not the decisions you get come with dispatch and whether or not they are firm decisions, as compared with the previous service?

Mr. Knight. I think that there has been a——

Mr. Jacobs. And when I say "firm decisions," I mean that they call the thing as they see it.

Mr. Knight. I tried to indicate during my original presentation that we have noticed a different trend. There is one arbitrator, in particular, who has done quite a bit of arbitration for us, and in most cases in the past we have found him fair and impartial. But he is exactly the man now who has rendered what we consider this very unfair decision to the effect that an employer must operate his business, and therefore he is bound by the contract only as long as it is convenient.

Mr. Jacobs. Particularly what I have in mind is this: Some people have represented to me, in the oil industry, that there seems to be a tendency on the part of these private arbitrators to try to throw a ruling this way one time and that way the next time, so as to be acceptable the next time they are needed as an arbitrator, rather than to come down and give you a decision so that you know what the decision is, and go on with your business. Have you observed anything of that kind?

Mr. KNIGHT. Frankly, no; I have not noticed that. We lose some and we win some.

Mr. JACOBS. Yes.

Mr. KNIGHT. Sometimes we wonder why the decisions go against us, but I have never felt that an arbitrator was counting them out, one for you and one for me.

Mr. JACOBS. Specifically, I will ask you this: Do you think it would be in the interests of labor peace to put arbitration back in the hands of the Government and have the Government furnish arbitrators?

Mr. KNIGHT. I would like very much to see that change made. I believe that if it is made—and it should be a function of Government—then certainly, in my opinion, the experiences of our union are going to be much more satisfactory to the working people.

Mr. JACOBS. They had been over a period of many years before this change came?

Mr. KNIGHT. Yes.

Mr. JACOBS. All right. Now, I would like to ask you another question or two about your attempts to bring unfair labor practice charges against these companies. You file charges, I suppose, against the companies with the Labor Board?

Mr. KNIGHT. Yes.

Mr. JACOBS. Have they been processed to the point where they issued complaints, or are they still in the processing stage?

Mr. KNIGHT. They are still in the processing stage.

Mr. JACOBS. And this started when?

Mr. KNIGHT. This strike that I am talking about started last September.

Mr. JACOBS. September of 1948?

Mr. KNIGHT. September of 1948. And charges were filed in 1948, which have not yet been processed. Some of them were withdrawn at the end of the strike situation. That was one of the demands made by the company, that they be withdrawn. However, many of them had been in there well over 60 days prior to that time.

Mr. JACOBS. And was there ever a complaint issued at all on your charges?

Mr. KNIGHT. There were complaints issued against us.

Mr. JACOBS. No. On your charges.

Mr. KNIGHT. Not that I know of. I am not sure as to that. Our legal department was handling it, and I am not sure, but I do not think there was ever a charge issued.

Mr. JACOBS. You spoke of State court injunctions. Were there any injunctions issued under Taft-Hartley subsequent to the passage of Taft-Hartley?

Mr. KNIGHT. Yes. There was not an injunction issued. There was an injunction asked, and the courts had set a date for it. However, in the meantime, we settled the strike. We lost the strike. Let me put it that way. That is what it amounted to.

Mr. JACOBS. That is when you went back in so that your people could vote?

Mr. KNIGHT. That happened in one plant. And then a very short time thereafter, we had to go in and settle the rest of them, because we had lost the strike, or rather our major unit had lost the situation.

Mr. Jacobs. Yes. Now, this company unit that had been organized, had it been in existence before, or was it whipped together during the strike?

Mr. Knight. It had been in existence before.

Mr. Jacobs. But the other union had filed a representation petition that had been laying up here with the Board for some time?

Mr. Knight. Yes.

Mr. Jacobs. Did you say 6 months?

Mr. Knight. I believe it was filed originally in March or April of 1948.

Mr. Jacobs. It would be approximately 6 months?

Mr. Knight. Approximately, yes.

Mr. Jacobs. And then when this strike was called, the election was immediately called; is that right? Or did they have——

Mr. Knight. I think the strike had been in existence for over 30 days before they lifted the petition and started the election procedure.

Mr. Jacobs. They sort of let it ripen a little, I guess.

Mr. Knight. That is right.

Mr. Jacobs. And then did they have a representation hearing before they called the election?

Mr. Knight. I do not think so. There was one meeting trying to determine the eligibility list.

Mr. Jacobs. Was it a consent election?

Mr. Knight. No, sir. It was an ordered election by the National Labor Relations Board.

Mr. Jacobs. Without a hearing?

Mr. Knight. Yes, sir; and we protested it under those circumstances. But it was still held. Now, there had been a hearing held, I believe, prior to that time.

Mr. Jacobs. Do you know who pressed it? Do you know whether the machinists pressed it, or did someone else press the petition for election?

Mr. Knight. Prior to the strike, sir, we had pressed it from the time that it was first instituted until the strike occurred. We had pressed it.

Mr. Jacobs. You had pressed it?

Mr. Knight. We had tried to get it out. But we did not want it held while our people were out on strikes.

Mr. Jacobs. All right now. Now, after the election, did the Board move of its own volition, on its own motion, or did someone press it to get it out?

Mr. Knight. If anyone pressed it, I do not know of it.

Mr. Jacobs. I see.

Mr. Knight. I suspect that it was pressed by the Standard Oil Co.

Mr. Jacobs. All right. Now, I am going to ask you about this case of where the seamen refused to go in by the picket line and pick up the oil. Was the entire industry struck in California? Or was this an unstruck company?

Mr. Knight. This was a struck company, and pickets were on the docks.

Mr. Jacobs. The same company operated the boats?

Mr. Knight. The same company that we were on strike against was operating the boats.

Mr. Jacobs. And were those the seamen on those boats?

Mr. Knight. Yes, sir.

Mr. Jacobs. That refused to come into the dock?

Mr. Knight. Yes, sir. And they were under contract with that company. The seamen had a contract covering the sailors on those boats. We had the contract covering the refineries.

Mr. Jacobs. Yes.

Mr. Knight. We were on strike and picketing. The seamen refused to run our picket lines. They were taken off the ships in some cases, and I think in some cases rather forcefully.

Mr. Jacobs. Were you certified as the bargaining agent for the company as a refinery unit?

Mr. Knight. Yes, sir. We bargained with them for years.

Mr. Jacobs. Was it in connection with that that the injunction was filed under the Taft-Hartley law?

Mr. Knight. In connection with our strike?

Mr. Jacobs. Was it in connection with this refusal to cross the picket line?

Mr. Knight. By the seamen? Oh, no.

Mr. Jacobs. Thank you, Mr. Knight. That is all.

Mr. Powell. Mr. Burke?

Mr. Burke. Mr. Knight, there has been given during the testimony in all these hearings a great deal of testimony to the effect that the labor unions have done a job on the Taft-Hartley Act by calling it names, such as slave-labor law, and so on. Of course, the slogans that were used, such as the emancipation of the workers, and all that sort of thing, were purely public information as far as this testimony went. But do you not think that the experiences that you have had, particularly in this California situation that you described, would bring the words "slave-labor law" out of the realm of the figurative, if it ever were in such a realm, and put it right squarely into the literal?

Mr. Knight. Our experience has proved to me, at least, that we were perfectly justified in everything that we said against the law, and we were justified in saying that it would wreck our labor unions. Maybe we could not find words quite bad enough to use in connection with this company. We certainly cannot find words bad enough to describe the situation that developed in California under the Taft-Hartley Act.

Mr. Burke. And that situtaion and the experience that you have described did bear out the statements that you made, that the Taft-Hartley Act in effect is a slave labor law, that it can be used as such, and it is for the purpose of breaking unions and destroying wherever possible to destroy, or to take the power down to an absolute minimum, where it is not possible to destroy?

Mr. Knight. Yes. It not only minimized the power of the union, but it legalized the power to protect scabs and strikebreakers.

Mr. Burke. On the matter of this arbitrator's decision, I was quite intrigued with the type of logic that was given out at that decision. Does that not seem to bear out the total philosophy of the Taft-Hartley Act, that ownership confers an exclusive right of decision in all matters pertaining to the business, without challenge by anyone?

Mr. Knight. Yes. It goes right back to the old philosophy and doctrine that exists in the minds of many of our people, of the sanctity of property and the dollar, and to hell with the human rights. To me, that arbitrator's decision is right along the lines of those theories that have been in the minds of some of America's people for a large number of years.

Mr. Burke. In other words, that can only be available to the employees for giving them a job, and giving them a place to work?

Mr. Knight. Yes; definitely so.

Mr. Burke. That is all.

Mr. Powell. Mr. Smith?

Mr. Smith. You and I have met before, Mr. Knight.

Mr. Knight. Indeed we have, sir, under very happy circumstances. At that time, it seems to me that you in your way and I in mine were doing everything we could to fight exactly the sort of situation that developed in California.

Mr. Smith. How many different places other than the San Joaquin Valley were these concentration camps, that you speak of, would you say?

Mr. Knight. In every pipe line station of the Tidewater Associated Oil Co. I am not sure. I think there are 8 or 10 of them scattered out over 400 miles of territory.

Mr. Smith. Do you know whether the company has ever issued any statement justifying this action on their part, locking up these pumping stations so that no one could get in or out?

Mr. Knight. Not to my knowledge.

Mr. Smith. Now, who is that pipe line owned by?

Mr. Knight. It is owned by the associated division of the Tidewater Associated Oil Co.

Mr. Smith. Where is their headquarters?

Mr. Knight. Their headquarters is in New York City. However, the associated division has a headquarters on New Montgomery Street in San Francisco.

Mr. Smith. You say the Tidewater Associated Oil Co.?

Mr. Knight. Yes, sir; the Tidewater Associated Oil Co. I would like to furnish to you, Congressman Smith, if I may, copies of affidavits from three ministers who tried to get into these pump-line stations and were refused admittance by the armed guards at the gate.

Mr. Smith. I would like to have them.

Mr. Knight. I will see that they are provided for you. They are now on file in the courts of California and with the National Labor Relations Board.

Mr. Smith. That is all, Mr. Chairman.

Mr. Kelley (presiding). Mr. Perkins, do you have something for the record?

Mr. Perkins. Yes, Mr. Chairman. I have a letter from a certain judge in Pikeville, Ky., who has had 25 or 30 years' legislative experience in the State senate in Kentucky, in which he sets out his views on the Taft-Hartley Act. The original is addressed to Representative Lesinski, and he sent me a copy. It particularly deals with the Communist oath, or the non-Communist oath, and he is opposed to that provision and other provisions. I would like unanimous consent to make it a part of the record.

Mr. Kelley. Without objection, it will be received for the record.

(The letter referred to is as follows:)

PIKEVILLE, KY., *February 19, 1949.*

MEMORANDUM ON LABOR LEGISLATION

I favor the repeal of the Taft-Hartley Act. This act is unfair to labor. The treatment labor received by the Labor Committees of the Eightieth Congress is such that the only way this wrong can be redressed is by an absolute repeal of the act.

The affidavit required of labor leaders, in which they must swear that they are not Communists so their unions can avail themselves of the services of the Labor Board is grossly unfair to labor and ineffective in handling the Communist problem.

An act of the Congress that assumes that labor is inclined to be communistic and thereby disloyal to the United States, cannot be defended. I note that it has been suggested that leaders of industry be required to make a similar affidavit, so that both labor and industrial leaders would be assumed to be disloyal to the United States. This would be an insult to both labor and management.

The affidavit provided for in the Taft-Hartley Act is not a proper or an effective approach to the control of communism. The problem should be handled in such a way as not to cast reflections on those who are innocent and free from such subversive influences.

1. I suggest the following as a direct and effective means of eliminating such communistic influence as may exist in labor union.

(*a*) Any person who belongs to any group, association, or party, that believes in or advocates a totalitarian form of government, and follows the party line of a foreign party or power, should be made ineligible to hold any office or position of trust in a labor union, whose members are employed in industry, engaged in interstate commerce.

(*b*) The Department of Labor should be required to make such investigations as are necessary to ascertain if persons, who are ineligible under paragraph (*a*) hereof, are holding office or positions of trust in any labor union covered by this paragraph. The files and services of the FBI, under proper restrictions, should be made available in these investigations.

(*c*) It should be made the duty of labor union covered by paragraph (*a*) to free themselves of subversive influences and to discharge and remove all such persons from office or positions of trust in such unions.

(*d*) If the investigation of the Labor Department should disclose that persons are ineligible to hold office or position of trust, in such labor unions, then it should be made the duty of the Labor Department, to take legal action in the United States district court, having jurisdiction of the offending person or persons, to remove them.

This can be done by petition, or by motion, with notice thereof to the offenders.

(*e*) Another title to the act should provide that any person belonging to any group, association, or party, that believes in or advocates a totalitarian form of government, and follows the party line of a foreign party or power, should be made ineligible to hold an office, or employment, in any department or agency of the Government of the United States.

Provision should be made for discharge and removal of any offender, who may be appointed or employed by such departments or agencies.

(*f*) It has been urged that labor has too much economic power. The exertion such economic power by labor as will obtain for labor a fair, reasonable, and equitable division of the earnings of industry is not inimical to the interests of the people or to industry itself. In the exertion of this economic power of labor to obtain its fair and equitable share of the earnings of industry, labor makes a contribution to the maintaining of our buying power, which is so essential to the prosperity and welfare of the people and industry.

2. Labor has an important position in our economic system. It has made a real contribution, through collective bargaining, in obtaining a fairer and more equitable division of the earnings of industry. It has been of great aid in maintaining our national purchasing power, upon which the prosperity and material welfare of the people and all business depends.

The position of labor in our economic system is clearly stated by J. MacCulloch, as follows:

"It is to labor and to labor only, that man owes everything of exchangeable value. Labor is the talisman that has raised him from the condition of the savage; that has changed the desert and forest into cultivated fields; that has covered the earth with cities, and the ocean with ships; that has given us plenty, comfort, and elegance, instead of want, misery, and barbarism."

In an address at Pittsburgh, Woodrow Wilson, in discussing the voice of America, said:

"The great voice of America does not come from the seats of learning. It comes in a murmer from the hills and woods and the farms and factories, and the mills, rolling on and gaining in volume until it comes to us from the homes of common men."

So long as the voice of America comes from the homes of the common people, and they are secure in their economic, social, and political life, these United States will remain the Gibraltar of the democracies of the world.

All of which is respectfully submitted.

E. D. STEPHENSON.

Mr. KELLEY. Mr. Jacobs?

Mr. JACOBS. Mr. Chairman, I have here a statement by the Central States Petroleum Union that was sent to me by the confederated unions, on the question of arbitration, concerning which I was examining the witness, which I would like to offer in the record.

Mr. KELLEY. Without objection, it will be received for the record.

(The statement referred to is as follows:)

STATEMENT BY HERBERT MYERS, SECRETARY-TREASURER, THE CENTRAL STATES PETROLEUM UNION, AND RESOLUTION ON FREE ARBITRATION AS ADOPTED AT CONFEDERATED UNIONS OF AMERICA, MEETING IN WASHINGTON ON FEBRUARY 27, 1949

The Central States Petroleum Union proposes to set forth its position on free arbitration, point No. 3 of a series of resolutions adopted by the Confederated Unions of America at a meeting held in Washington on February 27, 28, and March 1. The attached resolutions as presented are self-explanatory except that we feel that some information should be given to the Congressmen and Senators regarding our position on free arbitration.

Since 1919 the Standard Oil Co. (Indiana) has been party to an agreement first between the United States Government and the Standard Oil Co.; and since 1937, a three-way agreement between the union, the company and the United States Government whereby in all cases of dispute not settled at the bargaining table an arbitrator is furnished upon request by the Department of Labor whose decision is final and binding. This agreement is not a compulsory agreement, but a mutual one enacted each year when a new contract is signed. The value of arbitration to our union and to the company is apparent in that without the necessity of a strike practically everything that can be settled by a strike can be settled by this impartial arbitrator, even wages. The advantage of arbitration to the United States itself should be apparent to the lawmakers when it is recalled how much comment has been made by different people in the Government over the necessity of some system which would eliminate crippling economic strikes. We note that oil is one of the industries that could cripple our economy. We call to your attention that in the fall of 1945 an attempt was made to call such a crippling strike. During that time a wage issue was being decided by a United States Department of Labor arbitrator. We make no point of the fact that our particular set-up helped to break down this crippling strike. It is not the union's intention to feel proud of crippling some other union in their legitimate request. In this particular case we feel that had we been permitted to carry on with our arbitration before the strike was called, all oil workers would have benefited to the extent of possibly 4 to 7 percent more than the 18 percent granted by the oil panel, which 18 percent for some strange reason our arbitrator awarded us after holding our case an unduly long time. It should be unnecessary to point out to any person who wishes to avoid economic distress that a bargaining set-up, such as the Central States Petroleum Union, is the absolute answer.

Some strange reasoning was used just prior to the enactment of the Taft-Hartley Act by some spokesman for labor in Washington, who stated that free arbitration was crippling collective bargaining. Our interrupted no-strike record since 1937, which should be in the files of the Department of Labor, should conclusively answer such a charge. There has been no reason for workmen or management to complain of the results of this particular set-up. Our wages, benefits and working conditions are far above any of our competitors with the exception of the last few years when the wages have become approximately equal. In working conditions and benefits the Standard Oil employees still lead. To expect a system such as ours to survive when the union and the company have the responsibility of selecting an arbitrator is to expect too much. It is plain to be seen that when an arbitrator called in at a fairly decent wage per day to settle an issue between the union and the company, knowing that we have need for arbitration services several times during the year, would be reluctant to antagonize either the company or the union lest he no longer be considered suitable by either party. As a consequence, numerous issues, which are important in principle, if not in money, have been straddled to the extent that the arbitrator has not called the decisions as he saw them, but tried to pacify both parties. Under the old system where the Department of Labor in the three-way agreement furnished arbitrators on demand, neither the union nor the company had any voice in whom the arbitrator should be. Consequently, an arbitrator could come to our hearings, listen to the evidence and deliver his opinion without worrying whether or not he would be eligible to come again. Recently, while talking to some Government officials, it was suggested that arbitrators in the Department of Labor might play politics. We have only to say that from 1919 through 1945 none of the hundreds of cases that have been arbitrated show any evidence of political bias. Twelve years of this time was under Republican administration. We should like to go on record as stating that neither the union nor the company ever had cause to doubt the integrity of the arbitrators, and felt at all times that while they might make an honest mistake they themselves were honest.

Under the new system neither the union nor the company are pleased with the decisions as rendered, and it is greatly feared that this very successful form of labor-management relationship will come to an end; therefore, we would be forced to resort to strike tactics as other unions do in order to gain the results to which we have in the past been accustomed. We think a good illustration of the difference might be presented if organized baseball would quit hiring umpires and permit the opposing teams to hire men to call the plays for each game. Any baseball fan can spot the weakness of this at once. It is our contention that no arbitrator can call a case as he sees it when he is trying to make himself eligible for another job later on because it is too much to expect any union or any company to use a man who has given them a very costly decision if they have the say-so. We would dislike to see the Government in their interest of economy to compel litigants in courts to pay the charges. That is exactly what they have done to us in the matter of arbitration.

Another argument used in Washington 2 years ago on this matter was the savings to the Department of Labor by abolishing arbitration. This is a strange line of reasoning by a Government that will furnish conciliators who may spend weeks trying to persuade somebody to get together for the good of the national economy but have no authority to make them do so for the same conciliator could be assigned to hear a case with the Central States Petroleum Union versus the Standard Oil Co., sit there 1 day, listen to the case and settle it without more ado. It is difficult for use to comprehend how that costs any more money than conciliation. Since the abolition of free arbitration, a number of our small locals have used conciliators. We assume they are being paid a salary the same as the arbitrators were, and they meet a number of times with these locals and sometimes accomplish nothing, where under the old system they would meet once and settle the issue.

We respectfully request Congress to restore free arbitration under the jurisdiction of the Department of Labor.

RESOLUTION OF THE CONFEDERATED UNIONS OF AMERICA

Whereas there have been instances of discrimination against segments of American labor; and

Whereas new legislation is presently being formulated; it is hereby

Resolved, That the Confederated Unions of America at this time present to the Congressmen of each individual State these four points to be made a part of the new labor law:

(1) In deciding all cases under the National Labor Relations Act of 1949, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with the labor organizations national or international in scope.

(2) Equal representation in the Department of Labor.

(3) Upon request of the parties in dispute, the Secretary of Labor shall furnish arbitrators—all cost of which is to be borne by the National Government.

(4) In the appointment of labor-management advisory committees for respective industries, equal representation must be granted all unions whether or not the union is national or international in scope.

Mr. Kelley. That is all, Mr. Knight. Thank you very much.

Mr. Knight. Thank you. I would like to thank the committee for the opportunity to appear.

Mr. Jacobs. I have here also a statement by the Woman's Guild of the Evangelical and Reformed Church, in regard to the Taft-Hartley law and the Wagner Act, entitled "Economic Justice—Keystone of Democracy," which I should like to offer for the record.

Mr. Kelley. Without objection, it will be received for the record.

(The statement referred to will be found in the appendix following close of today's record. See p. 1514.)

Mr. Jacobs. I have a resolution adopted by the New York chapter of the Association of Catholic Trade Unionists regarding the Taft-Hartley law and the Wagner Act that I would like to offer.

Mr. Kelley. Without objection, it will be received.

(The resolution referred to is as follows:)

Resolution of the New York Chapter of the Association of Catholic Trade Unionists

Since its founding in 1937 the ACTU has had direct experience with a large number of trade-union members who appealed to it for help in stopping expulsion from their jobs by their union officials.

Most of these men and women deserved help because their only crime was to exercise their constitutional right to criticize abuses in the administration of their unions. Despite the justice of their position, however, and despite the efforts of the ACTU many of these good trade unionists were expelled from their unions and from their jobs. The union officials were able to do this because of agreements with the employers that all workers must be members of their union in good standing.

Appeals to higher bodies of the union often took years and were usually a foregone conclusion in any case. Appeals to the courts were often fruitless because of the customary reluctance of the courts to interfere in such cases, particularly when all appeals had not been exhausted within the union.

The result of such expulsions was, of course, to discourage almost all forms of opposition and criticism within the union. Without such healthy opposition and criticism democracy dies. We saw it die within these unions.

The Taft-Hartley Act tried to meet this problem by forbidding unions from forcing the expulsion of a worker from his job in a union shop for anything other than nonpayment of dues. This provison had several weaknesses—one, it prevented the union from exercising discipline against real antiunion elements; two, it made it possible for the union to retain its power to expel members unjustly, even though those members retained their jobs.

The ACTU cannot support any solution to this problem which would endanger the union shop or the closed shop: Now, therefore, be it

Resolved, That the New York chapter of the ACTU appeal to Congress to incorporate within the new labor law which will surely replace the infamous Taft-Hartley Act a provision granting the National Labor Relations Board the power to review cases of union discipline when these cases involve expulsion from membership or other major penalty.

Resolved, That copies of this resolution be sent to appropriate Members of Congress.

Mr. Jacobs. I also have a pamphlet entitled "Democracy in Trade Unions," issued by the American Civil Liberties Union, which I would like to offer for the record.

Mr. Kelley. Without objection, it will be received.

(The pamphlet referred to is reproduced in the appendix following close of today's record. See p. 1515.)

Mr. JACOBS. That is all, Mr. Chairman, with the exception that I have one of many anonymous letters that I have received. I would like to read two sentences, the opening sentence of each paragraph. The first is:

> Representative JACOBS. Keep and strengthen the Taft-Hartley law.

The first sentence of the next paragraph is:

> End other controls.

That is all.

Mr. KELLEY. The committee still has Mr. Curran, Mr. Green, Mr. Fitzgerald, Mr. Baldanzi, and Mr. Potofski. Now, the time of the committee has expired. If these gentlemen would be kind enough to submit their statements for the record, we will be glad to see that they are inserted at this point in the record.

I wish to say that the committee had an agreement with the officials of the CIO that we should run along today until the end of the day, and we could include the statements of those men that we did not hear in the record.

I am sorry that we did not reach you gentlemen, but we cannot help it.

Mr. BALDANZI. Mr. Chairman, my name is Baldanzi, and I have a statement. I fully understand your position and, with your permission, I would like to insert this in the record.

Mr. KELLEY. We will be very glad to put it in the record.

(Mr. Baldanzi's statement will be found in the appendix following close of today's record. See p. 1522.)

Mr. TISA. I am John Tisa, of the Food, Tobacco, Agricultural and Allied Workers Union of America, and I have a statement here I would like to present to the committee. If permissible, I would like to make a few remarks on them.

Mr. KELLEY. I am afraid we cannot hear the remarks, Mr. Tisa. We will accept the statement for the record.

Mr. TISA. The reason I ask that, Mr. Chairman, is that Mr. Strobel came and testified before this committee and attacked our union, and I think that we should be given an opportunity to contradict the statement.

Mr. KELLEY. We do not have the time. If I give it to you now, we should have to give it to everybody else.

Mr. TISA. Very well. This is the statement.

Mr. KELLEY. Without objection, it will be accepted for the record.

(Mr. Tisa's statement will be found in the appendix following close of today's record. See p. 1527.)

Mr. CURRAN. Mr. Chairman, I am Mr. Curran of the CIO Maritime Committee. I am sorry the committee has used up its time. We would like to submit this statement for the record.

Mr. KELLEY. Without objection, it will be received.

(Mr. Curran's statement will be found in the appendix following close of today's record. See p. 1534.)

Mr. GREEN. Mr. Chairman, my name is John Green, and I am president of the Industrial Union of Marine and Shipbuilding Workers of America. It is unfortunate that the committee's time has expired, because I believe that we have a story to tell.

Mr. KELLEY. You will have to leave it, Mr. Green.

Mr. GREEN. Nevertheless, I will submit the statement along with four exhibits. I want to impress upon you that the industry I am privileged to represent is a declining industry. We had a strike, and we had a taste of the Taft-Hartley Act.

Mr. KELLEY. We will be glad to put it in the record.

(The statement and exhibits referred to will be found in the appendix following close of today's record. See p. 1538.)

Mr. STRAUS. Mr. Chairman, my name is Leon Straus, and I am vice president of the International Fur and Leathers Workers Union. I have no prepared statement. We came here prepared to testify.

Mr. KELLEY. You were not on the scheduled list.

Mr. STRAUS. No; I was not, Mr. Chairman. I would like to ask this committee to extend its hearings.

Mr. KELLEY. We cannot do that.

Mr. STRAUS. Is it possible for you to meet tonight so that my testimony may be submitted?

Mr. KELLEY. The committee is engaged tonight at 6 o'clock.

Mr. STRAUS. I may call to your attention, Mr. Chairman, that this committee went past midnight hearing an employer.

Mr. KELLEY. I am telling you that we cannot meet tonight. This has closed our hearings by the motion that we have.

Mr. STRAUS. Don't you think that we are entitled to a fair and just hearing, at least to the extent that the employers had?

Mr. KELLEY. You may submit a statement for the record.

Mr. STRAUS. I have no statement, Mr. Chairman.

Mr. KELLEY. Can't you make one?

Mr. STRAUS. I would like to make one if the committee will hear me. I want to know why——

Mr. KELLEY. If you will give us a written statement, it will be inserted in the record.

Mr. STRAUS. But I haven't any, Mr. Chairman.

Mrs. PETERSON. I am Mrs. Peterson of the Amalgamated Clothing Workers and I was to appear today for Mr. Potofski, the president of our union, who could not come because of illness. I am very glad to present the statement for the record.

Mr. KELLEY. Without objection, it is so ordered.

(Mr. Potofski's statement will be found in the appendix following close of today's record. See p. 1587.)

Mr. BULCKE. Mr. Chairman, my name is Germain Bulcke. I am vice president of the Longshoremen's Union of the Pacific Coast. I came to the committee in the hope that we would be able to present our testimony, because we are going into a situation now that is very serious. However, I realize that the committee's time is up, and I wish to say to the committee that it is unfortunate, because the committee should have the opportunity to hear what is actually happening now. The action of the Taft-Hartley Act is going to destroy the fishing industry of the west coast.

Mr. KELLEY. We will accept your statement.

Mr. BULCKE. I have a statement. I will put it in.

(The statement referred to will be found in the appendix following close of today's record. See p. 1590.)

Mr. NIXON. Mr. Chairman, my name is Nixon. I have a statement here for the United Electrical, Radio, and Machine Workers. We are particularly disappointed, because this committee sat until 12:30 one night last week listening to the president of the General Electric Co., castigate our union and attack our labor relations. We sat here all day in the hope that we could answer Mr. Wilson and could present our general statement on this issue which is, of course, of life and death importance to us. We would be glad to sit here until 12:30 tonight to wait to be heard. But it is most unfortunate in an issue of this sort that we cannot present our testimony. You and I know that putting it in the record is no subsitute for being able to answer the questions of the committee, to be able to answer the questions that may be in the committee's minds, because of Wilson's testimony.

Mr. KELLEY. Without objection, Mr. Nixon, we will have your statement inserted in the record.

Mr. NIXON. It is very unsatisfactory.

(The statement referred to will be found in the appendix following close of today's record. See p. 1611.)

Mr. KELLY. Mr. Chairman, my name is Lawrence Kelly. I am vice president of the American Communications Association, and I would like to again urge that this committee extend its hearings so that we can tell the story of what the Taft-Hartley Act has done to our particular union. We can prove on the record that this is a union-busting act, and that the repeal of the Taft-Hartley Act is warranted, and the restoration of the Wagner Act.

Mr. KELLEY. Do you have a statement?

Mr. KELLY. I do not have a written statement. That is the reason.

Mr. KELLEY. We will give you permission to submit one, without objection.

Mr. KELLY. A written statement is no substitute.

Mr. KELLEY. I cannot help that now. I am sorry.

Mr. BROWN. Mr. Chairman, my name is Edgar C. Brown. I am director of the National Negro Council.

Mr. KELLEY. Were you not before our committee?

Mr. BROWN. No. I made an effort to get before the committee, and I want permission to put into the record from the Bureau of Labor Statistics of the Labor Department the names and the constitutions of 17 A. F. of L. unions which say that a member must be white, Caucasian, Christian, and 21. I want to know why it is we could never take this question up before this committee or the Senate committee, except after strong protest.

Mr. POWELL. Just a minute. It was taken up.

Mr. BROWN. I asked to be heard, and I have not been heard. I came in and begged to be heard, and I say to you that 13,000,000 Negroes are sick and tired of committees saying at the end of the hearing that it is always too late.

Mr. KELLEY. Wait a minute.

Mr. BROWN. The committee of Congress does not have time to hear anyone when the question of discrimination is to be exposed and a remedy outlined.

Mr. KELLEY. You cannot——

Mr. BROWN. It is a labor bill. We are asking for civil rights now.

Mr. KELLEY (gaveling). Regular order.

Mr. BROWN. The regular order always puts the Negro's spokesmen out of order.

Mr. POWELL. The question was taken up at a night session, and the amendments to the Taft-Hartley law were proposed, and I agreed that I would submit those amendments you are talking about in executive session of this committee.

Mr. BROWN. I am glad to know that, Dr. Powell. I did not know about it, and you did not ask me to be heard. I would like still to be heard, and I want to know whether I can have permission to put into the record the names of these 17 discriminatory A. F. of L. unions?

Mr. KELLEY. Without objection, it is so ordered.

Mr. BROWN. Thank you.

(The material referred to is as follows:)

STATEMENT OF EDGAR G. BROWN, DIRECTOR, NATIONAL NEGRO COUNCIL

We urge the Congress to stop labor and management racial discrimination by denying the Federal benefits of national labor-management-relations laws to unions or industries that deny membership or employment on account of race, creed, or color.

The following is a list of American Federation of Labor unions which state that a person must be white, Christian, etc., compiled from Handbook of American Trade-Unions, 1936 edition, Bulletin No. 618, Bureau of Labor Statistics, Department of Labor, and printed by Government Printing Office.

Carmen of America, Brotherhood of Railways.
Wire Weavers' Protective Association, American.
Masters, Mates and Pilots of America, National Organization.
Air Line Pilots' Association.
Clerks, Freight Handlers, Express and Station Employees, Brotherhood of Railway and Steamship.
Conductors, Brotherhood of Dining Car.
Conductors, Order of Sleeping Car.
Conductors of America, Order of Railway.
Engineers, Grand International Brotherhood of Locomotive.
Firemen and Enginemen, Brotherhood of Locomotive.
Maintenance of Way Employees, Brotherhood of.
Switchmen's Union of North America.
Trains Dispatchers' Association, American.
Trainmen, Brotherhood of Railroad.
Yardmasters of America, Railroad.
Yardmasters of North America, Railroad.
Telegraphers, Order of Railroad.
Telegraphers' Union of North America, Commercial.

Mr. CAMMER. Mr. Chairman, I have a statement for the International Union of Mine, Mill and Smelter Workers. I would like not to submit it for the record but to join in the request that this committee sit tonight so that on this legislation, which so vitally affects the bread-and-butter interests of millions of workers, there ought to be an opportunity to present——

Mr. KELLEY. We have 175 requests right now waiting to be heard. If we opened this up again, we shall run into that. We have a rule here that we would close in 10 full days.

Mr. CAMMER. I am not asking that you extend it beyond today, Mr. Chairman. I ask that you sit tonight.

Mr. KELLEY. No; we cannot. We will take your statement.

(The statement referred to will be found in the appendix following close of today's record. See p. 1617.)

Mr. MOONEY. Mr. Chairman, on behalf of the United Office and Professional Workers, we have a statement to submit. But, like these other unions, we have disputes before the Board on behalf of the Prudential agents, the Metropolitan agents, the John Hancock agents, and we have not been able to get Board action. We would like to have the committee hear these things.

Mr. KELLEY. There was testimony to that effect. All of your unions are part of the CIO and you should have your engagements cleared through them, the same as is done in the A. F. of L., so please do not blame us for not hearing you. You should have taken your problems down there and gotten your assignment for time.

Mr. STRAUS. Mr. Chairman, you have not even heard four or five who were on the list of the CIO today. There is no reason why you cannot meet tonight and hear their testimony.

Mr. KELLEY. Yes, there is. There is all the reason in the world. You will have to ask the CIO.

Mr. MOONEY. I would like to submit this statement on behalf of the United Office and Professional Workers.

Mr. KELLEY. Very well.

(The statement referred to will be found in the appendix following close of today's record. See p. 1621.)

Mr. STRAUS. I would like to submit a statement, too.

Mr. WIER. I am getting more telegrams as a member of this committee asking, "Why don't you do something?"

Mr. STRAUS. That is right. That is what we want to know. Why don't you do something?

Mr. WIER. Let us do something.

Mr. STRAUS. It is now 3 months.

Mr. WIER. You fellows will have us holding meetings and meetings, and having hearings——

Mr. STRAUS. Yes. But when you hear employers, why not hear enough of the union representatives to answer them?

Mr. WIER. I want to get action on this bill.

Mr. STRAUS. So do we. You should have acted the first day you were elected.

Mr. IRVING. I would like to advise this gentlemen here that we did not hear Mr. Wilson or Mr. Mosher at their convenience. We necessarily had to recess this hearing to go to the House floor, and we took that opportunity to make up the time.

Mr. STRAUS. We are willing to wait your convenience.

Mr. KELLEY. Yes. But you want us to do——

Mr. STRAUS. And testify at your convenience, Congressman.

Mr. KELLEY. Mr. Irving is telling you that we could not sit that afternoon.

Mr. IRVING. So we did not favor them because they were employers. We made up the time that day that we were not able to——

Mr. KELLEY. Anyone who wishes may file a statement and it will be received for the record if received before April 1. The committee will stand adjourned.

(Whereupon, at 5:45 p. m., the hearing was closed.)

APPENDIX

The several statements and communications referred to in today's record are as follows:

STATEMENT BY ARTHUR J. GOLDBERG, GENERAL COUNSEL, CONGRESS OF INDUSTRIAL ORGANIZATIONS AND UNITED STEELWORKERS OF AMERICA

My name is Arthur J. Goldberg, and my address is 718 Jackson Place NW., Washington, D. C. I am general counsel of the Congress of Industrial Organizations and the United Steelworkers of America.

I wish at the outset to express my appreciation to the committee for this opportunity to file this statement with the committee.

It cannot be denied that there have been few issues in all our national history which have so dominated a Presidential campaign as the repeal of the Taft-Hartley Act. In the same way that the issue of free silver was the issue of the Bryan campaign in 1896, the Taft-Hartley Act was the issue in the recent elections. The party which was returned to power, the Democratic Party, made this a dominant issue in the campaign and went to the people on that issue, and the Republican Party which had sponsored the Taft-Hartley Act sought, somewhat evasively it is true, to defend its handiwork before the people. In every sense of the word, the election embodies a popular manadate to erase the Taft-Hartley Act from the statute books.

I am aware that the recent election and the issues presented in the election really obviate the necessity for persuading a majority of the committee that the Taft-Hartley Act must be eliminated.

However, a detailed presentation against the Taft-Hartley Act is made here not with a view to persuading a majority of the committee that that act must go, but rather for the following reasons:

1. Those who have sponsored the act and who continue to defend it insist that the attack upon the act is based upon slogans and generalities and not upon specific facts. They cannot deny the verdict of the people in the recent elections, but they constantly claim that there is no basis in fact for that verdict and that the Taft-Hartley Act is a good law. Indeed, many of the sponsors of the act and the majority of the Joint Committee on Labor-Management Relations insist that the law has actually benefited labor. We present a detailed picture of the vicious effects of this law to refute the glib claims that nothing specific in the act can be condemned.

2. We think also it is important to detail labor's experiences under the Taft-Hartley Act, and to high light the evils of the law as a guide to this committee which now has before it certain proposals to amend the Wagner Act. The experiences of the Congress of Industrial Organizations under the law are elaborated here in order to assist the committee in its consideration of these proposed amendments.

The purpose of this testimony is to clarify the nature and operation of the law in order to prevent the revival of its evil concepts in other forms. We anticipate that those who are determined to foist this law upon our people will, either in open or disguised ways, strive through amendments to emasculate the Wagner Act and reenact the substance of this repudiated law.

This testimony is divided into two parts. Part I presents the views of the Congress of Industrial Organizations with respect to the Taft-Hartley Act, the Wagner Act which H. R. 2032 proposes to reenact, and the amendments which are contained in H. R. 2032. Part II presents a detailed analysis of the effects and impact of the Taft-Hartley Act upon labor-relations law and specific labor-relations situations.

PART 1.—A. THE TAFT-HARTLEY ACT

In order properly to evaluate the Taft-Hartley Act, we cannot view the act as merely changing the preexisting rights and obligations of employers and labor organizations. The Taft-Hartley Act has in effect completely altered the course of labor relations in this country. It has strengthened the hands of the most antilabor groups in the employer community. It gave those employers who had grudgingly accepted the Wagner Act new hope of breaking unions. In its most fundamental aspect, it created great changes in our industrial mores with incalculable effects upon labor-mangement problems at every stage of the organizational process and collective-bargaining relationship.

A law such as the Taft-Hartley Act cannot be assessed solely in terms of the formal orders which issue under the act. Such a law molds antiunion attitudes and destroys the basis of sound labor relations even when it is not actively resorted to by employers. In addition, the law has been used by employers as a club to force unions to recede from legitimate and needed bargaining demands on the basis of strained interpretations by employer attorneys.

Moreover, in considering the full impact of the act, it is important to remember that this law has stimulated corresponding repression on the State and local levels. It is not merely the Federal courts who are issuing injunctions. In the State courts as well, we find that the issuance of antilabor injunctions limiting and frequently outlawing all picketing is now becoming routine under the Taft-Hartley Act. We find on the State level an increasing resort to troops and State police for strikebreaking purposes, and a growing tendency to use many of the instrumentalities of the Government to repress the organizational activities of the working people and to break strikes.

The Taft-Hartley Act can be demonstrated to be a bad law. But, bad as the law can be demonstrated to be, a full picture is still not available. This is so because employers—particularly some of the large and more powerful employers in basic industries—have deliberately refrained from exploiting to the full the act's antiunion potentialities, partially out of a fear of creating too vivid a recognition of the act's meaning and partially because industry has enjoyed the most prosperous profit period ever enjoyed in peacetime. This fact is made clear throughout the recently concluded Senate hearings on the administration bill. As a Republican Senator put it, "As one reads that testimony, he finds management witnesses confessing, under cross-examination, that the most restrictive uses of the Taft-Hartley law will come when unemployment becomes widespread in America."

In order to present to this committee an accurate picture of the impact of this law, we have submitted to all CIO unions a detailed questionnaire seeking information with respect to the effects of the law on organization and collective bargaining. The information contained in responses to this questionnaire fully supports the following conclusions:

1. The Taft-Hartley Act has hampered and obstructed the organization of the unorganized. Virtually every union response to the questionnaire made it clear that it is a difficult if not a hazardous process under the Taft-Hartley act. In a country where labor organizations only include one-third of those eligible for membership, organization of new members has slowed down to a rate where it scarcely equals the loss of members due to death and retirement from industry. A graphic illustration of this is supplied by the following chart:

	July 1946–June 1947	October 1947–September 1948	Percent [1]
Number of elections	6, 920	4, 085	60
Number of eligible voters	934, 553	459, 878	49
Number won by CIO	2, 138	620	29
Votes for CIO	288, 381	108, 525	38
Votes of AFL	208, 524	90, 265	43

[1] This shows developments in October 1947–September 1948 period as a percentage of the July 1946–June 1947 period. For example, for every 100 elections held in the earlier period—before the Taft-Hartley enactment—only 60 were held in year of Taft-Hartley's existence. For every 100 eligible voters in earlier period, there were only 49 in the later period, etc.

Source: Annual and monthly NLRB reports.

The majority report of the Joint Committe on Labor-Management Relations has recently contended that labor-union membership has increased but its figures are completely misleading since it fails to distinguish between increases in membership in already organized plants and the organization of new plants.

No amount of juggling with figures can obscure the fact that the Taft-Hartley Act has made the organization of workers exceedingly difficult. The National Labor Relations Board has just issued an extremely significant statistical summary covering the month of January 1949 which corroborates this fact. The Board figures show that the number of unfair labor practice complaints issued by the agency during January doubled the monthly average for the past 7 years. The Board's experience during the month of January also shows that more employers were charged with the commission of unfair labor practices than in any 1 month since the effective date of the Taft-Hartley Act. The Board's records show that the staggering total of 357 charges of unfair labor practices were filed against employers during the month of January alone.

The Board's election figures likewise confirm the trend set forth in the election table above. During the month of January unions won 66 percent of the collective-bargaining elections conducted during that month. This compares with 73 percent won during the first year of the Taft-Hartley Act and with 81 percent won during the 12 years of the Wagner Act.

In short, our experience under the Taft-Hartley Act demonstrates that employers are using it with increasing effectiveness to blight the organization of the unorganized.

2. The act has forced unnecessary strikes. Three classes of strikes have been produced by the act:

(*a*) The act has had a powerful stimulus upon organizational strikes. A most significant index of the efficacy of a law promoting industrial peace is its effect upon organizational strikes, upon strikes for union recognition and for bargaining rights. Obviously unless a law provides a substitute for economic warfare by promoting organization and collective bargaining it has failed in a most fundamental way. Virtually every CIO union has been forced into strikes to obtain recognition and bargaining rights against employers who rely upon the weapons of the Taft-Hartley Act. A large number of these employers are using the act as a pretext for repudiating unions and evading collective-bargaining obligations.

(*b*) A second group of strikes attributable to the Taft-Hartley Act are strikes created by the terms of the law itself. Thus, the ink was scarcely dry on the law when strikes were precipitated by it in the automobile industry to achieve protection against the provisions of the law permitting law suits against unions for breach of contract as a result of acts neither authorized nor ratified by the union. The Nation-wide strikes in the printing industry were a direct flowering of the prohibition upon union security contained in the law. The printers were forced to strike to obtain a form of security which they had enjoyed for over 50 years and which the employers were perfectly willing to grant them.

Since the law has been in effect some 6 injunctions have issued under section 208, the so-called national emergency provision. These injunctions were issued in the atomic energy dispute, in the two mine workers dispute, in the longshore dispute on the west coast, in the longshore dispute on the east coast, and in the maritime disputes on the east coast and on the Great Lakes. No less than four of these disputes were precipitated by the Taft-Hartley Act.

The first emergency dispute in the coal industry in 1948 involved the miners' welfare fund. The complicated and ambiguous provisions of the welfare fund provisions of the Taft-Hartley Act gave rise to a dispute between the parties as to the proper method of activating the fund under the law.

In the second coal dispute a strike was precipitated over the union security restrictions in the Taft-Hartley Act.

The maritime dispute and the longshore dispute on the west coast were also precipitated as a result of the insistence by the employers that the law required that the hiring hall be eliminated. A second issue in the longshore strike was the employers' claim that "walking bosses" and ship's clerks are supervisory employees under the Taft-Hartley Act.

(*c*) A third type of dispute which has been stimulated by the Taft-Hartley Act are disputes over economic issues which could have been adjusted had employers not found the strike-breaking provisions of the act so inviting as to project an impasse into strike proportions.

A report has been rushed into print by the Joint Committee on Labor-Management Relations, the chairman and some of the members of which, prominently identified with the act, failed of reelection. Before commenting at various points of my testimony upon the report, I think it instructive to point out that the committee chairman, on August 7, procured the passage of a resolution extending the period for filing the report to March 15 on the ground that such an extension was necessary in order to make an adequate evaluation of the operation of the act. The report which was filed at the close of the last session certainly shows the unfortunate effects of the haste which its chairman feared last August.

Thus, the joint committee's report cites lumped figures to show a decline in man-hours lost as a whole as a result of strikes during the period of operation of the Taft-Hartley Act. Such figures are most deceptive. In evaluating the effect of the Taft-Hartley Act it is obvious that it would be extremely dangerous to attribute virtues to the law in direct proportion to its success in repressing strikes. The fact that a law forces individuals to work against their will, to take "no" for an answer to a reasonable wage demand, is hardly something in its favor. The decisive question is the kind of strikes which are caused and the manner in which a law creates the opportunities for avoiding strikes. The Taft-Hartley law is bankrupt in this decisive test. On the one hand, it forces strikes and on the other it arms employers with the means for breaking them.

Moreover, a more careful study of facts should have demonstrated to the joint committee investigators that during the period of the operation of the Taft-Hartley Act relatively few contracts have been opened for wage negotiations. In a large segment of our basic industry contracts were signed immediately prior to—and in anticipation of—the Taft-Hartley Act. These contracts will reopen in the spring of this year.

3. The third basic result of the law has been to prevent the closing of the growing gap between workers' living costs and earnings, to make it easier for American industry to deny wage increases.

I am aware that the majority of the Joint Committee on Labor-Management Relations in their precipitate vindication of the Taft-Hartley Act point to the fact that wage rates have risen but they studiously avoid any reference to prices or profits and fail to investigate the deterioration of the relationships between wages, prices, and profits.

In a triumphant demonstration that workers have enjoyed improved economic benefits under the Taft-Hartley Act, the joint committee published the following table (rept. p. 29) showing average hourly earning of industrial employees for 1946 and the first 9 months of 1948:

1947:	*Rate*	1948:	*Rate*
January	$1.161	January	$1.285
February	1.170	February	1.287
March	1.180	March	1.289
April	1.186	April	1.292
May	1.207	May	1.301
June	1.226	June	1.316
July	1.230	July	1.333
August	1.236	August	1.349
September	1.249	September	1.363
October	1.258		
November	1.268		
December	1.279		

However, the picture of increasing hourly earnings furnished by the joint committee report is most deceptive when we compare it with the following table of changes in real hourly earnings for the same period (January 1947 to September 1948[1]):

1947:	*Real hourly earnings*	1948:	*Real hourly earnings*
January	$1.161	January	$1.167
February	1.17	February	1.178
March	1.157	March	1.184
April	1.163	April	1.17
May	1.186	May	1.17
June	1.197	June	1.175
July	1.191	July	1.177
August	1.182	August	1.185
September	1.169	September	1.198
October	1.18		
November	1.179		
December	1.174		

[1] Based upon January 1947 level of Consumers' Price Index of the U. S. Bureau of Labor Statistics.

Source: U. S. Bureau of Labor Statistics.

Moreover, the figures relating to the worker's relative share of the Nation's wealth show that the operation of the Taft-Hartley Act has not improved his position. In the past few years the relative wage and salary share of income in manufacturing has been substantially reduced while profits have risen steadily.

In 1947 as compared with 1945, for example, profits constituted about 30 cents of each dollar of income received by manufacturing corporations, while in 1945 the profit share out of each dollar was only 21 cents. The wage and salary share over the same period fell from 74 cents to 68 cents. While final detailed figures for 1948 are not available, they show a continuation of this shift of the share of income away from wages and salaries towards profits.

The following table shows this trend very clearly:

Percent of income going to profits and wages and salaries in manufacturing [1]

Year	Corporate profit share	Wages and salaries share [2]
	Percent	*Percent*
1929	23	73
1939	21	76
1945	21	74
1946	23	76
1947	30	69

[1] Wages and salaries and profits both before taxes.

[2] In considering these percentages it is well to remember that each shift of less than 2 percent involves more than a billion dollars in income.

Source: U. S. Department of Commerce.

4. Finally, where established collective-bargaining relationships existed the Taft-Hartley Act has encouraged employers to cut contract standards and to become uncooperative and adamant in the settlement of grievances.

These, in my opinion, are the basic results of the Taft-Hartley Act. Further and related consequences of the law have been to encourage the revival of antilabor employer associations, to increase the use of strikebreakers, to popularize injunctions, to stimulate violence against union leaders and their members, to undermine the right to strike and picket, to transfer from employees to the employer the right and the power to choose their bargaining agent, to revive company unionism, to encourage on an unprecedented scale discrimination against union leaders and members for union activity, to double the time required by the Board for processing of unfair labor practice cases, to make the Government and the employer censors over the internal structures and affairs of labor organizations, to destroy freedom of contract in collective-bargaining relations, and to substitute Government dictation for free collective bargaining, to invite antilabor State legislatures to pass and apply repressive legislation, to leave unions and employers completely in the dark as to the appropriate manner in which to reopen contracts. to impose upon union members serious restraints upon the exercise of political rights by making it a crime to engage in political activity through their unions and to endanger industrial peace by making bargaining rights depend upon the taking of a test oath of political orthodoxy.

Just as there has been a deliberate attempt to convey the false impression that objections to the law are not based on fact so there has been an attempt to suggest that the objections to the law stem from a narrow group. I think that the recent elections demonstrate the falsity of the charge that only union leaders object to this law. It is not merely unions and their leaders which find this law obnoxious. It is not merely the millions of union members as well as members of the public who oppose this measure. As a matter of fact there are increasing signs that employers recognize that the law was unsound and unwise. An editorial in Business Week of December 18, 1948, a prominent organ of the business community, acknowledged that "few (businessmen) are wasting time deploring the imminent doom of the Taft-Hartley Act." This periodical concedes that the law is an unsound law. Summing up, it states:

"What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate from one which could destroy.

"Given a few million unemployed in America, given an administration in Washington which was not prounion—and the Taft-Hartley Act conceivably could wreck the labor movement.

"These are the provisions that could do it: (1) picketing can be restrained by injunction; (2) employers can petition for a collective-bargaining election; (3) strikers can be held ineligible to vote while the strike replacements cast the only ballots; and (4) if the outcome of this is a 'no-union' vote, the Government must certify and enforce it.

"Any time there is a surplus labor pool from which an employer can hire at least token strike replacements, these four provisions, linked together, presumably can destroy a union."

More recently, the general counsel of the Illinois Manufacturers Association pointed out to an audience of employers (Daily Labor Report (BNA) No. 14, January 14, 1949) that employers would suffer no great loss and indeed would gain in some instances from a repeal of at least seven provisions of the Taft-Hartley Act. The opinion of this lawyer envisaged no great loss to employers in the repeal of provisions covering, (1) union security; (2) suability; (3) multiplicity of elections; (4) 60 days' notice; (5) injunctions; (6) financial statements, and (7) anti-Communist affidavits.

The Taft-Hartley Act cannot be defended by anyone who is acquainted with the facts. It is not the attack upon the act which is not factual. On the contrary it is the defense of the act which is doctrinaire and blind to industrial realities.

I do not think that this country has ever seen a campaign of propaganda, concealment, and misrepresentation which matches that of the press and of the well-paid employer lobbyists to keep the millstone of the Taft-Hartley Act firmly bound around the necks of our working people. Operating on the old theory that if a lie is big enough and repeated often enough people will begin to believe it, employer groups, their paid lobbyists and the press have deliberately conveyed the impression that no case can be made against the Taft-Hartley Act and that only a few emotional labor leaders oppose the law. There has been a deliberate campaign to conceal from our people the case which has been made against this vicious statute.

Let me illustrate what I mean. There appeared before the Senate committee labor representatives, employer representatives, Government representatives, and a group of experts with long years of experience in the field of labor relations. I refer to such figures as William H. Davis, former chairman of the War Labor Board, of the National Defense Mediation Board of the Labor-Management Conference of 1941 and former Director of the Office of Economic Stabilization, whom one of the Republicans on the committee terms "one of the best qualified men in America" to speak on the subject of labor relations; William M. Leiserson, former Chairman of the National Mediation Board and former member of the National Labor Relations Board under the Wagner Act, and nationally known authority on labor relations; Professor Nathan P. Feinsinger, former general counsel to the Wisconsin Labor Relations Board, Associate General Counsel and public member of the National War Labor Board, Chairman of the Fact Finding Board in the steel dispute, teacher of labor law and nationally known arbitrator. All of these figures sharply condemned the Taft-Hartley Act and gave strong and explicit support to the Senate version of H. R. 2032. I think it significant that while the outstanding experts in the field of labor relations in this country all condemn the Taft-Hartley Act and favor the administration bill, yet little or nothing in their testimony is reported in the press. I think it also significant that these figures, of national stature, were not called to testify on the bill which became the Taft-Hartley Act when it was under consideration by the Eightieth Congress.

I think that the Senate hearings are extremely instructive for other reasons. Those who spoke against the administration bill are the very employer groups who from the beginning attacked the Wagner Act because it destroyed "the rights of the individual." These employer groups are the same groups which for years fought a running battle against the administration of the Wagner Act and were responsible for the Taft-Hartley Act. Now they pay lip-service to the principles of collective bargaining but still are fighting desperately to retain the Taft-Hartley Act because of their pretended concern for the rights of the individual.

Of course these reactionary groups are now aware that they cannot salvage the entire Taft-Hartley Act in its present form. They hope by making a pretended show of "reasonableness" and by conceding that certain features of the law are unfair and unworkable to salvage the basic provisions of the law. This technique of making strategic concessions should deceive no one.

Employer witness after employer witness appeared before the Senate committee and suavely assured the committee that "of course the Taft-Hartley Act is not sacred." Each one expressed willingness to endorse reasonable amendments. When pressed some of the employer witnesses could find no amendments which they considered reasonable. The concessions which some employer witnesses made in the interest of reasonableness are concessions with respect to provisions which, by a strange coincidence, have failed to accomplish their antilabor purpose. Thus, most of the employer witnesses were willing to abandon the provision in the Taft-Hartley Act providing for employee votes to authorize negotiation of union-security agreements. The reasons for this particular concession are not mysterious. Experience in the use of this election device has established that in many industries it has actually served to promote union security agreements instead of discouraging them as the sponsors of the Taft-Hartley Act had hoped.

In the same way employer witnesses demonstrated their reasonableness to the Senate committee by acquiescing in the dropping of the provision for an election among the employees involved in emergency strikes to determine whether the employer's last offer would be accepted. Employers have now recognized that such a ballot cannot be used to divide the leadership from its membership and that the last offer may, in fact, become a floor for future barganing. They are, therefore, willing abandon it.

An employer witness even conceded that in the building trades the ban on the closed shop is unworkable and disastrous because it interferes with the supply of skilled labor.

On cross-examination some employer witnesses were forced to concede that other provisions of the Taft-Hartley Act are unsound such as the provision for suits for breach of contract, the provision making union coercion a Federal offense, the provision relating to who are agents of labor organizations.

The technique of the strategic concession, adopted solely for the purpose of salvaging the basic provisions of the law, has been adopted throughout by Senator Taft. In a letter to Senator Thomas, chairman of the Senate committee, on February 21, 1949, Philip Murray, president of the CIO, made the following charges with respect to Senator Taft's concessions with respect to the inadequacies of the Taft-Hartley Act:

"In the record of the hearings Senator Taft has made a long list of concessions and retreats with respect to the specific provisions of the Taft-Hartley Act and their operation in practice. These are some of his own repudiations of important provisions of his own law:

"(1) He has repeatedly conceded that the provision in the act permitting strikebreakers to vote in elections but denying that right to strikers is one-sided and is a strike-breaking provision.

"(2) He has conceded that even under his own theories some boycotts are justifiable and that the Taft-Hartley Act goes too far in this regard.

"(3) He has conceded that the provisions of the law which make it mandatory to obtain injunctions against unions but not against employers are one-sided and should be eliminated. This would presumably mean the elimination also of the correlative provisions providing for damage suits where such injunctions lie.

"(4) The closed-shop prohibition apparently no longer seems to Senator Taft to be a vital provision in the law. He appears willing to scrap it.

"(5) Senator Taft has admitted that the notice provisions of the law are poorly drafted and create difficulty and confusion in connection with wage reopening clauses.

"(6) Likewise he has recognized that the penalties which may be imposed upon unions and their members for violations of the notice provision are excessive.

"(7) He has expressed the view that the affidavit provisions are improperly drafted.

"(8) Senator Taft has indicated his disagreement with the formulation of the featherbedding provision of the Taft-Hartley Act.

"(9) He has recognized that the present free-speech provisions of the act go too far.

"(10) He has conceded that the provisions of the Taft-Hartley Act imposing limitations upon political expenditures by unions are ambiguous.

"(11) He has conceded that the problem of welfare funds was not properly handled in the Taft-Hartley Act.

"(12) He has admitted that the enormous concentration of unreviewable power in the general counsel may be legitimately criticized.

"(13) He has admitted that the provisions for union authorization elections to obtain union security are unsound and should be deleted.

"(14) He has conceded that the present injunctive provisions of the Taft-Hartley Act dealing with so-called national emergency strikes permit of too broad an application.

"(15) He has accepted the provision in the Thomas bill authorizing emergency boards to make recommendations for the purpose of settling disputes, a power which is withheld from emergency boards created under the Taft-Hartley Act.

"(16) Not only has Senator Taft expressed doubts concerning the present powers of the general counsel but he has expressed a lack of confidence in the general counsel in a number of specific ways. For example, he has expressed disagreement with the general counsel as to whether small local business is covered by the Taft-Hartley Act. He has repeatedly insisted that the act must be amended to limit its scope.

"(17) Similarly, he has expressed lack of confidence in the general counsel with respect to the rulings of the general counsel that a member of a picket line is an agent of a union for purposes of the Taft-Hartley Act and that a failure of a union to comply with notice provisions of the Taft-Hartley Act is a refusal to bargain.

"(18) He has conceded that the provision for polling the employees at the end of the 80-day no-strike period with respect to the employer's last offer should be eliminated.

"These are some of the more salient concessions which Senator Taft has made."

Senator Taft, in commenting on President Murray's letter, has not denied that he has made the enumerated concessions, as well as many additional concessions, with respect to the inadequacies of the law. I think that these concessions by the very man who bears the primary responsibility for the law completely refutes the claims of those who insist that no case can be made against the law. The case against the law has been made by the sponsor of the law.

It seems to be the theory of Senator Taft and those who hope to save the act by strategic concessions that a labor statute is a legislative grab bag which may be filled or emptied at pleasure. A labor relations law is a complicated piece of machinery and we cannot eliminate the vital and important parts of it and assume that it will still be workable. On the contrary, even if we were to eliminate only those provisions which Senator Taft has conceded are unsound and unworkable what we leave remaining is not a statute at all but a meaningless hodge-podge of unrelated provisions. What is wrong with the Taft-Hartley Act is more than this or that particular provision. As all of the experts referred to above testified before the Senate committee, the evil of the Taft-Hartley Act lies in its approach and the particular provisions which Senator Taft is willing to abandon are merely symptoms of that basic evil in approach. We must wipe the slate clean and restore to the statute books a law embodying the Wagner Act approach.

The piecemeal dismemberment of the Taft-Hartley Act will not produce a sound labor relations statute. Nor will the technique of legislating on the basis of isolated and unrepresentative abuses yield sound legislation. The Senate hearings illustrate the manner in which this technique, which was used to create an atmosphere favorable to the passage of the Taft-Hartley Act, has been persisted in to retain the basic provisions of the Taft-Hartley Act.

President Murray, in his letter to Senator Thomas, previously referred to, has this to say with reference to this subject:

"The apologists for the Taft-Hartley Act prefer most of all to justify legislation affecting millions and millions of Americans upon the basis of an isolated and unrepresentative horrible example carefully dressed up and repeatedly trotted out to confuse and frighten the unwary.

"The repressive Taft-Hartley Act was itself passed through the use of this clever technique of seizing upon one or two unrepresentative fact situations to justify legislative provisions far beyond their literal reach. The hearings on the Taft-Hartley Act are replete with the use of this device. Now, in the present hearings, the same technique has been revived and warmed over. The shocking boycott provisions of the act are again justified by vague references to extreme fact situations which are not remotely typical of the boycotts in which workers normally engage. The same stock examples, now somewhat frayed, which were resorted to by Senator Taft in 1947 to justify his disastrous elimination of the closed shop are again trotted out.

"I do not know of any field of legislation outside of the labor field, where Congress would dare abridge the rights of millions of Americans on the basis of isolated and unrepresentative abuses. Senator Taft and some of his Republican colleagues would be outraged if the same technique were used to justify legislation invading employers' rights.

"It is, of course, obvious that the device of the horrible example is unfair and irresponsible. It results, as in the case of the Taft-Hartley Act, in imposing upon labor a myriad of unjust restraints—in a field where a minimum of governmental intervention is imperative. It means the very regimentation which Senator Taft professes to abhor in other connections."

Despite the barrage of newspaper propaganda to the contrary, I am positive that a fair and deliberate evaluation of the Senate testimony will corroborate the conclusion of the great majority of our people in the recent elections that the Taft-Hartley Act is a discredited law.

B. THE WAGNER ACT

I doubt whether there has been any statute passed by an American Legislature which has been as widely misrepresented and as little understood as the National Labor Relations Act of 1935, better known as the Wagner Act.

The purpose of the Wagner Act has been classically described by President Roosevelt. In his statement when he signed that act, he said:

"A better relationship between labor and management is the high purpose of this act. By assuring the employees the right of collective bargaining, it fosters the development of the employment contract on a sound and equitable basis. By providing an orderly procedure for determining who is entitled to represent the employees, it aims to remove one of the chief causes of wasteful economic strife. By preventing practices which tend to destroy the independence of labor, it seeks, for every worker within its scope, that freedom of choice and action which is justly his."

The purpose of the Wagner Act is to promote self-organization and collective bargaining with a minimum of governmental interference.

The thesis of that act is that the refusal by employers to bargain collectively with unions periodically causes strikes which interfere with the free flow of commerce. Congress found that these interruptions to commerce flow basically from inequality of bargaining power between the individual worker and his employer.

Congress therefore in the Wagner Act assured to the workers the right to "self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

It should be pointed out at the outset that the Wagner Act did not extend to workers rights which the Federal Government had theretofore denied them. As a matter of fact, the Clayton Act, passed in 1914, and the Norris-LaGuardia Act, passed by a Republican Congress in 1932, accorded to the workers of the Nation the selfsame rights which are embodied in the Wagner Act.

However, the Wagner Act went one important and necessary step further than prior laws protecting the right of self-organization and collective bargaining. The act implemented these protections in specific ways. These forms of implementation all flow from a central attempt to check abuses by the employer of economic power for the purpose of frustrating self-organization or defeating collective bargaining.

Thus, employers are forbidden by the act to use their economic power to interfere in the exercise by their employees of the right to self-organization. They are forbidden to discriminate against employees because of their union activities. The Wagner Act also makes it an unfair labor practice for an employer to bring into being or to control an organization of employees and of course makes it an unfair labor practice to refuse to bargain with a majority representative of the employees in an appropriate bargaining unit.

The Congress did not single out these particular unfair labor practices haphazardly or by accident. Abuses of economic power in connection with the specified forms of unfair labor practices had in 1935 a long genealogy of substance.

Today, as in the years prior to the passage of the Wagner Act, it is a commonplace for employers through coercion and intimidation to seek to alienate employees from labor organizations. Where this is not possible or advisable employers create and maintain company unions. Long years of labor history demonstrate that the company union is the greatest menace to self-organization and free collective bargaining. After the smashing of the railway shopmen's strike in 1922, company unionism became a stock device to defeat collective bargaining by placing at the bargaining table an alter ego of the employer in the form of a puppet labor organization.

The prohibition upon the use of economic power for discriminatory purposes also rests upon a long and bitter experience with such devices as the "yellow dog" contract and the blacklist. Perhaps the most common way of defeating unionism was the discharge of union leaders and the creation through the blacklist of a permanent economic ghetto under which union men were denied employment throughout an entire industry.

The bargaining obligation imposed by the Wagner Act is of course the key to the effectuation of the congressional purpose of achieving industrial harmony.

The enforcement provisions of the Wagner Act are not punitive. On the contrary, they are mild—too mild, if anything. The administrative phase of the proceedings results either only in remedial orders requiring the employer to cease and desist from the acts found to be unfair labor practices and to take affirmative action such as reinstatement with back pay, or the disestablishment of dominated unions.

Under the Wagner Act, Board orders do not have the force of law. The Board is required to obtain enforcement through a circuit court of appeals decree and an employer may correspondingly apply to a circuit court of appeals to review and set aside a Board proceeding and of course an appeal is possible by either party to the Supreme Court. I emphasize the fact that under Board procedure no sanction even remotely punitive is present. The employer is merely told not to do it again. It is only when he violates a decree that anything resembling a really drastic sanction, namely, contempt, becomes available.

The administrative procedure through which the Wagner Act functions is patterned after the procedure used with signal success for many years under the Interstate Commerce Commission Act. All parties are entitled to counsel and every procedural guaranty. The procedure is completely in accord with the requirements of the Administrative Procedure Act.

Although the unfair labor practice aspects of the Wagner Act have received great emphasis in public discussions, it is accurate to say that they are not the most important part of the Wagner Act. The most important parts of the Wagner Act are the provisions which deal with representation matters which center on section 9 of the act. This representation portion of the statute has as its purpose the resolution of questions concerning representation through elections or other means for determining a bargaining agent. In connection with its administration of this portion of the statute, the Board has worked out clear, simple rules familiar both to employers and labor organizations concerning the basic circumstances under which elections may be held such as when a contract is a bar to an election, what the appropriate bargaining unit is, what groups of employees are eligible to vote, etc.

Just as the Board's activities in connection with unfair labor practices have tended to overshadow its important contributions in connection with elections, so the contested cases have obscured the far greater volume of Board cases which have been settled through informal adjustment and consent. Only a small proportion, about 20 percent of the cases, decided by the Board under the Wagner Act were contested proceedings. Most cases were settled through voluntary adjustment and consent.

The Wagner Act became the law of the land in an effective and meaningful sense only in very slow stages, and even then not in all areas of our country. Certainly until the constitutionality of the act was established in 1937, there was very little compliance with its provisions. About 100 injunctions were obtained against enforcement of the act. The national industrial council of the National Association of Manufacturers, and the lawyers committee of the Liberty League supplied a steady stream of arguments in an attack upon the act. Immediately after the act was passed the NAM and certain of its affiliates counseled their members to disregard the law. As a La Follette-Thomas committee report puts it (No. 6, pt. IV), "the * * * evidence shows a well-defined deliberate opposition to a law enacted by the Congress of the United States. Even prior to the passage of the act, the association denounced the law as revolutionary and urged its members to take a stand against it * * *."

Employers' associations, such as the Associated Industries of Cleveland and the National Metal Trades Association conducted an organized campaign in defiance of the act. Both of these associations continued their strikebreaking services. Even after the act was declared constitutional the NAM issued a blueprint of a method whereby company unions could be disguised and so evade the requirements of the act. The National Metal Trades Association was found by the La Follette-Thomas committee to have continued its defense funds and maintained strikebreaking services in complete defiance of the Wagner Act. (See La Follette-Thomas committee Report No. 6, pt. IV, pp. 115–116).

After the act was validated, employer resistence increasingly took the form of evading specific provisions of the law. In addition, millions were spent by employers and their associations in a steady stream of propaganda deliberately misrepresenting the law and its provisions.

The propaganda against the act was transformed by the congressional spokesmen for employers into a legislative compaign to kill the act. There is an unbroken chain from the efforts of the Liberty League to kill the Wagner Act at its birth to the Taft-Hartley Act. Since the adoption of the Wagner Act there has not been a session of Congress which has not seen in some form or other a flood of bills to regulate or destroy the act and the Board. This legislative attack in itself encouraged large groups of employers to resist the law in the continuing hope that the efforts of a small antilabor group in Congress would ultimately prevail. As a matter of fact, there are employers in this country who never complied with the Wagner Act because they were encouraged to gamble on he repeal or amendment of the act.

In addition, the barrage of attacks upon the act served to stimulate a large variety of antilabor State laws which themselves hampered the effective operation of the act.

Two theories have nourished the attack over the years upon the Wagner Act from the days of the Liberty League until the present. The first is the so-called equalization theory, namely, that the act must be equalized so as to provide for unfair labor practices by unions. The answer to this contention has been supplied over the years in many forms. It is, as this committee itself pointed out when it reported out the bill in 1935, a "falsely conceived" mutuality agreement. Ample sanctions against abuses by unions exist in local law where unions impose injury upon others. As I will show in detail in my discussion of the operation of the Taft-Hartley Act, the Taft-Hartley Act's equalization provisions have not served the public welfare. They have merely extended to employers a convenient means of breaking strikes and added to existing local sanctions against unions an additional and unnecessary Federal sanction.

The crusade around the slogan "coercion from any source" is a crusade which has been led by those whose interest throughout the years has been in frustrating the growth of labor organizations.

In 1939, Senator Wagner courageously identified those who rallied behind the "coercion from any source" formula: "There is nothing new about this charge of 'interference.' It has been raised again and again by peole who have never lifted a finger to protect the legitimate rights of labor." (Source: Hearings before the House Committee on Labor, Seventy-sixth Cong., 1st sess., p. 288).

The second basic theory through which the attack upon the Wagner Act has been forwarded is the plea that "corrective" legislation must be necessary to protect the individual worker against the union. This was the argument made by the Liberty League at the birth of the Wagner Act. As a matter of fact, this same argument was made by counsel for an employer association at the hearings on the Norris-LaGuardia Act. The Taft-Hartley Act, if it has done one thing, has demonstrated that the claimed concern of certain employer groups for the rights of the individual is merely a disguised attack upon unions.

When the Taft-Hartley Act was passed the Wagner Act had barely begun to make itself felt as a law of industrial life in this country. Although the Wagner Act has been on the books since 1935, the injunction barrage of the earlier years, the effect of the war on normal labor relations, a deliberate campaign of resistance by certain and powerful employer groups, the effect of a number of antilabor laws in the States, all combined to deny full efficacy to the Wagner Act.

Resistance to the law by some employers served at least one purpose—it resulted in judicial clarification of the meaning of disputed terms. There have been about 700 court cases interpreting the Wagner Act. Today employers and unions know what the law means. It is a simple, clear guide in the field of labor relations—a field in which clarity and definitiveness is imperative for successful results. In this respect the Wagner Act in refreshing contrast to the Taft-Hartley Act which is ambiguous, confusing, and complex.

We live in a country whose labor force is the marvel of the entire world. Yet self-organization and collective bargaining have actually made headway against the most difficult odds. The reactionaries have through the years fought a tenacious and bitter battle to prevent self-organization and collective bargaining. The Taft-Hartley Act was pushed through by these reactionaries to carry out their destructive purposes.

There are those who would like to create the impression that employees no longer need the protection of the Wagner Act. This claim is completely without foundation. In the year 1947, the last year of the functioning of the Wagner Act, the Labor Board reported more charges of coercion, interference, and restraint by employers than at any time in the history of the act. Today, out of a labor force of some 60,000,000 in this country, only approximately one-fourth are organized. This percentage compares unfavorably with 48.2 percent for Great Britain, 35 percent for Italy, 36.8 percent for France, 33.4 percent for Norway, 36.6 percent for Sweden, and 31 percent for Denmark.

The public welfare requires that the Wagner Act be restored as the basic Federal labor law. Labor feels that there are imperfections in the Wagner Act. The enormous delays which are involved in the administration of the law frequently result in the denial, in effect, of the rights which it safeguards on paper. The lack of more severe sanctions has encouraged employers to gamble on violations. We must begin to explore the field of sanctions in order to make the law serve as a deterrent to antilabor conduct. However, despite its imperfections, the law represents a fair and temperate means of promoting harmonious labor relations. Neither labor nor management has a right to expect more from a Federal law. The law in no way interferes with the basic right of each of the partners to the collective-bargaining relationship to live, to flourish, and to grow strong. The fundamental error which was made by the Taft-Hartley Act was that it ignored this simple and indispensable foundation of sound labor relations.

C. THE PROPOSED AMENDMENTS

H. R. 2032, in addition to repealing the Taft-Hartley Act and reenacting the Wagner Act, provides for certain amendments. I should like to make it clear at the outset that the Congress of Industrial Organizations prefers an approach to the problem of labor legislation under which the Wagner Act would be immediately reenacted as a substitute for a repealed Taft-Hartley Act. We believe that there is an immediate present necessity for replacing the Taft-Hartley Act with a law which is fair and just. We are convinced that the Taft-Hartley Act should not remain on the books 1 day longer than is absolutely necessary. The effect which this law has had upon free collective bargaining has been so disastrous as to make imperative that the law be immediately erased from the statute books and that the Wagner Act be substituted for it as the law of the land.

I should make it clear that we do not oppose the amendments to the Wagner Act contained in H. R. 2032 in principle. The Congress of Industrial Organizations has expressed its willingness to endorse legislation within the spirit of the President's state of the Union message. The position of the Congress of Industrial Organizations was given on January 5 of this year by President Murray in a statement on the President's state of the Union message. With respect to the labor portion of that message, President Murray said:

"We hail in particular the President's plain and urgent request for the repeal of the Taft-Hartley Act and the reenactment of the Wagner Act. We feel certain that the Congress will heed the mandate of the election and the President's message in promptly achieving this objective. Once the Taft-Hartley law is repealed and the Wagner Act is reenacted, the CIO stands prepared to make constructive recommendations to the Congress in the field of labor-management relations. We are sure that both labor and management groups, meeting within the spirit and framework of the President's message, can reach substantial agreement, once the Wagner Act is restored, on any problems that may arise. This can be done with full recognition on all parts that to preserve our democratic freedoms government by injunction in the field of labor relations must be eliminated and wage freezing avoided."

Instead of approaching its problem in two steps, this committee has adopted a one-step approach through which amendments in keeping with the President's message are to be made at this time to the Wagner Act.

As I have indicated, the amendments which have been produced are in our view in keeping with the spirit of the President's message. While we would have preferred that the committee's proposals and consideration of them be deferred until after the passage of the Wagner Act and the repeal of the Taft-Hartley Act because we believe such an approach would be in the public interest.

We do not oppose the proposed amendments in principle. However, we offer the following comments on the amendments and suggestions with a view better to effectuate their purpose.

(1) *Illegal strikes and boycotts.*—The bill adds to the Wagner Act a section (sec. 8 (b)) which makes it an unfair labor practice for a labor organization to cause or attempt to cause employees to engage under certain conditions in an illegal work stoppage or a secondary boycott, as defined in the bill.

The conditions under which a work stoppage or secondary boycott is made an unfair labor practice are, first, where another labor organization is the certified labor representative of the employees within the meaning of section 9 of the act; second, where the employer is required to bargain with another labor organization; or, third, where the employer is currently recognizing another labor organization not illegally established or maintained and has executed a collective-bargaining agreement with it which would constitute a bar to a question concerning representation.

The purpose of this new section 8 (b) is to outlaw strikes which force an employer to violate the law. Such strikes were referred to in the President's state of the Union message in 1947 when he said: "Strikes to compel an employer to violate the law are inexcusable. Legislation to prevent such strikes is clearly desirable."

There are certain problems involved in prohibiting concerted action which has as its object compelling an employer to violate the law. On the one hand we must recognize that since we are dealing with the exercise of a basic right we should narrowly define the area of the prohibition in order to meet precisely the situation which it is the purpose of the statute to correct. I believe that this test is met by the amendment as it is written. The chief danger, of course, is that an employer may recognize an unrepresentative labor organization and thus illegalize a strike by a union actually representing a majority of the employees. In my opinion this danger is obviated by the wording of subsection 8 (b) (1) (C), which requires not only that the employer recognize an organization which is not established, maintained, or assisted by employer action but that he must have executed an agreement with such an organization which would bar a question concerning representation.

The Labor Board has, of course, held in many cases that premature recognition of a labor organization or recognition of a labor organization without adequate proof of majority where a rival labor organization is also organizing the emplyees are forms of assistance outlawed by the act. In addition, the Board has recognized that agreements made under such and related circumstances do not constitute a bar to a question concerning representation. Therefore, as I read this provision of the law, a strike by a rival labor organization would not be illegal under any circumstances where an employer entered a contract with a labor organization which would not be a bar to an election.

Subsections (a) and (b) of section 8 (b) (1) bar strikes where there is an outstanding certification or an order of the Board to bargain with another labor organization. Here, too, of course, the language must be read in the light of the purpose of the entire section, namely, to prevent compulsion upon an employer to violate the law. Hence these sections would apply only where the certification or the Board order involved are currently valid obligations to bargain with a labor organization.

Most of the terms used in section 8 (b) and its three subsections are terms which have acquired meaning as a result of administrative interpretation under the Wagner Act. I assume that these terms have been written into this section in the light of this administrative background. The Labor Board has over the years developed an intensive body of interpretation of when the duty to bargain arises. That body of interpretation undoubtedly applies to section 8 (b). The statute obviously outlaws only those strikes in which a duty to bargain arises in the way specified in the three subsections and as the terms used in those subsections have been defined by the National Labor Relations Board under the Wagner Act.

I believe that the definition of secondary boycott contained in section 106 (a) of the bill should make it clear that the refusal of workers to cross a picket line does not constitute a secondary boycott.

H. R. 2032 makes it an unfair-labor practice for a labor organization to cause or attempt to cause employees to engage in a secondary boycott or a strike where such activity has the purpose stated in the bill.

Secondary boycotts are defined in the statute to include the pressures which are normally used by unions upon one employer in order to achieve an objective of the union with reference to another employer. However, the definition of secondary boycott does not make it clear that where the pressure is exerted upon the second employer through a picket line the refusal of employees to cross a picket line will not result in unfair labor practice charges. In order to insure protection to employees who refuse to cross picket lines it is proposed that there be added to the definition of secondary boycott the phrase, at page 6 line 5, of the statute, "but shall not include the refusal by any person to enter upon the premises of any employer (other than his own employer)."

The following examples will clarify the purpose and effect of the proposed amendments:

(*a*) Union is engagaing in a strike against employer A in order to compel him to do what is forbidden by the statute. The members of another union, for example the Teamsters, who are employees of employer B, refuse to cross the picket line. It is the purpose of this amendment to immunize the Teamsters Union from a secondary boycott charge which would be based on the fact that its refusal to cross the picket line is a concerted refusal in the course of the employment of the employees of one employer, employer B, to transport goods because they are to be manufactured or distributed by another employer, employer A.

It is also the purpose of this amendment to remove as a basis for an unfair labor practice charge against the union the fact that its activities have caused the employees of employer B, namely the teamsters' employer, to refuse to transport goods because they are to be manufactured, etc., by employer A.

(*b*) Where a union is engaged in a secondary boycott to compel an employer to do what is forbidden by the statute. Here, too, the refusal to cross a picket line under the statute as it is written may become an ingredient of an unfair labor practice against the labor organization engaged in the economic activity condemned by the statute as well as against the labor organization whose members refuse to cross the picket line.

It is submitted that it is unsound and unwise to make a refusal to cross a picket line result in an unfair labor practice either on the part of the labor organization whose members refuse to cross the picket line or on the part of the labor organization whose picket lines other employees respect.

(1) Employees who typically refuse to cross picket lines do not do so out of a desire to aid one or another labor organization involved in the dispute. Frequently members of labor organizations refuse to cross the picket line of organizations whose interests are hostile to them. The refusal to cross the picket line rests upon a fundamental unwillingness by a union member to become the instrument for destroying the effectiveness of any picket line.

If employees are required to cross the picket line of other employees upon penalty of committing an unfair labor practice, a vital blow is dealt to a basic labor right.

It is no answer to say that the picket line itself is established to achieve an illegal objective. The employee who refuses to cross a picket line does not do so to aid the illegal objective. He does so as a matter of principle. And the principle does not depend upon the purpose of the picket line. Employees should not be required to inquire into the purpose of a picket line before they exercise the traditional and time-honored right to respect it.

The principle of the statute is that third party employers should not be made to suffer in connection with their property rights where certain types of disputes occur between a labor organization and the employer. It falls equally that unions should not be made to suffer in the exercise of a right which not only involves property but which involves principle when it is completely innocent of any intent to intervene in a dispute. If we do not "conscript" neutrals we should be consistent and not "conscript" neutrals when the neutral happens to be a union.

(2) Many labor organizations have as a long-established rule under their constitution and bylaws the requirement of refusing to cross picket lines. Unless the statute makes an exception to that practice these long-established and important aspects of union discipline will be undermined. Once the refusal to cross a picket line becomes the element of a Federal offense under certain circumstances, this creates an entering wedge for the destruction of the entire practice. It is a serious interference with the internal affairs of unions.

(3) Many unions have by contract stipulated with employers that they will not be required to cross picket lines. These well-established and necessary contractual provisions should not be rendered nugatory even in connection with the simple type of dispute toward which the bill is directed.

(4) Even the Taft-Hartley Act recognized—in connection with strikes for union recognition—that a refusal to cross a picket line was not a secondary boycott.

(5) The act can adequately accomplish its objectives without destroying the right to refuse to cross picket lines.

I would like to remind the committee that contrary to the prevailing impression, the sanctions imposed for violation of this section are severe sanctions. In the event of a strike found by the Board to fall within section 8 (b), the Board could undoubtedly order the strike terminated and the employees returned to work against their will.

It could even order such forms of affirmative relief as damages or reimbursement to the members of the rival organization for lost wages. Also, since the conduct is made an unfair labor practice, section 10 (e) of the statute would undoubtedly apply. This section specifically provides that the Circuit Court of Appeals in which the transcript of the record is filed in an unfair labor practice case has jurisdiction to issue "such temporary relief or restraining order as it deems just and proper." Although the Board has rarely resorted to this provision of 10 (e) in order to obtain injunctive relief against employers, there is no question that a court would have power to issue such an injunction either upon petition of the Board or sua sponte.

(2) *Jurisdictional disputes.*—The act also makes it an unfair labor practice for a labor organization to cause or attempt to cause employees to engage in a work stoppage or a secondary boycott in furtherance of a jurisdictional dispute as defined in the statute.

The statute is clear in indicating that the type of jurisdictional disputes dealt with are those disputes in which a labor organization claims the right to do certain work in behalf of its craft jurisdiction and another labor organization claims the right to do the same work in behalf of its craft jurisdiction. Related provisions dealing with jurisdictional disputes make a refusal to abide by an award an unfair labor practice and establish machinery for the disposition of jurisdictonal disputes by the Board or an arbitrator appointed by the Board subject to certain defined standards.

This is not a problem with which the CIO is directly concerned. Other labor organizations more immediately concerned will undoubtedly desire to comment on it.

(3) *Notice of termination or modification of collective-bargaining agreements and duties of employers and employees.*—Section 108 of the bill amends the Wagner Act by making it an unfair labor practice for an employer or labor organization "to terminate or modify a collective bargaining agreement covering employees in an industry affecting commerce" unless the party seeking such termination or modification notifies the Conciliation Service of the proposed termination or modification at least 30 days prior to the expiration date of the contract or 30 days prior to the time it is proposed to make the termination or modification, whichever is earlier.

Section 204 of the bill imposes upon employers and labor organizations a duty to exert reasonable effort to make and maintain collective-bargaining agreements for definite periods of time concerning (1) rates of pay, hours and terms and conditions of work; (2) notice provisions; (3) abstention from strikes, lock-outs, "or other acts of economic coercion" in violation of such agreements, and (4) procedures for the peaceful settlement of disputes involving the interpretation or application of such agreements.

A second independent duty which the section imposes is that of participating in meetings undertaken by the Conciliation Service to aid in the settlement of disputes.

These two provisions are grouped together for purposes of discussion and analysis because they present the same problem. In the case of both these provisions the objective which is proposed is a desirable one but the sanction is questionable and completely unsuited to the objective. The Congress of Industrial Organizations believes that it is desirable that the Conciliation Service have notice of all proposed changes which might lead to a strike. However, I believe that the sanction, namely, to make the failure to give such a notice an unfair labor practice, is exceedingly dangerous.

The statute would impose upon the conduct involved consequences wholly out of proportion to the character of the offense. There are thousands of unions who do not have paid or full-time secretaries. When a dispute arises, the sending of a notice to the Conciliation Service may be completely overlooked. The failure to send a notice may be purely a technical lapse.

However, should a union fail to take this step, an otherwise legal strike would become an illegal strike which would justify the discharge of the strikers and probably a suit at law. An employer could certainly rid himself of the union by firing a majority of the strikers where the union inadvertently had failed to give the required notice and then engaged in a strike.

In contrast, if an employer desired to terminate or modify a contract and failed to give the required notice, the sole Labor Board sanction would probably be a cease-and-desist order requiring him at some indefinite time in the future to refrain from such conduct.

It is not only that this section confronts a union with serious consequences for a technical lapse or that it has a disproportionate impact. We should consider further that the duty of the union under the section runs not to the employer but to the Conciliation Service. Certainly an employer should not be placed in the position where he may with impunity break a strike because a union technically violated a duty to the Government. I would therefore propose that instead of making the failure to notify the United States Conciliation Service a violation of the National Labor Relations Act that this section (section 108) be placed in title II and that it be merged with the duties of employers and employees, section 204, to which I now address myself before considering other additional aspects of the notice provision.

As in the case of the notice provision, the Congress of Industrial Organizations does not disagree with the objective of section 204 which is to encourage the making of agreements containing the four types of provisions indicated above. However, again, as in the case of the notice provisions, the section contains certain dangers which it seems to me flow from collateral sanctions which may be imposed upon a violation of the prescribed duties. Here, too, as in the case of the notice provisions, the sanctions are not commensurate with the violation involved.

Should an employer or labor organization decide that one of the four items specified in this section is unsuited to a particular collective-bargaining agreement and hence fails to make "a reasonable effort" to make an agreement concerning that item, a situation might arise in which an action could be brought for damages. Or should a union engage in a strike because of its rejection of one of the named items, a court might term the strike an illegal strike.

It seems clear that all that was intended by this section was to encourage entering agreements for definte periods covering the four named subjects. By imposing a duty to make such agreements, the section in effect creates a new and special type of bargaining obligation which may be extremely difficult to comply with and the violation of which may lay the basis for collateral consequences which are plainly not contemplated. Moreover, this section may be interpreted as a limitation upon the collective-bargaining obligation of the Wagner Act and as exhausting the subject matter of collective bargaining for purposes of the statute.

The basic purpose of both these provisions is to educate the parties into methods of dealing for the purpose of safeguarding the public interest. It is not intended to provide either employers or unions with weapons of industrial warfare. I therefore suggest that section 204 be amended in the following respects:

(*a*) That it be made the public policy of the United States that employers and employees and their representatives take the actions indicated in that section.

(*b*) That there be included within this redrafted section 204 the notice provisions as a new subsection (b) and that the present subsection (b) be made subsection (c).

(*c*) I would specify that notice need not be given in the event of a contract modification of a type which by the terms of the contract precludes an interruption of production.

(*d*) I would make it clear that the notice provision does not require a new notice in the event of the extension of a contract for periods less than 60 days.

(*e*) I would delete the phrase "other acts of economic coercion" as a synonym for a strike. It suggests that a strike for a legitimate objective is per se coercive and may, therefore, have consequences which are not intended by the bill.

I know that at this point there are those who will insist on the stereotyped judgment that the proposal to amend these sections and to remove even a suggestion of an illegally enforceable duty shows labor's unwillingness to accept a law with teeth. Teeth are useful but here, as in connection with the emergency strike situation, we should not adopt a policy of teeth for the sake of teeth. Those who are so enthusiastic for tough sanctions frequently overlook the fact that sanctions must serve some purpose.

In connection with this notice problem, as well as with the problem of encouraging the making of certain types of agreements, I am convinced that tough sanctions—even as tough as the unfair labor practice sanctions—would simply defeat the salutary purpose of these provisions.

In conformity with the above suggestions, the following changes should be made in the bill:

1. The present section 108 and the heading under which it appears should be eliminated. (Subsequently in my testimony I propose a new section 108 dealing with restrictive State laws.)

2. The present heading, Duties of Employers and Employees, which appears at page 14, line 11 of the bill, should be changed to read, Public Policy of the United States With Respect to Collective-Bargaining Agreements.

3. Section 204 should be amended to read as follows:

In order to prevent or minimize labor disputes affecting the free flow of commerce or threatening consequences injurious to the general welfare, it is the public policy of the United States that—

(*a*) employers and employees, and their representatives in any industry affecting commerce exert every reasonable effort to make and maintain collective-bargaining agreements for definite periods of time, concerning (1) rates of pay, hours, and terms and conditions of work; (2) adequate notice of desire to terminate or change such agreements; (3) abstention from strikes, lock-outs, in violation of such agreements; and (4) procedures for the peaceful settlement of disputes involving the interpretation or application of such agreements;

(*b*) where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the party to such contract desiring to terminate or modify such contract shall notify the United States Conciliation Service of the proposed termination or modification at least 30 days prior to the expiration date of the contract, or 30 days prior to the time it is proposed to make such termination or modification, whichever is earlier: *Provided*, That this provision shall not require the notification of the Service of a proposed termination or modification of a contract where such contract or its terms or conditions have been extended for a period less than 60 days and notification has been made of a proposed termination or modification of the extended agreement: *Provided further*, That this provision shall not require the notification of the Service of a proposed modification or termination of a contract where the party desiring such termination or modification may not, under such contract, take economic action in support thereof;

(*c*) employers, employees and their representatives in any industry affecting commerce participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of any dispute to which they are parties.

4. Section 205 should remain as it now appears with the exception of the heading, which should be eliminated since the subject matter of section 205 is covered by the proposed new heading over section 204.

5. In the event present section 108 is retained and not merged into section 204, it should contain the two provisos suggested above in proposed section 204 (b), and it should be made clear by appropriate amendment that the section applies only where the failure to give the notice is willful.

(4) *National emergencies.*—Sections 301 and 302 of the statute deal specifically with the steps which may be taken in the event of a so-called national emergency work stoppage. These sections provide that the President may issue a proclamation that such an emergency exists because a stoppage of work resulted or threatens to result from a labor dispute "in a vital industry which affects the public interest." It authorizes the President to issue a proclamation to that effect, and to call upon the parties to refrain from stopping work or to return to work if the stoppage has occurred.

After the issuance of the proclamation, the President is authorized promptly to appoint an emergency board to investigate the dispute. The Board thus appointed is given power (*a*) to seek to induce the parties to reach a settlement, and (*b*) in any event within a time period to be determined by the President but no more than 25 days after the issuance of the proclamation to make a report which shall include findings and recommendations.

The parties to the dispute are required to continue or to return to work after a proclamation has been issued and until 5 days have elapsed after the report has been made by the appointed Board. During this period of time the parties are required to maintain the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute unless there is voluntary agreementt on a change.

It is my understanding that this provision of the statute does not provide for injunctions; that its sanctions are the prestige of the President and the force of public opinion.

I think that I should make this point very clear. I know that there are some lawyers who will theorize that because the statute contains, in section 302 (c), language that "the parties to the dispute shall" continue to work or resume operations after the Presidential proclamation that a duty is created which is enforceable by an injunctive sanction. The argument runs that courts will read an injunction into the section by ruling that Congress could not have intended to create a duty without a remedy. Such a contention will base itself upon such a case as *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway & Steamship Clerks* (281 U. S. 548), in which the Railway Labor Act of 1926 was construed to impose a duty legally enforceable through an injunction. In this case the court ruled that section 20 of the Clayton Act was not applicable. Reference should also be made to *Virginian Railway Co.* v. *System Federation of Employees* (300 U. S. 515), in which the Supreme Court held that the Railway Labor Act, as amended in 1934, imposed a legally enforceable obligation upon carriers despite the Norris-LaGuardia Act on the basis of language comparable to that in this provision.

However, I think that this statute was intended not to provide for injunctions, and that any argument to the contrary must yield to the fact that the drafters, in section 401, contemporaneously expressly stated that the Norris-LaGuardia Act and the Clayton Act are continued in full force and effect with an exception in the case of section 10 of the National Labor Relations Act.

If this statute provided otherwise and contained a provision for a injunctive sanction, the CIO would oppose it and oppose it vigorously. Our reasons for opposing injunctions are well known.

(*a*) An injunction imposes involuntary servitude upon the workers. It crushes the right to strike. What Abraham Lincoln said in 1860 with respect to the right to be free of involuntary servitude and the right to strike is fully applicable today:

"I am glad to see that a system of labor prevails under which laborers can strike when they want to, where they are not obligated to work under all circumstances, and are not tied down and obliged to labor whether you pay them or not. I like a system which lets a man quit when he wants to, and wish it might prevail elsewhere. One of the reasons why I am opposed to slavery is just here."

(*b*) An injunction places the Government on the side of the employer without giving labor an opportunity to present its position.

(*c*) The labor injunction, as Justice Brandeis said long ago, seeks "to endow property with active militant power which would make it dominant over men."

(*d*) Although our judicial system is supposed to dispose of individual cases and punish individuals for particular wrongs committed, the injunctive device permits a Federal judge to pass judgment against large groups of men involved in a complicated economic struggle and enmesh them in dragnet restraints.

(*e*) The effect of an injunction is not lightened; it is increased when the Government is empowered to obtain injunctions rather than private individuals. The struggle against the injunctive evil has been a struggle against the intervention of the Federal Government in the disputes through the judiciary. And the three major injunctions which were obtained in this country in labor disputes and which form the landmarks of the injunctive evil were all injunctions obtained at the insistence of the Government: the Debs injunction, the injunction in the coal strike during the last war, and the railway shopmen's injunction in 1922.

(*f*) The use of compulsion always seems to be an easy way to settle a troublesome problem. Injunctions do not settle labor disputes. On the contrary, they inflame labor disputes as our experience under the Taft-Hartley Act shows. And they embitter the workers of the country and convince them that their Government is prejudiced against them.

The Norris-LaGuardia Act was the culmination of nearly two generations of bitter debate. The American worker regards this law with profound confidence and is determined that its principles should not be compromised. Because this provision respects the integrity of the Norris-LaGuardia Act we endorse it.

There has been a deliberate attempt, rooted in partisan politics, to confuse the nature and purpose of sections 301 and 302. In his letter to Senator Thomas, President Murray exposed those political maneuvers in the following fashion:

"Part of the desperate campaign to save the Taft-Hartley Act involves an attempt to score political points—to obscure the fundamental issues which are involved in this legislation by improvising synthetic issues purely for purposes of avoiding a defense of the act.

"Nowhere is this best seen than in the furious but essentially mock debate with respect to the so-called emergency strike issue.

"As I see it, those who are opposed to the bill have conveniently split into two camps: Those who insist that the bill is bad because it contains no injunctive provisions to save the country from 'paralysis,' and those who insist that the bill is objectionable because it does contain injunctive provisions which threaten basic freedoms. It is a curious thing that those who condemn the bill because it lacks injunctions and those who condemn it because they believe it to contain injunctions never find an occasion to engage in a public debate in the course of the hearings on their sharply divergent viewpoints. These Senators never attack each other. They find it strategically far more convenient to attack the bill, and the combined purpose of their attack is to suggest that the bill places the country either at the mercy of a tyrannical President or of workers free to strike without injunctive restraint.

"I think it can fairly be said that the entire issue with respect to the President's inherent powers has been deliberately confused by opponents of the Thomas bill. The fact is the bill contains no injunctive provisions and it is not the purpose of the bill to employ the device of the injunction in strikes affecting the national health or welfare. Secretary Tobin made this plain in his sponsoring testimony.

"Those who attack the emergency provision of the bill apparently hope to conceal the fact that the Taft-Hartley Act 80-day injunctive provisions and the supporting procedures have completely and utterly failed. The record and the testimony of such witnesses as William H. Davis and Cyrus Ching show clearly that the Taft-Hartley injunctive provisions serve to cause strikes and to prevent settlements and make no constructive contribution in any way to the protection of the national welfare.

"Efforts to shackle labor with the injunction as a means of settling disputes invariably coincide with periods of great national tension. The first of such efforts occurred in 1893, when the Debs injunction became the spearhead of a vast antilabor crusade against American working people. The threat that the injunction would become a tremendous means of repressing the American labor movement haunted our people. The Clayton Act was finally put on the books to avert this threat.

"The second injunctive drive occurred during and after the First World War, when sweeping strikebreaking injunctions were issued in the coal industry and in the railroad industry. These and other injunctions which followed again produced a legislative defense in the form of the Norris-LaGuardia Act.

"The Taft-Hartley Act represents the third attempt of organized antiunionism and its congressional spokesmen to utilize the tensions and readjustment of the postwar period to foist upon the American people the injunction as a means of smashing strikes. This third historic attack on labor must be stopped.

"It is an ironic circumstance that those who insist upon permanently introducing injunctions into our national life do so on the ground that the public must be protected. But it degrades the public interest to assume that we protect it by forcing workers to work against their will for the profit of private employers. The public interest demands, above all, that we have a free America, and this third devious attempt to restore Government by injunction must be exposed because a free labor movement is a vital part of a free America."

As a final comment on this portion of the bill and the controversy surrounding it, I point to the fact that every nationally known expert in the field of labor relations who testified before the Senate committee condemned the Taft-Hartley emergency strike provisions and endorsed sections 301 and 302 as infinitely superior.

(5) *United States Conciliation Service.*—The bill restores the Conciliation Service to the Department of Labor. We believe that this is a sound step and in the public interest.

The removal of the Service from the Labor Department under the Taft-Hartley Act did not result from any demonstrated defects in the functioning of the Service in the Department of Labor. On the contrary, the Conciliation Service was transferred as part of a systematic attempt to weaken the Labor Department and in direct violation of the Republican Party's pledges to build the Department and to strengthen it.

I do not wish to be construed as being critical in any way of the present Federal Mediation and Conciliation Director. As a matter of fact, I believe that he has rendered distinguished public service, and I hope that he will continue to render it as head of the Service within the Department of Labor.

I do not believe that the transfer to the Department should depend upon issues of personality.

Unparticularized claims have been made that employers lack confidence in a service housed in the Department of Labor. It is my considered judgment that these claims are completely without foundation and that under the present Secretary of Labor the Department will make an effective contribution to the public welfare as a part of the Department of Labor.

(6) *Restrictive State laws.*—The provision dealing with restrictive State laws is imperatively needed as a clarifying measure. Union security and the check-off are protected by the statute because they are devices which, when embodied in collective-bargaining agreements, limit or prevent strikes. It is unsound to provide for the protection of interstate commerce and at the same time to permit threats to such commerce to arise by virtue of the operation of local laws. It is equally unsound to extend bargaining rights to the right to bargain with respect to union security and the check-off but to make those rights turn upon the particular State in which the individuals subject to the agreement happen to reside. Why should a Tennessee or Virginia employer enjoy defenses to a refusal to bargain which are not available to an employer in New York or Pennsylvania? And why should an employer in interstate commerce who complies in good faith with the Federal law and negotiates a union-security contract be held guilty of an unfair labor practice under State law when he discharges an employee under such a contract simply because a vote among the employees was not taken under the State law before the contract was negotiated? See *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, U. S. Supreme Court, decided March 17, 1949.

The absurd result of the provisions of section 14 (b) yielding to more restrictive State laws in connection with union security has been demonstrated by our experience. In such a case as the Giant Food Stores case (22 L. R. R. M. 1070) the Labor Board was forced to disregard a single bargaining unit and to hold union authorization elections only in those States covered by the bargaining unit which did not outlaw union security.

Under the conditions created by modern industry, collective bargaining is not a matter permitting a diversity of treatment according to local conditions. Uniformity in bargaining terms produces a stability which is essential to effective collective bargaining. Section 107 wisely prevents a balkanization of the bargaining process. Congress has expressly stated in the Wagner Act that the promotion of collective bargaining and of self-organization is a Federal concern and the Supreme Court, in refusing to permit local terms to vary the meaning of the Wagner Act, has pointed out in construing another section of the act, in *N. L. R. B.* v. *Hearst Publications* (64 S. Ct. 851, 857):

"Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patchwork plan for securing freedom of employees' organizations and of collective bargaining. The Wagner Act is Federal legislation, administered by a national agency, intended to solve a national problem on a national scale. (Cf., e. g., S. Rept. No. 573, 74th Cong., 1st sess., pp. 2–4.)"

Section 14 (b) of the Taft-Hartley Act, which is discussed in part II, had the effect of delegating to State legislatures the power to destroy federally created rights and thus to impair the public interest. It had the further effect of actually encouraging the States to impose restrictive local conditions upon the bargaining relationship. This provision should make it clear that with respect to the important matter of union security and check-off the integrity of the Federal standard is to be preserved.

There is a further problem in connection with restrictive State laws which needs clarification. I suggest that under the heading, Freedom from Restrictive (not restricted as it presently appears) State Laws, there be added a new section 108 in place of the notice provision which is now entitled section 108. This new section should make it clear that other basic rights in addition to union security are to be made immune from State interference.

Specifically, it is proposed that a new section 108 be written into the bill as follows:

SEC. 108. Section 13 of the Natonal Labor Relations Act of 1935 is amended to read as follows: "Nothing in this act, except as specifically provided for herein, shall be construed so as to interfere with, impede, or diminish in any way the right to strike or the exercise of the other rights guaranteed by section 7 of this act. Nor shall any provision in any State law interefere with or impede or diminish in any way the right of employeers of employers engaged in commerce or whose activities affect commerce to strike or the exercise of the other rights guaranteed in section 7 of this act."

It will be noted that this amendment adds to section 13 of the Wagner Act the phrase "except as specifically provided for herein." The purpose of this amendment is to conform section 13 to the qualifications on the right to strike which are contained in the new bill.

In addition, this amendment makes it clear that it is not only the right to strike which the act protects but the other rights to engage in concerted activities which are guaranteed by section 7.

As the section is presently written it might suggest that the right to strike occupies a position superior to the other rights, such as the right to self-organization, which are guaranteed by section 7. This clarification, which is obviously consistent with the intention of Congress, has been made necessary because of the cloud cast upon the integrity of these other rights by the recent decision of the Supreme Court in *UAW-AFL* v. *Wisconsin Employment Relations Board*, decided February 28, 1949. The first sentence of the proposed amendment standing alone might serve to establish the fact that not only are all of these rights protected by the act but that they are immune from interference or diminution as a result of the operation of State laws. However, in order to remove all doubts that it is intended to accomplish both these results, the second sentence in the amendment relating to State laws has been added. Thus this provision should serve to prevent the application to employees of employers in interstate commerce of State laws requiring strike votes, for example, or notices as a condition to the right to strike. It should also serve to make it clear that State laws requiring notification of a State agency or an employer as a condiion of the right to strike are inapplicable to interstate situations. In addition, this amendment will prevent further qualification by the States of the right to strike or to engage in other concerted activities with reference to employees in interstate commerce, to an extent greater than these rights are qualified by the bill. It need hardly be added that the proposed amendment will not invalidate State laws in this field; it will merely confine their application to employees engaged in intrastate commerce.

It is important to make the paramountcy of the Federal law in this field absolutely clear. This has been done in connection with the closed shop by section 107 of the bill. The failure at this time to take parallel action with respect to the right to strike and related rights will only serve as an argument by employers that all of the myriad restrictions on the right to strike in the States were intended to be left standing. This construction will achieve added weight because of the decision of the Supreme Court in *UAW-AFL* v. *Wisconsin Employment Relations Board*, supra, shortly before the bill was reported out. Unless the clarifying amendment suggested above is adopted there is a very grave danger that the right to strike even in industries affecting commerce may be seriously qualified and even destroyed by State legislation.

(7) *Restrictions on political contributions.*—Nothing more clearly demonstrates the partisan political character of the Taft-Hartley Act than its provision outlawing political expenditures by labor organizations. Although unrelated to any labor relations issue, it was inserted in the act by its sponsors in an effort to escape the political consequences which such a restrictive measure might produce. It was logical for the sponsors of the Taft-Hartley Act to seek to deprive labor of the power to make effective political choice in order to elect those who opposed the act and to defeat those who favored it.

The outlawing of political expenditures by labor organizations was another expression of that falsely conceived mutuality which was used throughout the Taft-Hartley Act for the purpose of repressing labor. The prohibition completely disregards the civil and political rights of American workers. It is a blot on our statute books and should be eliminated.

The theory upon which labor organizations have been barred from political contributions and expenditures in connection with elections is that labor organizations must be treated like corporations.

However, it is obvious that there is a sharp difference between the corporations and labor organizations. Anyone familiar with the manner in which our Corrupt Practices Act has been enforced knows very well that it is perfectly simple for powerful stockholders and corporations to subsidize political campaigns and to obtain decisive political influence. Contrast the power of members of the Du Pont family, for example, with the power of individual trade-unionists and it becomes obvious that the ban upon the political activity of labor organizations has the effect of promoting a fundamental inequality. The records of the 1944 presidential campaign and the recent presidential campaign show enormous contributions by American upper-income families. The denial to members of labor organizations of the right collectively to direct their political strength against the overwhelming political strength of antilabor groups is not only to strip the workers of this country of the right of freedom of speech, press, and assembly, but to disfigure the democratic framework of our society and to place one group in permanent political bondage.

Labor organizations are part of a wholesome process through which the base of our political life is being broadened. The Taft-Hartley Act and the political ban contained in the Smith-Connally Act sought improperly to interfere with this process. They should be repealed in the interests of political democracy.

(8) *Bar to certain proceedings.*—Section 105 of the bill seeks to make it clear that all proceedings under the Taft-Hartley Act do not survive the new legislation unless such proceedings would be valid under the Wagner Act. The CIO believes that such a provision is sound and necessary.

However, I should call the attention of the committee to the fact that the Taft-Hartley proceedings are defined as proceedings "under the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947." The correct name for the entire Taft-Hartley Act is, of course, the Labor-Management Relations Act, 1947. As section 105 is presently worded, it would merely bar proceedings under that portion of the Taft-Hartley Act title I which amends the National Labor Relations Act. Thus it would not bar proceedings under title III arising out of damage suits against labor organizations or prosecutions for violation of the ban on political expenditures. I believe that the bar of section 105 should apply as well to this title of the Taft-Hartley Act.

Section 105 creates a bar to proceedings under the Taft-Hartley Act in any court of the United States. But the Taft-Hartley Act also sought to create a right of action in any court, including State courts, having jurisdiction of the parties.

To correct these errors, it is proposed that section 105 be redrafted to read as follows:

Notwithstanding the provisions of the act of February 25, 1871 (16 Stat. 432), neither the Board nor any court of the United States nor any other court having jurisdiction of the parties shall have jurisdiction to entertain, process, make, impose, or enforce any petition, complaint, order, liability, or punishment under the Labor-Management Relations Act, 1947, with respect to any act or omission occurring prior to the date of enactment of this act, unless such petition, complaint, order, liability, or punishment could be entertained, processed, made, imposed, or enforced under the National Labor Relations Act with respect to a like act or omission occurring after the date of enactment of said act. [The remainder of section as it presently appears.]

At this point, it should also be noted that the exemption of the Railway Labor Act in section 405 inadvertently fails to include title I of the Taft-Hartley Act.

I am convinced that this bill is sound and just legislation in the field of labor relations.

In a democratic system labor-relations legislation ideally serves the purpose of setting up with a minimum of Government interference the ground rules which serve as a basis for free collective bargaining. Those who seek to transform labor-relations legislation into something more than that, into a means of hampering, handicapping, or oppressing one or the other of the parties to the relationship, really do not believe in freedom or in the freeman's society.

I believe that this law takes labor relations out of the area of partisan politics and restores them to the parties.

This bill is consistent with the recognition which is at the base of democratic labor relations, namely, that in order to protect the rights of the individual we must protect the rights of the group. In every period of crisis in labor-relations crusaders for individual rights have used this slogan to destroy unions. Long ago we learned the lesson that unless we protect unions we leave the individual helpless economically and politically.

We must recognize that the right of free association is a basic right, a right protected by our Constitution as well as by moral law.

PART II.—THE TAFT-HARTLEY ACT AND OUR EXPERIENCE UNDER IT

We present below a series of discussions of particular provisions of the Taft-Hartley Act and the ways in which these provisions have operated. We have singled out only certain of the provisions concerning which experience is available

It is important to bear in mind that none of the provisions of the Taft-Hartley Act may be considered in isolation, divorced from the other provisions. To give one example, the provision relating to decertification elections is objectonable for the reasons given in this analysis. But this provision must be considered together with the provision limiting elections to 12 months' periods, since where a decertification succeeds in unseating a representative union as a result of employer pressure no second election may be held for a period of 12 months.

In the same way, all of the election provisions which, directly or indirectly, give the employer access to the Board's election machinery must be considered in conjunction with the so-called "employer free speech" provisions which have been consistently used to permit employers to terrorize employees and to override their preference. Similarly, the provisions denying striking employees the right to vote in elections must be viewed in conjunction with the provisions giving employees access to the Board's election machinery, the free-speech provision, the provision outlawing a strike against a certified bargaining agent, the provision for mandatory injunctions against such strikes, and the provision creating a right of action in Federal and State courts on behalf of anyone injured by such a strike. And the provisions relating to injunctions and union unfair labor practices are integrally related to the agency provisions under which unions, both the local and the international, may be held answerable even for the acts of members whose conduct has been repudiated.

A. UNION SECURITY

The Taft-Hartley Act all but destroys union security. It achieves this result (1) by barring the closed shop and other forms of preferential hiring outright, (2) by permitting only an extremely limited form of union security, and (3) by not permitting even this weakened type of union security to be effectively implemented. Union security is rendered meaningless by confining it only to discharges for failure to pay dues. The effect of this provision has been to deny unions the power to procure the discharge of spies, contract breakers, stool pigeons, and other individuals whose activities may be injurious to the interests of both the employer and the union.

But still other obstacles are imposed upon union security. First, the union and its officers are required to comply with the filing requirements of the act and, second, the union has to win an authorization election of a majority not of those voting as in the conventional election but a majority of those eligible to vote.

Finally, even after a union wins such an election the right to negotiate the so-called union security agreement is subject to a deauthorization election. It was obviously the hope of those who devised this complicated structure that even limited union security would be wiped out by the Taft-Hartley Act. What has been the result of this section?

The record shows that the authorization election provision has resulted in overwhelming approval of union security. Statistics supplied by the Labor Board show that authorization elections have been won by unions in 98.2 percent of the cases and that 84 percent of the eligible voters voted in favor of union security. During the year in which these elections have been conducted, 3,457,532 employees voted. The cost to the Government has been approximately 40 cents a vote. The union authorization election has obviously not served its hoped-for purpose of preventing union security. On the contrary many employers complain that it has promoted union security on the ground that it is difficult to resist a demand for it after the employees have voted for it.

Apart from the fact that it has cost the Government a great deal of money to discover that the employees want union security other serious objections are presented to this provision of the law. In the first place, it has imposed upon the Board an unbelievable backlog. The Board has estimated that during the fiscal year 1948–49 it will be called upon to hold no less than 30,000 union authorization elections. This means not merely a hopeless administrative log-jam but in addition the creation of a situation in which the Board is powerless to process with reasonable degree of speed other types of cases, such as ordinary representation election and unfair labor practice cases.

A second objection to the union authorization provision is the fact that it has broken down completely in areas where employment is intermittent, such as the building trades.

Even the joint committee has recommended the elimination of this provision.

But the problem presented by the Taft-Hartley provision on union security is not confined to the authorization elections. The elimination of closed shop and the restrictions upon the use of union-security clauses must be abolished if we are to have sound labor relations. It would be pointless to burden the committee with a detailed justification of the closed shop. As long as there has been collective bargaining in America there have ben closed or union-security contracts. Prior to the passage of the Taft-Hartley Act approximately 10,000,000 American workers enjoyed the benefits of union-security contracts in the steel industry, the clothing industry, fur, rubber, printing, maritime, electrical manufacturing, textile, and many other industries. The closed or union shop has contributed to industrial peace.

A study by Father Jerome L. Toner, formerly of Catholic University, draws the following instructive conclusions with respect to the benefits of closed-shop contracts:

"(1) Labor relations are considerably smoother as a result of the closed shop.

"(2) Trade-unions have demonstrated genuine responsibility under closed-shop contracts, and have contributed substantially to the improvement of production.

"(3) The closed shop will probably be the rule rather than the exception within the next decade."

Our labor history shows that employers who genuinely desire to deal with unions in a harmonious fashion have favored the closed shop and other forms of union security and that opposition to the closed shop is a mask which usually conceals a basic objective of destroying unionism. This identity between anti-unionism and opposition to the closed shop is fully borne out by the records of the La Follette-Thomas committee, as well as the records of the National Labor Relations Board. The same antilabor employers who now claim to oppose the closed shop in principle did not hesitate to sign closed-shop contracts with company unions in order to prevent bona fide unionism. As Father Toner's study, referred to earlier, points out: "Many of those employers who use the closed shop to frustrate genuine labor organization frown on it when they are asked to incorporate it into the standard union contract."

It is significant that a number of employer witnesses admitted on cross-examination before the Senate committee that they opposed the closed shop because it increased costs. In short, the opposition to the closed shop is based not on principle but on the fear that it may strengthen the bargaining power of unions.

It is also significant that certain employer witnesses, appearing before the Senate committee representing industries in which historically labor unions have served as employment agencies, conceded that the Taft-Hartley Act's ban on the closed shop had produced chaos by impeding a vitally needed supply of skilled labor and jeopardizing long-established apprenticeship programs. One witness representing employers in the construction industry was frank enough to admit that he preferred the administration bill to the Taft-Hartley Act if for no other reason than that it sanctioned the closed shop.

I have already referred to the fact that six so-called emergency strikes occurred since the passage of the Taft-Hartley Act. In at least three of those strikes a major cause was the desire for union security. In addition the principal cause of the strike in the printing industry resulted from the ban on union security contained in the Taft-Hartley Act.

The Congress of Industrial Organizations is convinced that all of the limitations on union security contained in the law are unwise and unsound and that these curbs upon union security threaten industrial peace and long established stable relationships. The existing statutory limitation upon the scope of union security agreements preventing discharge for any reason other than the nonpayment of dues have made a mockery of the union security agreement and have left unions helpless to resort to union-security agreements as a means of policing violations of a labor agreement.

One of the inexplicable contradictions of the Taft-Hartley Act is its insistence upon union "responsibility" for contract violation, whether authorized or not, and at the same time its refusal to permit unions to use union security agreements for purposes of enforcing conformity with contracts.

As the members of this committee well know, an irony of the operation of this provision of the law is that it has produced disputes between unions and employers in situations where both have agreed upon the merits of union security. In many cases where strikes have not occurred union security clauses have been bootlegged so as to evade the provisions of the law.

It is not sufficient, however, in restoring the effectiveness of union security as an aid to industrial peace merely to restore the Wagner Act. The effect of the Taft-Hartley Act has been not only to weaken, if not destroy, effective union security but actually to encourage the States to pass and apply even more restrictive laws. This was achieved through section 14 (b) of the law which permits the application of more restrictive State laws prohibiting union security altogether.

In reenacting the Wagner Act it is important therefore that we make it clear that the Federal protection of union security may not be defeated by State laws. Under the present operation of the Taft-Hartley Act, collective bargaining in the field of union security has become a roulette wheel where an individual's rights turn not upon his agreement or the statute but rather upon the laws of the particular State where he happens to be living. Is there any reason why an employee of the United States Steel Corp. in Tennessee should be denied union security protection while an employee under the same agreement in Pennsylvania should enjoy that protection?

We have learned through years of bitter experience that uniformity is essential in fashioning a sound system of labor relations. The Supreme Court has recognized, in *Bethlehem Steel Co.* v. *New York State Labor Relations Board* (330 U. S. 767), and *La Crosse Telephone Corporation* v. *Wisconsin Employment Relations Board, et al.*, decided January 17, 1949, that the Federal labor law is and must be supreme in any case which is within the Federal power.

This committee must by specific enactment make it clear, both with respect to union security and with respect to the related problem of the check-off, that conflicting State laws are superseded as to all cases under the Wagner Act. This does not, of course, mean that State laws are not applicable to purely intrastate enterprises. It does mean that in this field where uniformity is so vital Congress will not tolerate attempts to undermine Federal laws. Recognition of the primacy of the Federal law in this field is vital to avoid the chaos and confusion which inevitably results from a multiplicity of standards. In the Taft-Hartley Act the Congress deliberately abandoned its functions and delegated them to reactionary State legislatures to further carve up union security. This unfortunate abdication of Federal authority must be corrected. The congressional power to protect union security rests in the last analysis upon its power to protect interstate commerce from disturbances. But the threat of such an interruption of commerce remains when a State law refuses to permit an employer to bargain with respect to union security or to incorporate it into an agreement. It simply makes no sense for Congress to assert its readiness to protect union security under the commerce power and then to permit that protection to be wiped out by prohibitory State laws.

B. COERCION BY UNIONS AND BY EMPLOYERS ; FREE SPEECH

(1) *Union coercion.*—Section 8 (b) (1) (A) of the act makes it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed them under the act. This section of the act became law in the face of repeated warnings by labor experts who had opposed similar "equalizing" amendments in the past on the ground that this provision would be used as a dragnet device to destroy or hamper the exercise of labor's legitimate rights.

Still valid today is the statement in the report of the Senate Committee on Education and Labor in 1935 of reasons for confining the bill to unfair labor practices of employers:

"One suggestion in regard to this bill has been advanced so frequently that the committee deems it advisable to set forth its reason for rejecting it. This proposal is that employees and labor organizations, as well as employers, should be prohibited from interfering with, restraining, or coercing employees in their organizational activities or their choice of representatives.

"The argument most frequently made for this proposal is the abstract one that it is necessary in order to provide fair and equal treatment of employers and employees. The bill prohibits employers from interfering with the right of employees to organize. The corresponding right of employers is that they should be free to organize without interference on the part of employees; no showing has been made that this right of employers to organize needs Federal protection as against employees. Regulation of the activities of employees and labor organizations in regard to the organization of employees is no more germane to the purposes of this bill than would be regulation of activities of employers and employer associations in connection with the organization of employers in trade associations.

"This erroneously conceived mutuality argument is that since employers are to be prohibited from interfering with the organization of workers, employees and labor organizations should also be prohibited from engaging in such activities To say that employees and labor organizations should be no more active than employers in the organization of employees is untenable; this would defeat the very objects of the bill.

"There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute 'coersion': a threat to strike, a refusal to work on material of nonunion manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts closed-shop agreements or strikes for such agreements are condemned as 'coersive.' Thus to prohibit employees from 'coercing' their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act.

"Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of the local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal courts against fraud, violence, or threats of violence. (See 29 U. S. C., sec. 104 (e) and (i))." (S. Rept. No. 573, p. 16, 74th Cong., 1st sess.)

Before the act was passed the text of this section on union coercion and restraint was amended to limit its scope and a legislative history was made for the purpose of stressing the claimed narrow nature of the section. Thus, a provision in the section placing a prohibition on union "interference" was deleted. In addition, an express provision was written in the section stating that the section should not be construed to impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. In addition, it was pointed out that the so-called free-speech provision of the act, section 8 (c), immunizing expression of views under any provisions of the act providing such expression contained no threat of reprisal or force or promise of benefit, would serve further to protect legitimate concerted activities by unions.

Despite all this, the worst fears of the opponents of the section have been realized even during the short period in which the act has been in effect. In cases of so-called union coercion on the picket line, the act has been used in situations in which, if misconduct did in fact occur, obviously appropriate forums would be the local courts and law-enforcement agencies. This provision has had the effect which was freely predicted by labor of imposing upon unions not merely a double liability but a triple liability. The same course of conduct which would give rise to local police action is now being used to ground State court injunction and Federal cease-and-desist orders. Moreover, in proceeding against these so-called union unfair labor practices new standards of liability are being improvised by the Board's agents which are reminiscent of those resorted to during the most antilabor period in our history.

The processes of the act are being used to police charges of episodic and dubious union misconduct on the picket line. The flavor of the kind of conduct to which coercion charges address themselves may be obtained from this comment of the trial examiner in the *Sunset Line & Twine case* (No. 20-CB-1):

"Having created a situation wherein human emotions might reasonably be expected to escape ordinary decorum and restraint, the company may not then stand aside in innocence, aloof and without responsibility for conduct of individuals among the crowd. The general counsel points to the presence there of two or three union officials. There is no evidence, however, that they were there before the police had arrived. Furthermore, Gouvea, the company superintendent, admitted that he also was there, moving freely about among the milling crowd. Under the circumstances, the examiner is of the opinion that the respondent unions may not be held to be accountable for the behavior of persons in this situation, which clearly was not of their making. Furthermore, not only subordinate officers but the heads of the city and county law-enforcement bodies were also on the ground. They witnessed the events. Yet, so far as the evidence shows, no individual was formally charged, haled into court, or found guilty of any misconduct. In effect, the general counsel urges the examiner to recommend that the Board seek from a circuit court of appeals an order requiring a local and an international union to 'cease and desist' from engaging in acts which, although witnessed by them, the State, county, and city police apparently considered of so little significance as to warrant not even police-court action.

"In *Milk Wagon Drivers v. Meadowmoor Dairies, Inc.* (61 Sup. Ct. 552), Mr. Justice Frankfurter said: '* * * the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exurberance the conclusion that otherwise peaceful picketing has the taint of force.'

"The examiner concludes and finds that the preponderance of evidence fails to sustain the allegations of the complaint relating to October 15: (1) as to 'mass picketing' and (2) as to conduct constituting restraint and coercion.

"4. Conclusions in general

"In summary, the strike at the company's plant has not taken place in a setting of violence No person has been physically or bodily injured while comnig to or leaving the plant premises. The few threats uttered have been both episodic and isolated; none is shown to have been an integral part of a conduct pattern designed to coerce employees. The attendant circumstances have not been such 'that fear of physical harm rather than persuasion is the force loosed upon the persons sought to be influenced.'"

The Board in part reversed the trial examiner's recommendations in the above case. Certain incidents which the trial examiner properly termed "petty annoyances" were found by the Board to be union coercion and restraint and elevated by the Board to the level of a Federal offense. The trial examiner rules in this case that the strike was caused solely by the employer's misconduct and that immediately after the Taft-Hartley Act was passed the employer arbitrarily terminated a 7-year period of peaceful labor relations and precipitated the strike. The Board did not dispute the factual bases of his ruling but merely held them to be irrelevant.

In *Matter of Perry Norvell Company* (case No. 9–CB–3) the trial examiner in dismissing charges of restraint and coercion against the union stated:

"2. ACTUAL RESTRAINT OR COERCION NOT ESTABLISHED

"The altercations described above which attended the reopening of the plant are well within that class of events characterized by the Board and the courts in numerous cases in the past as 'minor clashes on the picket line,' and have generally been found insufficient to justify the discharge of striking employees participating in them. There are no grounds for applying a more rigorous test where, instead of seeking relief, a labor organization is affirmatively charged with restraint and coercion. The incidents revealed by the record were relatively isolated, with reference to the length of the strike and the number of strikers involved. There was no mass picketing. There was no single instance where [an] employee seeking to enter the plant was prevented from doing so. There was no assault more serious than a push with shoulder or elbow, and no threat of violence which was taken seriously. On the whole, it would be difficult to find an instance of a strike as peacefully conducted under circumstances as provocative of violence. The clashes in question took place only after the discharge of the members of the committee for no other reason than their peaceful, though allegedly 'illegal,' leadership of the strike, and their attempt, and the attempt of the committee of lasters, to discuss the grievance of one of their members with their employer—a right guaranteed them by the act.

"The undersigned concludes and finds that there was no actual restraint or coercion exercised by the respondents herein, or their agents."

The Board upheld the basic finding of the trial examiner in the above case but insisted that several of the acts which he characterized as "minor clashes on the picket line" were condemned by the Taft-Hartley Act (23 L. R. R. M. 1045).

We cannot overstress the fact that a proper appreciation of the evils involved in the enlargement by the office of the general counsel of the concept of coercion as written into the act must include an awareness that the very issuance of the complaint and the holding of a hearing during a strike constitutes a sharp interference by the Federal Government in a labor dispute. Employer sponsors of charges of coercion against unions are not interested in obtaining punishment of particular individuals for illegal misconduct. They are far more interested in bringing to bear the force and power of a Federal official—namely, the general counsel—for strikebreaking purposes. They know that in such a forum a far lower standard of proof is required than in an ordinary criminal or equity case, and that the general counsel will be satisfied with dragnet theories of agency as a basis for imputing liability to the union.

An illustration of the manner in which this new technique operates is the Perry Norvell Shoe case. In that case, the employer filed a charge on August 27, 1947, alleging a jurisdictional strike, a breach of contract, and other claimed violations of the Taft-Hartley Act. Thereafter, on October 6, 1947, upon consultation with the general counsel's office, the employer filed an amended charge claiming a violation of the union coercion and restraint provisions of the act. On October 8, 1947, this charge gave rise to a complaint issued by the general counsel's office. We ask the committee to note the unusual speed.

On October 21, 1947, a hearing was held. However, on October 20, 1947, the company fired all the union leaders in the plant and notified its striking employees that—

"A complaint has been issued by the Board charging the union with certain unfair labor relations practices. The Labor Relations Board issued this complaint yesterday and made a thorough investigation into the facts by its own investigators.

"We feel that you should know this and that the United States Government has intervened into the matter. We intend to reopen the factory at 7 a. m. in the morning of Thursday, October 23, 1947.

"Your failure to appear on the day and hour set for the reopening the plant will indicate that you no longer want your job and you will be replaced."

Thus, immediately before the hearing the employer had already cleared the decks because, after all, had not the United States Government "intervened in the matter"?

Completing the pattern, the employer obtained an injunction from a State court on November 19, 1947, curtailing the picketing of his plant.

On December 12, 1947, the trial examiner issued an intermediate report dismissing the entire complaint. The trial examiner found, contrary to the contentions of the company and the general counsel, that the strike did not violate the contract, that there was no union misconduct on the picket line as contended by the general counsel, and that "on the whole it will be difficult to find an instance of a strike as peacefully conducted under circumstances as provocative of violence." Finally, the trial examiner ruled that the general counsel's theory of union responsibility was unsound and improper.

Thus, an improperly issued complaint successfully broke a strike.

In his efforts to transform section 8 (b) (1) (A) of the act into a catch-all for the purpose of restraining all manner of conduct of which he disapproves and which is not specifically made illegal, the general counsel has encountered certain difficulties because of the existence of the free-speech provisions of the section and the proviso preserving the right of the union freely to conduct its own internal affairs. However, these limiting provisions of the act have not deterred the general counsel in his attempt to expand the antiunion provisions of the law. Thus, in *Matter of Watson Specialties Stores* (Case No. 10–CC–1), a so-called secondary boycott case, the employees involved also picketed the establishment of the primary employer in an effort to persuade his employees to join the union. The general counsel, however, insisted that such picketing is "economic coercion" to "force" the employer's employees to join the union and that the free-speech protections of the law do not apply to this situation. The trial examiner, however, rejected this contention, which had in part served as the basis for a complaint and a petition for an injunction, on the ground that it was protected both by the Constitution and by the act.

In the Perry Norvell Shoe case, a union engaged in a strike which was not prohibited by any provision in the law. The general counsel first argued that the act was violated because of the conduct of the striking employees. He then argued that the strike was in violation of a collective-bargaining agreement—a contention which was rejected by the trial examiner—and that therefore the nonstriking employees were coerced in the exercise of their right not to strike. In short, the general counsel urged a theory which implied that any strike is "coercive" of the rights of nonstrikers. In rejecting this contention, the trial examiner stated:

"* * * the ultimate logic of the theory advanced by the general counsel would seem to be that all strikes are outlawed by the act, whether there is a collective-bargaining agreement or not; for by the terms of section 7 of the act, employees have a right to refrain from, as well as to engage in, the concerted activities enumerated therein. A peaceful organizational strike, where there is no collective contract, may operate just as effectively to violate the right of nonstriking employees to refrain from these concerted activities, and to interfere with their relations with their employer, as an equally peaceful strike during the term of a collective-bargaining agreement. If the latter constitutes restraint or coercion, so does the former, with the result that all strikes become unlawful under the general counsel's construction of section 8 (b) (1) (A), despite Senator Taft's statement that no strikes are outlawed thereby."

In his brief to the Board, the general counsel insisted that the strike was an "illegal" strike despite the fact that it was not condemned by any specific provision in the statute and despite the fact that the legislative history indicates that it was not intended to proscribe the type of strike involved. The general counsel maintained, however, that limitations on the right to strike are not confined to those strikes specifically banned by the statute but "Congress intended that the Board place such restrictions upon the right to strike as it deemed necessary to effectuate the policies of the act."

The Perry Norvell case illustrates an attempted enlargement of the coercion provision of the act on the basis of a theory that a strike by a union "coerces" nonmembers of the striking union.

In his attempt to bring peaceful picketing under Federal ban the general counsel has also developed the theory that peaceful picketing by workers of a striking union coerces members of other unions who refuse to cross picket lines. In *Matter of Sealright* (Case No. 21–CC–13), certain warehousemen, members of the ILWU–CIO, refused to handle paper which originated in a struck plant and which had been transported to a dock picketed by striking AFL paper workers. The general counsel first sought to obtain a cease and desist order against the picketing upon the ground that it was not protected by the free-speech provisions of the act and that even though peaceful it was nevertheless coercive. He urged, moreover, that the warehousemen refused to handle the struck goods out of fear of the pickets although there was not the slightest indication in the record that the words, actions, or conduct of the pickets were calculated to create fear. As the trial examiner pointed out in dismissing the complaint, the general counsel assumed contrary to fact that the employees desired to work in the presence of the pickets. The general counsel insisted that the employees who refused to work upon the struck goods did so out of fear and not out of conscience, despite the fact that the employees testified that they would not cross a picket line and that their contract with their employers protected them in the right not to pass the pickets.

It is noteworthy that in the Sealright case, despite the ultimate rejection of the general counsel's theories by the trial examiner, the Office of the General Counsel nevertheless succeeded in obtaining an injunction from the Federal district court before the issuance of the complaint.

The same attempt to expand the coercion sections of the act may be found in *Matter of Klassen & Hodgson, Inc.* (case No. 17–CC–1). In that case, a trial examiner found that truck drivers refused to cross a peaceful picket line maintained around the establishment of a secondary employer. The truck driver's union was not involved in any way in the dispute. The trial examiner nevertheless held that because a power of discipline exists in the truck driver's union to punish crossing a picket line, the picketing, even by members of another union, constitutes a threat of reprisal which is outside of the protection of the free-speech provisions of the statute. The trial examiner disposed of the fact that the truck drivers' union was not a respondent in the case by pointing out that it was a member of a building trades council which was a respondent in the case. The trial examiner stated:

"These employees were members of a union—the truck drivers—affiliated with the trades council. As to these persons, then, the picket line contained an implicit threat of discipline from their own union, and constituted inducement and encouragement of employees contrary to the statute. The absence of any overtly stated threat does not make the conduct noncoercive. A power of discipline existed in the union to punish the offense. In the absence of assurances to the employees to the contrary, it must be inferred that the power would be exercised.

"So far as the issue of responsibility is concerned, the respondents and the truck drivers' union, acting along with others and through the building trades council, engaged in a joint enterprise to force Klassen to cease doing business with Wadsworth. It was a foreseeable consequence of this action, if it was not indeed its purpose, that employees affiliated with the acting unions would decline to cross the picket line because of a reasonable fear of reprisal from their own union. Such a consequence did occur. There was thus prohibited inducement and encouragement attributable to the respondents. That the respondents had no power of reprisal over persons not members of their union is immaterial here. They are responsible for the foreseeable acts of their partner—the truck drivers' union—in the furtherance of the joint enterprise. Had the two not acted in concert, and had the acts of the truck drivers' union been its own independent conduct, the result would, of course, be different."

The significant aspect of this case is not merely the tortured reasoning by means of which peaceful picketing was clothed with a coercive character, but the development of a theory of "coercion" by a union of its own members because of the possibility that it may invoke its internal rules and regulations.

This decision makes completely meaningless the proviso in section 8 (b) (1) (A) preserving the right of a labor organization to prescribe its own rules.

In *Matter of Ryan Construction Co.* (case No. 35-CC-7), the general counsel sponsored a complaint on the theory that a picket line is per se coercive and obtained an injunction because other union members refused to cross the picket line. *Evans* v. *United Electrical Workers* ((S. D. Ind.) 22 L. R. R. M. 2459).

The full flowering of the theory of intraunion coercion is contained in the Intermediate Report of Trial Examiner Ringer in the Graphic Arts case (No. 5-CB-1). In that case the trial examiner found that the ITU "coerced" its own members by conveying to them through their local union the union's internal rules with respect to its collective-bargaining program. The implications of this theory that a labor organization coerces its own members when it insists upon a democratically adopted bargaining program go to the very essence of group action and to the very heart of the trade-union movement.

When the cases on intraunion coercion are considered together with the cases dealing with the responsibility of the union for the acts of its agents we see the creation of a weird dilemma. The broad principles of union responsibility which the act provides for plus the denial in the act of union-security protection make imperative the adoption of effective union controls if the union is to avoid the imputation of liability for the acts of its members. But when the union proceeds to take steps to preserve itself from destruction, then such steps are deemed to be coercive. Indeed, one court, in *Styles* v. *Local 760* ((E. D. Tenn) 22 L. R. R. M. 2447), has found "coercion" under the Taft-Hartley Act in being a "member of a modern strongly disciplined union."

The theory of the trial examiner in the Graphic Arts case and the theory of the office of the General Counsel in other cases involving alleged union coercion of its own members, appears to be that a union is a hastily improvised aggregation of individuals held together by illegal pressures which await only the "liberating" touch of a Board agent. In its ultimate posture the theory that a union coerces its own members when it promulgates legitimate and time-honored union rules relating to such matters as crossing picket lines or working upon struck work is a profound insult to the group loyalty, good sense and unity of American working men and women. It rests upon the ridiculous assumption that unions are held together by fear and intimidation and that union members never act toward a common objective through democratically arrived at means but rather are forced to do so by a threat of reprisal.

In the enlargement of the coercion provisions one final development of Board doctrine curtailing the free speech protections of section 8 (c) is significant. This development made its appearance in *Matter of Montgomery Fair Co.* (case No. 15-CC-5). In that case a trial examiner held that peaceful picketing of their employer's premises by members of an AFL union who refused to work with nonunion members for an antilabor contractor was not protected by either the Constitution or the act. The trial examiner achieved this result by insisting that the picketing was in support of a strike which itself was illegal and that it was not separable from the strike. This ruling was made despite the fact that practically all the employees who had been engaged in the strike had obtained employment elsewhere and that the only remaining pressure upon the employer was a statement of fact on the picket signs. This decision nullifies the rights of unions and their members to exercise a basic right which the Supreme Court has said is essential to constitutional protection.

The full impact of the enlargement by the Board and the Office of the General Counsel of theories of coercion cannot be properly appreciated without the awareness that in many of the cases discussed above injunctions completely halting the complained of activity were promptly obtained by the Board. This injunctive relief was obtained in Sealright, in Klassen & Hodgson, in Ryan Construction, in Atlantic & Pacific, in Montgomery Fair, and in ITU.

The coercion provisions of the Taft-Hartley Act go far beyond creating the basis for cease-and-desist orders against unions. They provide a perfect framework, as I have repeatedly pointed out, for the creation of a strikebreaking technique.

Finally, so-called coercion through mass picket lines is held to justify the discharge of participants in such activity by way of a strained analogy to the Fanstel case dealing with the sit-down strike. Thus, in *Matter of International Nickel Co.* (22 L. R. R. M. 1006), in *Matter of Dearborn Glass Co.* (22 L. R. R. M. 1284), and *Matter of Socony Vacuum Oil* (22 L. R. R. M. 1321), the Board justified discharges of union members and leaders, on the basis of such theories.

In short, the union coercion section of the act also undermines the weak protections against discrimination which exist in the act. The full flowering of this technique may be seen in the oil workers' strike in California in which the employers, alerted to their "rights" under the Taft-Hartley Act, have insisted upon wholesale discharges for alleged picket line misconduct.

(2) *Employer free speech.*—It does not tell the whole story to say that unions are being enveloped in a dragnet theory of coercion and that their right freely to picket is being subjected to a phenomenal injunctive and administrative erosion. For, during the very period when this development has occurred the Board, in processing those cases against employers which have their roots in Wagner Act complaints, has displayed a contrastingly tender regard for the rights of employers to freedom of speech and action. The Board does not find it difficult, as did the trial examiner in the Montgomery Fair case, to separate illegal conduct by employers from supporting speeches. Whenever an employer commits an unfair labor practice the Board refuses to permit his misconduct to deprive him of the free-speech privilege with respect to subsequent speeches even though the unfair labor practices are grounded in the same antiunion campaign. Without any evidence of coercion whatsoever the trial examiners of the Board and the general counsel have urged that a possible fear of union discipline is enough to ground a charge of coercion against a respondent union with respect to its own members. This eagerness to attribute to a relationship an actual or potential coercive thrust is in marked contrast to the Board's complete disregard of the enormously coervice implications in the employer-employee relationship.

From decisions of the Board and the trial examiners in connection with coercion and free speech by employers and unions there is emerging a dream world—a world of fantasy—in which the employees are continually victimized not by their employers who possess the power of discharge but by their unions. This strange double standard is illustrated by such cases as *Matter of Wrought Iron Range Co.* (case No. 14–C–1197), in which the Board reversed the trial examiner and found a blatant course of antiunion letters and notices to be privileged under the statute. Included in the employer's conduct on the eve of a representation election was a representation that the company was their "bargaining agent": a warning to the employees that election results will "bear directly on your welfare and the welfare of those dependent upon you"; that "the company means to win this election"; that a defeat of the union will be "a vote of confidence in the company." The Board even found that the distribution by foremen of letters urging employees to consider "their own future welfare" and enclosing sample ballots marked as " 'No' votes against the union" was within the protective scope of section 8 (c) of the act. In short, the Board has permitted the free-speech provisions of the act to be expanded to the point where the most open interference in an election which, after all, is the primary concern of his employees is outside the scope of the act.

It is important to point out to the committee precisely what is involved in this issue of employer free speech over which so many false claims have been made. In the first place, no labor organization has ever denied that employers are entitled to freedom of speech. This is a right that is, of course, guaranteed to all under the first amendment, but freedom to speak does not include the right to intimidate, to coerce, to dominate employees through verbal acts. We should bear in mind that employers have consistently used the shield of free speech as a device for interfering in employee self-organization.

Most typically, free speech has been used by employers to interfere in elections. One would assume that the question of what bargaining agency the employees should select should remain primarily a matter for the employees to determine. If labor organizations insisted upon the right to participate in the selection of a management representative such claims would hardly be received with sympathy. Yet employers insist that the right to free speech furnishes a justification not merely for interfering in employee elections but even for using speech as a coercive device. Under the Wagner Act the Board did not deny to employers the right to present views even in connection with representation matters. At times, the Board's tolerance extended to a dangerous point for, in many of the cases in which the Board refused to set aside elections, employers had actively intervened in the elections in order to influence the outcome.

The Board's rules under the Wagner Act were relatively simple:

(1) While employers were permitted freedom of speech in connection with elections they were not permitted to use their economic power or physical facilities for the purpose of compelling employees to listen to their propaganda.

(2) In evaluating whether speech had reached the level of an unfair labor practice the Board necessarily considered relevant the totality of the employer's conduct, whether he had in a context relevant to the speech engaged in conduct which gave the speech a sharper thrust than was communicated by its literal words.

(3) The Board recognized in certain cases that speech could effectively and improperly destroy the opportunity of free elections even if it failed to constitute an unfair labor practice.

The Taft-Hartley Act has, in my opinion, in an overwhelming number of instances frustrated the effectiveness of Labor Board elections in providing the employee with an opportunity for a free choice of bargaining agent. This has been accomplished through rulings under the act which permit the employer to take complete liberty in the way of propaganda and coercion. The Board has wiped out the captive audience doctrine and immunized employer speech even when employees are compelled to listen to it. It disregards the totality of the employer's conduct and permits the employer in an election virtually the same unlimited scope, with the sole exception of one case, *Matter of General Shoe Corporation* (21 L. R. R. M. 1337), which it allows him in an unfair labor practice situation.

In the General Shoe case referred to above the employer immediately prior to an election sent a series of letters to the employees assuring them that they would not lose their jobs by failing to join the union, pointing out that three pay increases had previously been given the employees and that the existing organizations in the plant were for the employees' benefit.

Subsequently, the employer issued leaflets, placed full-page advertisements in the town newspapers, issued a mimeographed letter and, on the day before the election, the president of the company read a prepared speech 24 or more times to small groups of employees who were brought before him in the plant by the foremen during working hours. In addition the foremen conducted personal interviews with the employees in the plant and at the employees' homes. The literature which the company circulated ridiculed the union. It urged that the employees vote against it because "(1) unions mean strikes and employees and the company lose money; (2) unions make workers dissatisfied, and unhappy workers do not make good shoemakers; (3) unions penalize the better employees by not recognizing merit; (4) unions cost money contributed by workers to promote jobs and potential power for union leaders, and (5) unions set employees and management at war with each other and are thus bad for both. * * *"

The employees were subjected to a barrage of further management propaganda which accused the union of causing trouble and predicted that it would not provide jobs for the men. The company also issued a three-page pamphlet, with one page containing a sample ballot with a sentence in large type, "A vote of 'no' is a vote of confidence in the company." The prepared speech of the company president included the following reference to the union organizer:

"Incidentally, this man Burke of St. Louis is not really named Burke, but Berg, a Jewish man from Brooklyn, N. Y. The union formed here in Pulaski would be under his jurisdiction."

After this diatribe the union was defeated in the election. The Labor Board rejected a finding by the trial examiner that the conduct involved a violation of the act and found instead that it was protected by the free-speech provisions of the Taft-Hartley Act. The Board could not help finding, however, that even though the conduct did not constitute an unfair labor practice the election should nevertheless be set aside. Two Board members dissented from this finding on the ground that the employer's conduct was protected by free speech. This case is now under heavy attack both by employers and by the joint committee.

If this employer did not effectively coerce his employees in this case then language has no meaning. Not so long ago, in *I. A. M. v. N. L. R. B.* (311 U. S. 72, 78) the Supreme Court taught us that even "slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring the employer's strong displeasure."

What was involved here was no slight suggestion but a systematic campaign to undermine the employees' will and to corrupt their independence. Yet the Taft-Hartley Act requires that employers be permitted in this fashion to take over an election with immunity from unfair labor practice charges.

A case which illustrates the operation in election situations of the employer free-speech doctrine is *Matter of Babcock & Wilcox* (22 L. R. R. M. 1057). In this case the employees were required to listen to speeches on four separate occasions just before the Board conducted a collective-bargaining election. On each of the four occasions employees on the first and second shifts were called to a particular section of the plant during working hours. On each of these occasions the superintendent of the plant delivered a prepared speech, obviously calculated to intimidate the employees. The Board nevertheless held that this speech, which the trial examiner described as antiunion, was protected by the free-speech provisions of the act. In short, the Board has held that the employer has a right to speak even under circumstances in which he compels his employees to listen and that the employees have been deprived by the Taft-Hartley Act of the right not to listen.

In *Matter of Mallinckrodt Chemical Works* (22 L. R. R. M. 1514), the plant manager and the personnel director called the employees in, one at a time, and delivered to each employee a carefully prepared statement attacking the union. There can be no question that this statement was intended to and did coerce the employees into rejecting the union in a Board election. The Board held, however, that the statement was protected by the free-speech provisions of the the Taft-Hartley Act, despite the fact that the interviews were conducted under the most coercive circumstances. This case destroyed the underlying doctrine of the General Shoe case and leaves employees utterly defenseless in election situations.

In *Matter of Mylan Sparta Co.* (22 L. R. R. M. 1317), the company in connection with an election pointed out that "we have the right for good business reasons to close * * * entirely or in part, at any time." Here was a threat clearly understood by the employees to be a threat to close the plant if the election favored the union.

Yet the Board likewise placed its blessing on this electioneering.

In *Matter of Hinde and Dauch Paper Co.* (22 L. R. R. M. 1229), the employer assembled his employees and made a speech containing the following statements:

"Your job and your relationship with us is involved."

"Our relations with this union are bad."

Supervisors in the plant made the following statements:

"Join the A. F. of L. or a company union."

"Be sure to vote on the right side of the paper."

In addition, the employer threatened to close down his plant. Yet the Board found that the act protected the employer in this conduct.

In *Matter of Fontaine Converting Works* (22 L. R. R. M. 1149), the employer supported a company union and discharged union members. The Board found that statements to union men that they "would be sorry" for bringing the union into the plant, and compelling employees to listen to a speech in the plant attacking the union were not coercive even in the light of the employer's unfair labor practices.

In *Matter of Atlantic Stages* (22 L. R. R. M. 1242), the employer discriminated against a large number of union members. The Board found that even in this context his questioning of employees as to whether or not they were union members was not coercive.

These are only a very few of the cases in which the Board has given its blessing to deliberate invasions by employers of the right to freedom of organization and of the right to a free choice of bargaining agents. As a result of the Board's decisions dealing with the so-called free-speech problem prior to elections there has now emerged a full-dress employer technique for exposing employees on the eve of an election to a variety of coercive harangues with complete impunity under the statute. The employer's right of free speech has all but devoured the employees' right of free choice.

In the questionnaires which have been submitted to CIO unions, which I have referred to already in my remarks, there is a remarkable uniformity of reaction in connection with this problem of employer free speech. The union responses make it clear that unless something is done immediately elections will be virtually valueless as an expression of free choice. The free-speech provisions of the Taft-Hartley Act and their interpretations by the Board have made a shambles of sound principles for the conduct of industrial relations.

The experience of unions as respondents under the act serves as more than a significant contrast to the Board's treatment of employers. What is involved here is more than the fact that unions are being treated—in complete disregard of industrial reality—as the oppressors of the employees, both union members, and nonmembers, to be curbed by administrative order and injunction. Fundamentally, the double standard which the cases on coercion spell out means that the right to join a union and to engage in concerted activities has fallen victim to the right not to join a union and not to engage in such activities, that the right to organize is rapidly being supplanted as an object of Federal solicitude and protection by a "yellow dog" principle under which employer attacks on the fundamental rights to form labor organizations and engage in concerted activities are endowed with Federal sanctions.

C. THE REVIVAL OF GOVERNMENT BY INJUNCTION

The Taft-Hartley Act contains provisions for three types of injunctions. Under section 10 (j) the Board has discretionary power upon the issuance of a complaint to apply for temporary relief or a restraining order. This relief may be sought both against employers and against labor organizations, although up until the present it has been used almost exclusively against labor organizations.

Under section 10 (l) of the act the Board is required, where reasonable cause exists to believe that a charge is true and that a complaint should issue, to petition a Federal court for injunctive relief. See *Douds* v. *Teamsters Local* (75 F. Supp. 414). This provision is directed exclusively against unions and implements the unfair labor practice provisions dealing with secondary boycott and related matters.

There is a third type of statutory injunction. This is the injunction provided for in section 206 of the act, the so-called "national emergency" injunction. This is the provision of the law which authorizes the Attorney General to obtain an injunction to forestall a strike endangering the public health or safety. This provision is discussed in another section of this testimony.

In connection with all of these sections, jurisdiction is conferred upon the Federal court either in the district in which the labor organization maintains its principal officers or in any district in which its duly authorized officers or agents are engaged in promoting the interests of employee members.

In its applications for injunctions, both under section 10 (j) and section 10 (l) of the act, the Board through its general counsel has refused to permit the labor organizations involved to defend themselves and insisted that the only factual question is whether, in the case of section 10 (l), the Board's agent has reasonable cause to believe that the charge is true and that a complaint should issue and, in the case of section 10 (j), it is probable that the charges and complaint are supportable. In other words, not only has the doctrine of government-by-injunction been revived but it has been revived in such a form as to be as oppressive as possible in its impact upon unions.

We say "impact upon unions" advisedly for the injunctive provisions of the law have been invoked almost exclusively against unions. The Board's figures show that from August 22, 1947, until the present, the Board petitioned for injunctions in 43 cases. In all of these cases but two the injunctions were sought against unions. The injunctions obtained under this section have been addressed primarily to halting concerted activities for the maintenance of working standards.

The Board has petitioned for injunctions under its discretionary powers in 6 of these 43 cases and 4 of them have been against unions.

The general counsel of the Board, in his many speeches before employer groups throughout the country, almost invariably points out that it is not his intention to permit the discretionary injunctive provisions to be used except in the most unusual circumstances. Thus in a speech before the Indiana Personnel Association the general counsel stated:

"At this stage, however, I want to warn you that these discretionary injunctions are regarded in the office of the general counsel with the highest conceivable degree of respect. They represent one of the most powerful weapons existing under our system of government. It is our feeling that when Congress passed that authority to this agency, it intended that the power be used most sparingly and only in those cases where the principle involved was so glaring, or when the segment of the people involved was so large, that the acts sought to be enjoined could properly be regarded as endangering the public welfare in a substantial way. In short, it is not our idea that Congress ever intended this authority to be utilized in matters involving local disputes ordinarily to be handled in the regular course of the Board's proceedings. The Taft-Hartley Act is not a weapon placed in the hands of employers to abuse labor organizations. It is a medium for curtailing and restaining abuses of employers and employees and the public by labor organizations, and also, a medium for restraining abuses of employees and labor organizations by employers as well."

On another occasion he referred to the "emergency character" of these injunctive provisions. Yet the office of the general counsel has used these injunctive provisions in a most indiscriminate fashion. Thus, he sought an injunction in a local dispute involving some 40 members of the Meat Cutters' Union on the west coast. In another case, he sought and obtained a 10 (j) injunction in a dispute involving a trucker, Conway's Express, in up-State New York. And, as a part of comprehensive proceedings against the ITU, he sought an injunction against that union in a Federal court at Indianapolis. More recently he has sought an injunction to impose upon the mine workers the employers' theories of what constitutes collective bargaining within the meaning of the statute.

We assert that it is farcical for the office of the general counsel to insist upon the special circumstances under which injunctive relief may be afforded under section 10 (j) and then to proceed, as he has, to enjoin the ITU whose strike hardly involves that jeopardy to the safety and welfare of the public which the general counsel insists is the proper standard to be used in a 10 (j) situation.

In order to properly evaluate the viciousness of the injunction provisions the following considerations must be borne in mind:

(1) The office of the general counsel has exclusive control over the injunctive process. His decisions to take injunctive action are wholly unreviewable.

(2) It is the theory of the statute that injunctions are permitted only as a form of interim relief pending administrative disposition of the controversy. However, no one should be deceived into thinking that these injunctions endure for only a short period of time. The fact is that under the Board's injunctive provisions the controversy is settled on the employer's terms for a prolonged and indefinite period, long before the case is determined by the Board. This means that in every situation in which an employer can induce the general counsel to obtain an injunction he has, for all practical purposes, secured a legal short cut for the attainment of his ends. It would be a hardy union indeed which could resume a controversy with his employer after the long drawn-out process which might give rise to a Labor Board order in its favor. And bear in mind that the injunction is issued solely on the basis of probable cause. There is no consideration of the merits. The judge merely decides whether there is a reasonable ground for an administrative prejudgment with respect to the controversy.

The length of time during which an injunction may bind a labor organization and its members is illustrated by the case of Klassen & Hodgson. In that case an 8 (b) (4) complaint was issued and a petition for a 10 (1) injunction was filed. The injunction was granted by the Kansas City District Court on January 8, 1948. Subsequent to the entry of the injunctive order the Board's trial examiner sustained some of the charges but recommended dismissal of others. The circuit court of appeals nevertheless, on November 2, 1948, affirmed the injunctive order in its entirety (23 L. R. R. M. 2040).

But the appeals court recognized the injustice of the delay in the following terms:

"It is manifest that in making its injunction effective until the Board entered its final adjudication, the court acted in the belief that the Board would make its final adjudication with reasonable dispatch. Not only 2 months but approximately 10 months have passed, and the Board has not acted. If the court had understood or anticipated that such a delay would intervene, it might have withheld injunctive relief, or it might have conditioned its injunction differently.

"The judgment is affirmed and the cause is remanded with authority in the trial court to determine in the exercise of its sound judicial discretion whether in view of all the 10 existing facts, conditions, and circumstances the writ should be modified or terminated in advance of the final adjudication of the Board."

Thereafter, on February 24, 1949, the Board decided the case on its merits over a year after the injunction had been issued.

Under these circumstances it is completely misleading to contend that the injunction is merely a form of interim relief.

(3) While an injunction under the act remains outstanding long enough to destroy the exercise of vital rights, there is no effective means of appealing it. This is so because the injunction, by the terms of the statute, can remain outstanding only until there is administrative action. The administrative action usually is sufficiently delayed to cripple a labor organization but at the same time to cut off the right of an appeal to the Supreme Court.

(4) When an injunction is appealed to the circuit court of appeals, the standard of review which is applied by the court of appeals is far more restricted than in the case of an unfair labor practice involving an employer. The reviewing court will only inquire whether the decision of the district court to issue an injunction was "clearly erroneous."

(5) The injustice of the injunctive procedure is dramatically illustrated when we consider the relationship of the courts to the administrative process. In a number of cases, including the Klassen & Hodgson case previously referred to (see also *Evans* v. *United Electrical Workers* (22 L. R. R. M. 2459) ; *Le Baron* v. *Printing Specialties* (75 F. Supp. 678) ; *Cranefield* v. *Bricklayers Union* (78 F. Supp. 611)), a complaint against the union was dismissed in whole or in part by the trial examiner after an injunction had been issued. This has not induced the general counsel to seek to have the injunction dismissed or modified although it is the trial examiner who is charged with the interpretation of the statute. The fact that the union prevailed before the trial examiner in no way affects the injunction. In fact, in a case involving the International Typographical Union, the general counsel went into court to obtain an injunction to restrain acts which the trial examiner had already held not to be violative of the law. Indeed, the general counsel sought to hold the union in contempt on the basis of conduct declared to be legal by the trial examiner.

The converse is also true. The fact that the union prevailed before the court does not free it of the administrative proceeding. If a union should, in spite of the extreme narrowness of the issue, prevail in a court (see *Styles* v. *Local 74* (21 L. R. R. M. 2010) ; *Douds* v. *Metropolitan Federation* (75 F. Supp. 672) ; *Sperry* v. *Denver Building Council* (21 L. R. R. M. 2572) ; *Sperry* v. *Denver Building Council* (21 L. R. R. M. 2712)) the administrative proceeding nevertheless continues. In other words, a union must win both before the court and before the Board if it is free to exercise its rights.

(6) The injunctions which have been issued have been extremely broad in scope. This may be seen from such a case as *Le Baron* v. *Kern County Farm Union* (22 L. R. R. M. 2435), where a Federal judge, on petition of the general counsel, issued a sweeping injunction in an organizational strike against three unions, enjoining them "and each of them, their agents, servants and employees, and all persons acting in active concert or participation with them * * * from the commission and continuation of the acts and conduct set forth above, acts in furtherance of support thereof, and like or related acts or conduct, whose commission in the future is likely or may be fairly anticipated from respondents' acts and conduct in the past."

The above case is significant for another reason. The injunction was issued in that case to restrain activities by agricultural laborers on a huge mechanized farm whose employees were held not to be covered by the Taft-Hartley Act.

(7) It is obvious that the effect of 10 (j) and 10 (l) has been to lodge in antilabor courts the right, power and jurisdiction to determine labor controversies. This vital question concerning the interpretation of the statute is decided in the first instance, and conclusively for all practical purposes, not by the administrative agency charged with the interpretation of the statute but by courts.

(8) When we consider the validity of the injunctive sanction we must remember that where 10 (l) injunctions are appropriate the statute also creates a right on the part of "whoever shall be injured" to sue labor organizations in Federal and State courts for engaging in the same conduct.

(9) In connection with the revival of the injunctive evil in circumstances where the Federal Government has been the petitioner, it is important to bring to the attention of the committee that the act has been responsible for widespread issuance of injunctions on both the State and the Federal level at the instance of private employers. We are aware that the legislative history of the act makes it clear that it was not the intention to give to private employers new grounds for obtaining injunctions, but the plain fact is that both directly and indirectly

the Taft-Hartley Act has produced an ever-increasing number of injunctions obtained at the instance of private employers. See *Fulford* v. *Smith Cabinet Mfg. Co.* ((Ind. App. Ct.) 16 L. W. 2465); *Simons* v. *Retail Clerks Union, Local 77* (16 L. W. 251); *Alabama Cartage Co.* v. *International Brotherhood of Teamsters* ((Alabama Sup. Ct.), March 24, 1948); *Scranton Broadcasters, Inc.* v. *A. C. A* (November 7, 1947); *Terminal Railroad Association* v. *I. A. M.*, (Ill. App. Ct.). January 26, 1948; *J. Fred Schmidt Packing Co.* v. *Local 346* ((Court of Common Pleas, Franklin County, Ohio), December 17, 1947); *Dixie Motor Coach* v. *Amalgamated* ((D. C. Ark.), 21 L. R. R. M. 2193).

The injunctive provisions of the Taft-Hartley Act have been justified on the ground that "after all" it is only the Government and not the private employer who is permitted to obtain the injunction. As I have already indicated above, in many State courts injunctions have been issued on Taft-Hartley grounds at the instance of the employer. But more important is the fact that the injunctive evil is not alleviated but is intensified when the injunction is obtained at the instance of the Government.

The entire history of the injunctive evil shows that the intervention of the Government made of the injunction an even more oppressive weapon. The three leading injunction cases which led to the Norris-LaGuardia Act were all cases in which the Government sought the injunction. See *In re Debs* (158 U. S. 564); *U. S.* v. *Frank J. Hayes et al.* (D. Ind. November term, 1919) Equity 312, unreported); *U. S.* v. *Railway Employees Department* (283 Fed. 479 (N. D. Ill.)).

The movement to eliminate injunctions as a weapon in industrial conflict was not merely a movement to deprive private employers of that weapon. So to view it would be to ignore the entire character of the struggle against injunctions and would be to disregard some of the most bitter pages of our labor history.

(10) Finally, we cannot measure the extent of the injunctive evil merely by referring to the fact that 43 injunctions have been petitioned for. The Board's records show that over 300 charges of so-called secondary boycotts have been filed with the general counsel. In large numbers of these cases employers were compelled to halt or refrain from the complained of activities upon the threat that an injunction would issue.

The Taft-Hartley Act thus revives injunctions in their most oppressive form.

D. RESPONSIBILITY OF UNIONS AND OF EMPLOYERS UNDER THE TAFT-HARTLEY ACT

In considering the antilabor impact and scope of the Taft-Hartley Act we cannot confine ourselves merely to a consideration of the manner in which the antiunion sections of that law have been interpreted. It is important in addition to take under consideration parallel interpretations of the Taft-Hartley Act dealing with problems of agency and the responsibility of unions for alleged illegal acts.

This problem has an importance which goes beyond the problem of whether unions should be charged with responsibility for unfair labor practices which they have not committed. The Board resorts to the same theory of agency in seeking injunctions against unions as it invokes in its unfair labor practice proceedings. Thus on the basis of acts for which the union may not be fairly held responsible, the general counsel is enabled to obtain an injunction against the union itself. In other words, these expanded theories of agency can and do serve a strike-breaking purpose by permitting injunctions to be directed against the union itself.

Finally, it is important to bear in mind that the Board's theories of agency may well lay the basis for damage suits against the union under section 301 of the act.

Before the passage of the act unions were protected against indiscriminate imputation of liability by section 6 of the Norris-LaGuardia Act which prevented the imposition of liability except upon clear proof of actual participation in or actual authorization of the acts involved or after ratification of such acts where there was actual knowledge.

The need for the Norris-LaGuardia Act arose out of the practice of Federal courts to impose as a theory of responsibility in labor cases the "illegal purpose" doctrine which applied the law of conspiracy to strikes and other union activities—that is, the union and each of its members were held responsible or liable for each and every act of their associates on strike. See statement by Senator Walsh, 75 Congressional Record 4693; Frankfurter & Greene, The Labor Injunction, pages 61, 177–178.

The Senate report dealing with this provision of the Norris-LaGuardia Act (S. Rept. No. 163, 72d Cong., 1st sess., pp. 19, 20, 21) points out that "it has often occurred that employers themselves have secured the services of detectives, who, under the guise of labor men, have gained admission into labor unions. When this happens these detectives are usually doing everything within their power to incite employees who are on strike to commit acts of violence, and such detectives, contrary to the definite instructions of labor-union leaders, sometimes commit unlawful acts for the considered and only purpose of laying the foundation for injunctive process, for bringing discredit upon the union, and making its officers and members liable for damages."

The House report likewise points out (H. Rept. No. 669, 72d Cong., 1st sess., p. 9):

"This section speaks for itself and it is desirable because both individuals and associations have been held liable for unlawful acts of overzealous members which acts were never authorized nor ratified by the officer or association and were entirely without the scope of any authority permitted by the officer or association of the offending member."

Apart from the protections of the Norris-LaGuardia Act, it is accepted legal doctrine in this field that in order to hold a union liable for a wrongful act of a member acting on its behalf it must be shown that either the union authorized or ratified the wrongful act or the physical movements of the member were subject to the control of the union.

It was presumably the purpose of the agency provision of the Taft-Hartley Act to impose common-law rules of agency upon both employers and unions and to deprive unions of the important protections of the Norris-LaGuardia Act. We believe that this amendment of the act is unsound, unfair to unions, and unrealistic. (See Cox, Some Aspects of the Labor-Management Relations Act, 1947, 51 Harv. Law Rev. 1, at 12–14.)

Even the limited experience up to this point with the Taft-Hartley Act demonstrates quite clearly that al of the old abuses in connection with union responsibility have been reintroduced into the law in a more dangerous form than ever before. It is accurate to say that the Taft-Hartley Act, as it has been construed, makes a labor organization responsible for the acts of its members under almost all circumstances. Thus, in the Mine Workers injunction case, decided April 19, 1948, Judge Goldsborough announced what he termed a novel principle of liability that "a union that is functioning must be held responsible for the mass action of its members." In short, under Judge Goldsborough's ruling all forms of concerted activities are attributable to the union whether authorized or not; whether repudiated by the union or not, and whether ratified by the union or not. The union becomes an insurer and must assume responsibility for every act which, in the opinion of the Federal judge, constitutes the "mass action of its members."

This doctrine is, however, not significantly broader than that adopted by the Board's general counsel and some of its trial examiners. In the Colonial Hardwood case (No. 5–CB–4), a trial examiner ruled that all pickets, whether union members or not, are agents of the union for purposes of imposing liability under the act. The trial examiner stated, "sanctioning of a strike by a labor organization's agent, with apparent though not actual authority to do so, also makes the participants in strike activities (such as picketing) the subagents of the labor organization in such activities. For, the actual or apparent sponsorship of a strike by a labor organization manifests an invitation to all the employees, whether union members or not, to engage in such activities supporting the strike as the labor organization establishes or directs through its actual or apparent agents. Participation by the employees in these activities constitutes an acceptance of the invitation with the result that, upon the normal consensual principles common to the law of agency and contract, they thereby become the subagents of the labor organization in the particular activities."

It was also ruled by the trial examiner that an international representative of the union through his actual or apparent authority can in his activities away from the picket line create "subagents" whose wrongful acts may bind the union.

It is quite apparent that these rulings completely revive the doctrine that a strike is a conspiracy which may furnish the basis for imputing liability regardless of authorization and ratification. Not all trial examiners have accepted the general counsel's dragnet theories of agency, theories which would impose practically absolute liability upon labor organizations and which would turn the clock back to the most repressive era in our labor history.

In the Sunset Line & Twine case, a trial examiner in dismissing the complaint thus analyzed and disposed of the general counsel's views with respect to union responsibility under the act:

"As to the responsibility of the respondent unions, counsel's stated position in summary is as follows: The unions must be held accountable, as principals, for the acts of their agents, and the term 'agents' shall be construed to include (1) officers of the local and of the international, and (2) pickets. As to his definition of 'pickets,' counsel admits that 'we will have to indulge in presumptions,' but asks that it cover (1) all persons carrying out functions normally associated with peaceful picketing, such as patrolling entrances to the plant regularly, carrying placards persuading employees and others not to enter the plant, 'or even * * * yelling "scab" at strike breakers'; (2) all striking employees of the plant in question when near plant property; and (3) fellow members of the union conducting the strike, even if not then or ever employees of the company involved, when near plant property at times when employees are entering or leaving the plant—unless 'the union * * * denies that such persons are their pickets.' Finally, counsel maintains, in effect, that the respondent unions must also be held accountable for the conduct of any persons who are on the street while picketing is in progress, if a union official is also present who (1) incites them to engage in activities directed against strike breakers, or (2) not having incited such persons, nevertheless takes no action to disavow responsibility for such conduct.

"It appears to the examiner that the general counsel, in urging the foregoing 'legal theory' is indulging in some presumptions which, if found valid, would not only negate section 13 of the act but also would reduce to shambles the long-established law of agency. What group of employees would have the temerity to strike, for any reason, if officers of their local and national unions might be held in contempt of a court decree because a threat was uttered or violence committed by anyone on a public street where pickets were peaceably pacing? And to insist, as counsel apparently does in this case, that the burden is upon the union to prove that it does not condone the acts of unidentified persons (who may be authorized pickets or agents provocateurs) is to do violence to a well-recognized principle of agency. Tiffany on Agency states: '* * * it is for the person who relies upon a ratification to show that all material facts were made known to the principal or else that the circumstances were such as to manifest an intention on his part to ratify at all events.' And in the Labor Injunction, by Frankfurter and Green: '* * * the plaintiff has the burden of proving that all individual defendants are liable on ordinary agency principles.'

"Under the circumstances of the case at hand, ascribing to the union knowledge of an act by an unidentified person in a crowd of 300 not of its own convening, on a public street, merely because a union official happened to be present somewhere in the throng, and therefrom to infer union ratification of the conduct, in the absence of immediate disavowal, is to stretch with Procrustean torture a short inference to fit a long theory.

"It would appear that the general counsel is reasoning in reverse from the 'omnibus' injunction issued in the Debs case, in 1895, where 'all other persons whomsoever' were enjoined, and is endeavoring to attribute to certain local and national labor organizations the acts of 'all other persons whomsoever.'"

The general counsel's theory of responsibility which was rejected by the trial examiner was very hospitably received by a majority of the Board. A majority of the Board found that the international union involved in the case was responsible for claimed acts of coercion and restraint committed by various individuals during the strike. 22 L. R. R. M. 1001. Little more appears in the record as a basis for holding the international responsible except the fact of affiliation with the local involved in the dispute. However, the Board improvised a new theory of responsibility. It held that the international was responsible not on the basis of proof but on the basis of the pleadings and on the basis of the fact that the regional director of the international was present at a picketing demonstration where violence was said to have occurred and did nothing about it. There was no proof that the representative participated in the claimed violence or that he in any way guided the activities of the strikers. The Board held the international union responsible for all of the acts committed by officers, pickets, strikers, and others, "although the record does not show the precise character of the relationship between the respondents," because of the "critical fact that the international was a cosponsor of the strike in the course of which the lawless acts were committed."

This case represents a complete revival of the doctrine under which labor organizations were held responsible for the conduct of individuals who in no way were authorized to represent the unions.

In the Perry Norvell case, one trial examiner tersely put it, in commenting upon the general counsel's theories of union responsibility, "counsel's theory as stated here amounts to the concept of a strike as a conspiracy, a concept which has long been obsolete."

In its consideration of the Perry Norvell case the Board found a labor organization liable on the basis of the acts of its members without any evidence of authority or ratification. Even the common-law rules of agency were not met and the Board indicated there, as in the Sunset Line & Twine case, that having found (on the basis of no evidence at all) certain individuals to be agents of a labor organization it was prepared to hold the organization responsible for the acts of those "agents" even though the labor organization may have expressly forbidden them (22 L. R. R. M. 1061).

In the two decisions in which the Board has dealt with the problems of agency and responsibility it has made the following clear:

(*a*) That it is prepared to find agency on the basis of mere membership in a union.

(*b*) That is is prepared to impute to the union responsibility for all acts of the agent even for those which the union has forbidden, and

(*c*) That it is prepared to conclude from little more than the fact of affiliation not only that the local union is responsible for the acts of the "agent" but even that the international union is responsible.

It is obvious that under the standards of agency adopted under the act there is virtually no way in which a union in a shifting and complex strike situation can protect itself from the imputation of liability for completely unauthorized acts. The door is once more completely open for the company spy and provocateur to expose a union to liability for unauthorized acts.

It is also important to bring to the committee's attention the fact that not only has the act produced outrageous conceptions of union liability but that the problem of establishing liability has involved extensive and unnecessary litigation. We think that an agency of the Federal Government charged with an important task of preserving industrial peace should have more important things to do with its time and money than to conduct a trial to determine whether a union representative is responsible for some episode which can be far more profitably investigated by the local authorities.

In connection with the issue of responsibility, as in other sections of the act, we find a significant one-sidedness. Before the passage of the Taft-Hartley Act the Board had carefully evolved rules to determine employer responsibility. These rules rest not upon common-law rules of agency but upon industrial relations. The Board recognized that under modern conditions of industry the very status of a supervisor is such as to convey management wishes to the men. The Supreme Court upheld the Board's theories of employer responsibility for the acts of supervision in many cases.

The Taft-Hartley Act, just as it expanded union responsibility, has curtailed employer responsibility so as to make it easy for him to violate the rights of his employees. Under the act as it is now written the responsibility of the employer for the acts of the supervisor—as that term is defined in the act—depends upon technical questions of agency and not upon industrial realities. It was pointed out when the Taft-Hartley Act was passed that this section wipes out 12 years of administrative and judicial interpretation and creates a device for destroying unions through the evasion of employer responsibility.

The operation of the Taft-Hartley Act with reference to employer responsibility is seen in such a case as *Matter of Larsen Co.* (22 L. R. R. M. 1210), where the Board reversed a trial examiner's ruling that an employer was responsible for the conduct of a field agent and a foreman. The Board concluded "under the circumstances we do not find that the conduct of either of these employees was, merely by reason of his status, attributable to the respondent nor, upon the basis of the entire record, are we persuaded that the respondent authorized or ratified the above-described conduct of Klint and Williams. Accordingly we are unable to agree with the trial examiner that the record warrants a finding that the respondent engaged in surveillance of a union meeting and thereby violated the act."

Contrast this with the ease with which the Board and trial examiners find that even employees are agents of labor organizations.

A second means which the Board has opened to employers to escape responsibility but has apparently denied unions is the disavowal of the conduct involved. The Board has indicated on the issue of union responsibility that where an "agent" acts within the area of his authority disavowal does not exculpate the union. However, contrast this with such a case as the Kinsman Transit case (22 L. R. R. M. 1165), where the chief engineer on a vessel, 10 days before an election was held, addressed the employees and told his audience that one of the two contending labor organizations involved was the better organization, could get more wages and a more favorable contract, that the company had less trouble with it and that the men might lost their jobs if they voted for another organization. In addition, several employees were questioned by this official before the election as to how they intended to vote. The union against which this campaign was directed pointed out that such conduct on a vessel by a superior officer is far more coercive in effect than when engaged in by an ordinary foreman or supervisor. But, because the employer had sent a formal letter of disavowal, the Board refused to set aside the election. This decision is particularly striking in view of one further circumstance, namely, that 4 hours prior to the election an outstanding adherent of the union which was opposed by the employer was discharged. Another instance of the technique of the strategic disavowal is Matter of Cutter Laboratories (23 L. R. R. M. 1445). In this case, on the morning of a decertification election, there was distributed to the employees in the plant through the regular company mail system a letter urging a "No" vote. The record shows that a supervisor participated in the distribution of the letters. The employer posted a notice on the bulletin board 15 or 20 minutes before the balloting began disavowing the supervisor's conduct. Even though it was obvious that many of the employees might not have seen the notice the Board refused to set aside the election.

The expansion of concepts of union responsibility and the contraction of employer responsibility are aspects of the statute which were injected into the law with the conviction that it would make many of the provisions even more coercive than they appeared to be. It was to sections of this type that Congressman Hartley had reference when he said that "there is more in this law than meets the eyes."

E. SECONDARY BOYCOTT

The elaborate and sweeping prohibitions on secondary boycott and sympathy strikes contained within the act share with the sections on union security the characteristic that they turn the clock back to a much earlier era in American labor history and they seek to outlaw rights and protections which have been long established. Prior to the passage of the Clayton Act in 1914, the antitrust laws were used to impose injunctive and criminal penalties upon boycotts.

A national protest led to the enactment in 1914 of the Clayton Act which declared that "labor of a human being is not a commodity or article of commerce. It is the purpose of this declaration to prohibit the application of antitrust laws to secondary boycott."

The courts, however, persisted in issuing injunctions against secondary boycott. Liberal judges, such as Justices Brandeis and Holmes dissented in Supreme Court cases on the ground that these activities were legitimate and should be protected. What Justice Brandeis pointed out in 1921 is even truer today:

"When centralization in the control of business brought its corresponding centralization of workingmen, new facts had to be appraised. A single employer might * * * threaten the standing of the whole organization and the standards of its members; and when he did so, the union in order to protect itself, would naturally refuse to work on its products wherever found."

In the Bedford Cut Stone case Justices Brandeis and Holmes held: "Members of the Journeymen Stone Cutters' Association could not work anywhere on stone which had been cut at the quarries by 'men working in opposition' to it, without aiding and abetting the enemy. Observance by each member of the provision of their constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and his fellows. If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman law and the Clayton Act an instrument for imposing restraints upon labor which reminds one of involuntary servitude."

In the Duplex Printing Press case they pointed out: "May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it * * *. Courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself * * *. It is lawful for all members of a union by whomever employed to refuse to handle materials whose production weakens the union."

In 1932 the Norris-LaGuardia Act was passed which outlawed the use of injunctions in labor disputes and which made it clear that such disputes were protected against injunctions "regardless of whether disputants stand in the proximate relation of employer and employee." It was a specific purpose of the Norris-LaGuardia Act to protect secondary boycotts against interference by the courts and to give effect to the views of Brandeis and Holmes.

The Supreme Court has, in case after case, recognized that it is legitimate and necessary for labor organizations to cooperate in order to eliminate threats to their wage standards arising anywhere within an industry.

In the Apex case the Court declared: "An elimination of price competition based on differences in labor standards is the objective of any national labor organization." In the Thornhill case the Court stated: "The health of the present generation and of those as yet unborn may depend on these matters and the practices in a single factory may have economic repercussions upon a whole region." And in the Swing case, the entire Court agreed that "Interdependence of economic interests of all engaged in the same industry has become a commonplace."

As President Truman made clear in his message of 1947:

"Not all secondary boycotts are unjustified. We must judge them on the basis of their objectives. For example, boycotts intended to protect wage rates and working conditions should be distinguished from those in furtherance of jurisdictional disputes. The structure of industry sometimes requires unions, as a matter of self-preservation, to extend the conflict beyond a particular employer. There should be no blanket prohibition against boycotts. The appropriate goal is legislation which prohibits secondary boycotts in pursuance of unjustifiable objectives, but does not impair the union's right to preserve its own existence and the gains made in genuine collective bargaining."

The Taft-Hartley Act provision dealing with boycott and illegal strike outlaws every conceivable type of sympathetic strike or boycott. Even where it is obvious that employees have real common interests to protect the act outlaws common action and it outlaws such action even against employers who are cooperating in strikebreaking.

Under the provisions of the law employees are required to work against their will and to subsidize with their labor the attempts of other employers to break down the standards in their industry. Even in the situation in which the secondary employer is organized by the same union which is on strike against the primary employer the union members in the second plant are compelled to act as strikebreakers under this law against a strike conducted by their own union. One of the really incredible ways in which this law operates is to direct its sanctions against workers maintaining a picket line in a plant against which they are striking when such picket line is respected by the employees of another employer. If the Labor Board can establish that a purpose, however remote, of the picket line was to turn away employees of other employers the act applies. See, for example, *Matter of Klassen and Hodgson*, Case No. 17–CC–1.

In *Matter of Ryan Construction Company*, Case No. 35–CC–7, a union was charged with unfair labor practices under section 8 (b) (4) (A) of the act because the employees of a contractor (Ryan) refused te cross a picket line which had been set up by the respondent union in a strike against the Bucyrus-Erie Co. The office of the general counsel maintained that the respondents violated the boycott provisions of the act because they induced the contractor's employees to "concertedly refuse to perform services for Ryan, in order to compel Ryan to cease doing business with Bucyrus" and obtained an injunction on this theory of the law.

The pretext for the Taft-Hartley boycott provisions was the claimed need to protect employers against interunion quarrels and jurisdictional disputes. However, almost every one of the boycott cases which has been reported involves concerted activity against nonunion employers and for the protection of living standards.

The scope of the secondary boycott provisions of the act is unrivaled by even the most restrictive State laws. To outlaw, as this statute does, a union's refusal to process struck work or to let its members work with nonunion men or its publication that a particular job is unfair betrays a fundamental contempt for the rights of working men and women and a complete disregard of the realities of industrial life. These broad provisions of the law are implemented by a requirement of mandatory injunctions which are obtained at the instance of the general counsel and by a section (sec. 303), making the offending labor organization liable in damages at the instance of "whoever shall be injured in his business or property."

The provisions here discussed are strikebreaking provisions of unprecedented savagery. They require the Government to obtain an injunction immediately forcing the employees to abandon strikes or picketing and subjecting the union to action in Federal court by anyone who might even be slightly discommoded by the prohibited acts. The Taft-Hartley Act was a colossal mistake. But, in the provisions dealing with secondary boycotts and related matters even the sponsors of the Taft-Hartley Act overreached themselves.

The evils of this portion of the law are dramatically illuminated by the recent decision of the Board in the Klassen and Hodgsen case, No. 17–CC–1.

This case involves a so-called secondary boycott. In this case a building contractor cooperated with a manufacturer of prefabricated houses who refused to recognize and deal with the carpenters' union. The carpenters picketed the contractor who had entered into relations with the unfair employer. It also placed the contractor's name on an "unfair" or "we do not patronize" list. In addition, as a result of its activities, a union carpenter left the employment of the contractor.

The Board reversed the major findings of the trial examiner and held, first, that the activity involved is an unfair labor practice within the meaning of the act, and, second, that peaceful picketing and the circulation of "we do not patronize" lists is not protected by the free-speech provisions of the act, and, finally, that even though a single employee left the employment of the contractor nevertheless the union would be held responsible for inducing "concerted" action.

This case illustrates in a shocking fashion the evils of the Taft-Hartley Act. In this case even before a complaint issued pursuant to the requirements of the Taft-Hartley Act, the general counsel's office obtained an injunction restraining the activities which the Board has held to be an unfair labor practice This injunction, which is exclusively directed against unions and which is mandatory under the act, has been in effect for over a year.

This decision and the injunction which was issued in anticipation of it, accomplshes the following results:

(1) It announces that under the Taft-Hartley Act an employer who cooperates fith another to degrade established conditions of employment and thus threatens the working conditions of an entire area is completely immune under the Taft-Hartley Act. Under this decision workers in the building trades are forced to serve an unfair employer even when it means the destruction of their own standards achieved only after years of bitter struggle.

(2) This decision means that even a product boycott is outlawed by the act. In this case what was involved was a refusal by workers to handle a product which had been fabricated under unfair conditions. Here the act shelters not a so-called neutral party to a dispute but one who processes the product of an unfair employer with the inevitable result of destroying a wage scale.

(3) The Board's decision substantially curtails the right of peaceful picketing. Although it has long been established that the right of peaceful picketing is protected by the right of free speech contained in the Constitution, the Board has announced in this decision that picketing, even when it is peaceful, is not protected as free speech. The Board's decision completely destroys a protection which is indispensable to workers to present their side in an industrial dispute. Contrast this denial to workers of the right of free speech with the act's and the Board's extraordinary tenderness for the free speech of employers. The employers have used the act as a means for making a shambles of free industrial elections. Despite the most outrageous forms of interventions by employers at elections, the Board almost invariably holds their conduct to be protected by free speech. Yet it now announces that unions and their members may not hope for the same treatment.

(4) Under this decision and under the Taft-Hartley Act, which it interprets, even a request in writing by a union urging others not to patronize an unfair employer is not protected as a form of free speech. It is not merely that picketing is outlawed as a form of speech but other means of communication as well, traditionally sheltered by the free-speech protections, are now barred.

This decision makes it clear that the infamous illegal-purpose doctrine is revived under the Taft-Hartley Act. Under this doctrine conduct, no matter how peaceful, may be enjoined and outlawed by the simple device of a statutory or judicial pronouncement that while the activity itself may be harmless it nevertheless must be condemned because of its claimed purpose.

(5) Even in the days when some forms of boycott were outlawed, it was nevertheless consistently held that if in addition to a boycotting purpose a union sought as well to organize the employer against whom the secondary boycott was directed, such activity could not be enjoined. In this case the employees also sought to organize the contractor handling the unfair product. However, the Board held that the act requires that the conduct be enjoined. In short, this decision makes clear that the act is far more antilabor than any previous formulation of the law.

(6) The decision holds that even an effort to induce a single employee to leave an establishment is illegal as a form of concerted activity. The Board reaches this conclusion because it insists that the total purpose of the union was to induce concerted action. The Board's strange willingness to stretch in this fashion the scope of the act even where it means the denial to unions of basic rights, again contrasts with its tenderness toward employers and its refusal under similar circumstances to consider employer conduct in the light of total purpose.

(7) Finally, this decision involves the application of Federal power to a local construction enterprise. Here, too, we see an instance of the short-sighted and one-sided application of the Taft-Hartley Act. This act was sponsored by those who professed to be great believers in States' rights. States' rights arguments, however, are used only to defeat social-welfare legislation, such as health insurance, but never to prevent the Federal invasion of basic rights of workers no matter how local or intrastate in character the industry involved. It is only when a union seeks an election that the Board suddenly discovers that because of the local character of the industry "it would not effectuate the policies of the act" to entertain the petition.

This decision gives new life to all of those cases which constitute rejected symbols of an antilabor era. I refer to cases such as *Duplex* v. *Deering*, the Bedford Cut Stone case, and *Gompers* v. *Buck Stove & Range*. It does more than that, however. It also invalidates basic decisions in connection with the right to picket which a more enlightened Supreme Court has in recent years enunciated. I refer to such cases as *Wohl* v. *Bakery Drivers*, and *Thornhill* v. *Alabama*. The Board's decision makes it clear that the threats of the Taft-Hartley Act to labor's rights are profound and basic.

F. THE FILING REQUIREMENTS

The CIO is convinced that the filing requirements and in particular the requirements of section 9 (h) dealing with affidavits relating to political beliefs of union leaders are unconstitutional.

Section 9 (h) directs the Board to withhold from a noncomplying union the remedies otherwise available to it under the act for the prevention and redress of unfair labor practices by employers. As to noncomplying unions, employers are once more free to use the repressive practices by which they broke unions and prevented unionization in the days before the Wagner Act was passed. And there can be no question that employers have resorted to these practices on a widespread scale.

Literally, section 9 (h) only prohibits the Board from acting upon charges filed by noncomplying unions, leaving it free to consider charges by individual members of such unions. However, even the Wagner Act gave the Board complete discretion, not subject to judicial review, as to whether to act on charges. By a Taft-Hartley amendment (sec. 3 (d)), that discretion was transferred from the Board to the general counsel, whose dismissal of charges is now not reviewable even by the Board.

It is the general counsel's normal practice to entertain charges filed by individuals alleging discrimination, and presumably coercion and restraint, but not those alleging company unionism or refusal to bargain. However, even as to charges of the former types, the general counsel, sometimes, if the complainant's union is not in compliance, arbitrarily refuses to issue a complaint. In such cases the ground assigned for dismissal is that the members were acting for the union, although it is the individual who is the primary victim of an unfair labor practice of this type. (See e. g., *Matter of Times Square Store Corp.* (79 N. L. R. B. No. 50)).

Moreover, only the union can complain of an employer's refusal to bargain with it. Noncomplying unions which have for years been the certified bargaining representatives in particular plants, are thus now deprived of all legal remedy against the employers' refusal to bargain with them. This effect of section 9 (h) is strikingly illustrated by the cases of *United Steelworkers of America, CIO* v. *N. L. R. B.* (No. 431), certiorari granted; and *United Steelworkers of America* v. *N. L. R. B.*, now pending decision in the court of appeals for the first circuit. In each of those cases the union had for some years been the certified-bargaining representative in the particular plant involved; the employer refused to bargain about certain subjects; the union filed a charge with the Board; and, after a hearing, the trial examiner issued a report recommending that the employer be ordered to bargain with the union on the issues in question. Each case stood in this posture when the Taft-Hartley Act was passed, and in each case the Board then conditioned its order upon compliance by the union with the new section 9 (h).

Employers are not forbidden to recognize or bargain with noncomplying unions; but, if the employer refuses, the union has no legal remedy under the act. The result is that the employer, and not the Government, decides whether the sanction of nonrecognition is to be invoked against a noncomplying union. For the Government to discriminate against unions on account of the political and economic beliefs of their officers is bad enough. For it to delegate such power to employers is worse.

Whether a particular employer will decide to withdraw recognition from a noncomplying union will depend on several considerations. One is whether he can effectively alienate the support of the union members and others in the community from the union on the ground that the union leaders hold proscribed beliefs. Attacks by employers upon unions and unionism for patriotic reasons are, of course, not a novel phenomenon in the field of labor relations. The recent longshoremen's strike on the west coast took place because the employers were induced by 9 (h) to believe that they could successfully refuse to deal with the existing leadership of the union. See Fortune, January 1949, p. 153. A second factor which will enter into the employer's consideration is whether the economic strength of the union is so great as to make it impracticable for him to withdraw recognition. For while a union has no legal remedy, it still has the right to strike or invoke other economic sanctions not prohibited by the Taft-Hartley Act.

Yet a third factor which may induce an employer to withdraw recognition from a noncomplying union is the presence in the field of a competing union which is more acceptable to the employer. The Board conducts its representation elections in such a fashion as to virtually insure the victory of a complying union. Thus, an employer can legally use noncompliance with section 9 (h) indirectly to influence its employees to reject the noncomplying union and select its competitor. That, of course, is just what an employer is forbidden to do directly by section 8 (a) (2).

The consequences of noncompliance with 9 (h) go far beyond the loss of legal remedies under the act. Unions which are not in compliance with section 9 (h) are prohibited from entering into a union-shop contract with an employer. That is effected in this way: The act, by sections 7, 8 (a) (3), and 8 (b) (1), prohibits the closed shop and permits the union shop only after the union has won a special type of election provided for in section 9 (e) (1) of the act. And section 9 (h) provides that no such election shall be conducted at the behest of a noncomplying union.

Not only the union shop, but the closed shop, was legal long before the Wagner Act. Indeed, this provision puts noncomplying unions under a restraint to which unions were never before subjected by Federal legislation. A closed or union shop is the goal of every union. To prohibit the union shop to noncomplying unions, while permitting it to complying unions, is to strike noncomplying unions a deadly blow.

Section 9 (h) results in the exclusion of noncomplying unions from participation in Board elections, and the holding of these elections under rules which virtually insure the success of competing complying unions.

In a recent proceeding (*Matter of Woodmark Industries, Inc.* (80 N. L. R. B. No. 171)) the Board certified a complying union which received only 15 votes out of a total of 43 cast. Of the remaining votes, 11 were for no union and 17 were write-in votes for a noncomplying union which had theretofore been the bargaining representative. The Board voided the 17 write-in votes and certified the complying union, which was the only union on the official ballot, on the ground that it won a majority of the 26 valid ballots cast.

The write-in votes were not even given the status of votes against the complying union. If they were, the Board declared, the noncomplying union would reap "an indirect benefit * * * (from a Board election) as the result of having demonstrated its strength in such election and having secured the defeat of a complying labor organization properly participating therein."

This election strikingly resembles those held in the people's democracies of eastern Europe. Joyfully accepting the mandate of the Eightieth Congress to stamp out political unorthodoxy in unions, the Board reduces to a mockery the constitutional rights of workers to form and join labor organizations of their own choosing.

Section 9 (h) and the financial filing requirements have encouraged employers to engage in grossly unfair labor practices against nonfiling unions and their members. In addition, they have made a mockery of free elections.

Moreover, section 9 (h) clearly invades freedom of thought and speech as well as freedom of assembly. The section is an insult to the labor movement because it seeks to impose improper pressures on workers in their choice of leaders.

The filing requirements have served to endow the Board and the general counsel with extraordinary powers of censorship over the right of a noncomplying union to exist and over the basic structure even of complying unions.

This is evident from such cases as *Matter of Lane Wells* (22 L. R. R. M. 1114, 1362), and *Matter of Prudential Insurance Company* (case No. 2-RM-70). In these cases, although the international union had complied with the filing requirements, the Board has insisted that local unions be required to file even if they play no part at all in collective bargaining and are not the bargaining agency but are merely in the picture. Unquestionably the Board is using the filing requirements as a means of forcing changes in the internal relations of unions.

In the Prudential case the Board announced the amazing doctrine that the CIO union there involved would not be permitted to participate in the election unless each local which contained employees of the employer as well as the international complied with the filing requirements. In that case it was perfectly clear that the local unions had nothing to do with collective bargaining. The decision imposed almost insuperable administrative problems upon the union involved. The inconveniences resulting from a doctrine that every local union which has members who are employees of the employer must file financial returns as a condition precedent to an election are enormous.

Because the filing requirements are a condition to obtaining elections and bargaining rights, they have imposed enormous delays upon unions' efforts in these directions. Where a labor organization has thousands of locals whose activities are not guided by lawyers endless delays result before the technical requirements of the law are fully satisfied.

The requirements relating to the filing of financial returns, I believe, are superfluous. Labor organizations are now under a duty to file, and there has been no showing that labor unions are financially irresponsible or remiss in their financial obligations to their members. The present financial filing requirements are so complex and so technical that many unions report that a great deal of staff work is required to maintain current compliance with these requirements. A number of international unions report that it has become necessary to assign a staff representative to assist local unions in preparing financial statements for filing which constitutes a tremendous expense for the unions. Most of the local union secretaries are plant employees and find it difficult to prepare these statements.

Finally, in connection with the filing requirements it should be pointed out that not only do labor organizations now comply with the filing requirements for tax purposes, but all CIO unions issue to their members complete financial statements in accordance with their constitutions and bylaws.

Like every antilabor development on the Federal level these interpretations of the statute by the Board have found an exaggerated counterpart on the State level.

In *Simmons* v. *Local 770, Retail Clerks* (21 L. R. R. M. 2685), a California court ruled that a union which has not complied with the Taft-Hartley Act filing requirements is an outlaw and may be enjoined from picketing an employer. The court ruled that such a union which had not submitted to the filing requirements has no legal standing to represent or bargain for employees of any business over which the Board has jurisdiction. This ruling is, of course, contrary to the law since there is nothing in the Taft-Hartley Act which justifies an employer in refusing to deal with a nonfiling union representing a majority of his employees. It is significant, moreover, that the very court which issued this decision permitting an employer to obtain an injunction against a strike or picketing by a nonfiling union on the ground that it is an outlaw under the Taft-Hartley Act had previously held that it has no power whatsoever to enjoin the alleged commission of unfair labor practices under the Taft-Hartley Act. In other words, the Court saw fit to rely upon the Taft-Hartley Act in order to discriminate against the exercise of rights by a nonfiling union.

A second case in which the Taft-Hartley Act was used in a State court for strikebreaking purposes involved the Scranton Broadcasters and the American Communications Association (21 L. R. R. M. 2024), in a strike which was forced by an employer through the discharge of a union leader. A Pennsylvania judge issued an injunction against the striking union on the ground, among others, that a union which had not complied with the Taft-Hartley Act could be enjoined from striking for that reason alone. In this, as in the great majority of cases in which employers have obtained injunctions, the employer involved manifestly was determined to escape from a bargaining obligation.

Another case in which a State court permitted an employer to flout his public responsibilities and his bargaining obligation involved the Smith Cabinet Company and the United Furniture Workers, CIO (Ind.) (77 N. E. (2d) 755). In that case the employer refused to recognize a majority union which had failed to qualify for certification under section 9 (h), a Labor Board election having been held before the effective date of the Taft-Hartley Act. The employer's refusal to bargain precipitated a strike and a request by the employer for injunctive relief against picketing. The union urged that the employer be barred from obtaining injunctive relief on the basis of a State statute banning such relief to employers failing to recognize the obligations imposed by law. An Indiana appellate court held on Mahch 10, 1948, that an employee is free to refuse to bargain with a nonfiling union, although it admitted that under the Wagner Act the same employer would have been required to recognize the union as the bargaining agent in the absence of certification.

These decisions are typical of a growing number of decisions in which employers are using section 9 (h) of the act to defeat the statutory purpose of promoting collective bargaining and to obtain a repudiation of established rules with respect to the status of collective-bargaining agencies.

G. RESTRICTIONS ON THE RIGHT TO STRIKE

The Taft-Hartley Act outlaws certain strikes because of their purpose. In addition, even where a strike is for a purpose which is not barred by the act, certain serious prohibitions and obstacles to the right to strike are created. These include a 60-day strike notice provision, the emergency-strike provision, and a provision denying strikers the right to vote in elections.

(1) *The 60-day-notice provisions.*—The act imposes a requirement that no strike can be held where a collective-bargaining agreement is in effect unless a written notice is served 60 days prior to the time it is proposed to terminate or modify the agreemeent and the terms and conditions of employment are continued in full force and effect for such 60-day period.

This provision is so worded that it is frequently impossible to know just when a notice is required and when it is not. No clear guide is furnished as to whether wage-reopening clauses and contract extensions are subject to it.

Moreover, where a union violates the notice requirement and strikes prior to the expiration of the 60-day period, it can be completely demolished through the mass discharge of its members.

This is so because the law specifically states that an employee engaging in a strike during the 60-day period loses his status as an employee for the purposes of the act. The provisions of this section in effect make the entire future of the union turn upon whether it complies with the extremely ambiguous language of the statute. See *Graham* v. *Boeing* (22 L. R. R. M. 2243 and compare 23 L. R. R. M. 1107). In contrast, if an employer violates the notice provisions, the sole sanction is a Board cease and desist some time in the distant future.

The period prior to the termination of an agreement is a period which should be the most productive for the purposes of collective bargaining. This provision of the law has converted it into a period during which each side carefully watches the other to catch failures to comply with any of the technical notice requirements imposed and to gain whatever advantage it can from such technical lapse.

Most present-day collective bargaining contracts of any major proportions contain a provision requiring a certain period of notice and negotiation prior to the termination date. Such a provision reflects the considered judgment of the parties as to how long a period of negotiation is reasonable and necessary.

The imposition by Congress of a special notice provision in addition to that provided for in the contract has had harmful effects upon free collective bargaining. The incentive to bona fide negotiation and settlement is substantially diminished since the employer knows that for at least 60 days he has a guaranty against any strike action.

In addition, since there is a legislatively prescribed contract extension and negotiation period of 60 days, the parties could be expected in future contracts to omit the provisions on the same subjects now contained in their agreements. Such provisions would no longer serve any function with respect to the commencement of negotiations.

(2) *Emergency strikes.*—Section 206 of the Taft-Hartley Act established the procedure for dealing with emergency strikes.

This procedure, which has been applied in seven cases, has not operated in the public interest.

Under the procedure provided for in the Taft-Hartley Act, whenever, in the opinion of the President, a threatened or actual strike or lock-out involving all or a substantial part of an industry, not subject to the Railway Labor Act, will imperil the national health or safety, the President is authorized to appoint a board of inquiry to investigate the issues and to make a written report. Such a report under the statute includes a statement of the facts but contains no recommendations. No time limit is fixed in the statute for the filing of the report or for the functioning of the board of inquiry.

When the President receives the report of the board of inquiry, but not before, he may instruct the Attorney General to seek an injunction. The court, upon finding that the dispute affects all or a substantial part of the industry and will imperil national health or safety, may enjoin the strike or lock-out and make other orders deemed appropriate. The Norris-LaGuardia Act was specifically made inapplicable.

After an injunction is issued the parties are required, with the assistance of the Mediation and Conciliation Service, but without any duty to accept the proposals of the Service, to make an effort to adjust their differences.

After the injunction is issued the President is required to reconvene the Board and if the dispute is not settled at the end of a 60-day period dating from the issuance of the injunction, the Board reports to the President the current position of the parties and the efforts which have been made toward settlement. Within the next 15 days the Board must take a secret vote of the employees as to whether they wish to accept the employer's last offer. Five days later the Board must certify the results of the vote to the Attorney General who then must ask the court to discharge the injunction. The motion must be granted.

Thus, for a period of 80 days, employers receive, as a gift of the statute, their own terms, the forced labor of their employees.

The recent report of the Federal Mediation and Conciliation Service emphasizes that the injunctive provisions of this law have served to stimulate disputes rather than to promote settlement of them. As the Conciliation Service report points out (at p. 56):

"Indeed, the final report of the board of inquiry in the maritime dispute involving the Pacific coast longshoremen's union observed that the employers and unions in that dispute regarded the injunction period as a 'warming up' rather than a 'cooling off' period (p. 27). National emergency disputes vary widely in their facts and circumstances, and it is unlikely that any machinery can be devised that will guarantee satisfactory handling in all situations.

"One of the conclusions which the Service is undoubtedly justified in drawing from its experience of the last year is that provision for an 80-day period of continued operations, under injunctive order of a court, tends to delay rather than facilitate settlement of a dispute. Parties unable to resolve the issues facing them before a dead-line date, when subject to an injunction order, tend to lose a sense of urgency and to relax their efforts to reach a settlement. They wait for the next dead-line date (the date of discharge of the injunction) to spur them to renewed efforts. In most instances efforts of the Service to encourage the parties to bargain during the injunction period, with a view to early settlement, fall on deaf ears."

In the recent report of the Joint Committee on Labor-Management Relations, this eloquent—and, we think, unconscious tribute—to the bankruptcy of the injunctive device appears in its discussion of the atomic energy dispute:

"The procedures called for by sections 207 to 210, inclusive, ran their course. In a last offer ballot, conducted by the NLRB, the employees voted by a large majority not to accept the employer's last offer. This last offer took the form of a proposed contract, a copy of which was distributed to each employee prior to the balloting. It was considered to be the most feasible method available under the circumstances, since the dispute did not involve a simple proposition, but six major points of difference and nine of lesser importance.

"The injunction was dismissed at the end of 80 days. Immediately the parties sat down, with the assistance of the Federal Mediation and Conciliation Service, and after 52 hours of constant negotiation agreed to a settlement."

In short, the parties did nothing while the injunction was outstanding but settled the dispute when the injunction was dismissed.

In its discussion of the maritime strike the joint committee's report points out that the emergency board device likewise served to divert the parties from collective bargaining. The report states (at p. 19):

"It should be noted that in order to avert a strike in this case, it was necessary to invoke the procedures of the emergency provisions 12 days before the dead line. During these last 12 days the parties were busy preparing for and attending the hearings being held by the two panels of the President's board of inquiry, instead of negotiating and trying to reach a settlement. Hence, negotiations had to cease at a time when they are traditionally most likely to produce a settlement."

The joint committee itself has to some extent recognized that the emergency provisions of the Taft-Hartley Act are unworkable. It insists, however, that the injunction provisions should be retained. We are firmly convinced that the injunctive provisions constitute the basic evil of the measure. Injunctions are not, in our view, either sound or effective ways of resolving labor disputes. They impose upon workers involuntary servitude, they encourage employers to refuse to bargain, encouraged by their knowledge that for a period of 80 days at least they will have the labor of their employees at reduced rates and with governmental sanction. While the emergency injunction provision may temporarily stop a strike, it will, as it did in the west coast strike, inevitably serve to increase the resentment and determination of the workers and thus to stimulate a strike. Emergency injunctive provisions of the type embodied in the Taft-Hartley Act immediately raise in the mind of every fair-minded man one question: If workers may be required to render service upon the Government's terms for 80 days, why does not the public interest require that the employer be compelled to maintain conditions of employment which would render a strike unnecessary?

The Taft-Hartley Act involves compulsion, and compulsion is a two-edged sword.

The Taft-Hartley injunctive provisions make workers in our basic industries second-class citizens. They are punished and denied their rights precisely because their services are important to the economy.

Because of its prophetic and deadly accuracy, I commend to your attention the following portion of the President's message vetoing the Taft-Hartley Act, dealing with the problem of emergency strikes:

"This procedure would be certain to do more harm than good, and to increase rather than diminish widespread industrial disturbances. I am convinced that the country would be in for a bitter disappointment if these provisions of the bill became law.

"At the outset of a board of inquiry would be required to investigate the situation thoroughly, but would be specifically forbidden to offer its informed judgment concerning a reasonable basis for settlement of the dispute. Such inquiry therefore would serve merely as a sounding board to dramatize the respective positions of the parties.

"A strike or lock-out might occur before the board of inquiry could make its report, and perhaps even before the board could be appointed. The existence of such a strike or lock-out would hamper the board in pursuing its inquiry. Experience has shown that fact-finding, if it is to be most effective as a device for settlement of labor disputes, should come before the men leave their work, not afterward. Furthermore, an injunction issued after a strike has started would arouse bitter resentment which would not contribute to agreement.

"If the dispute had not been settled after 60 days of the waiting period, the National Labor Relations Board would be required to hold a separate election of the employees of each employer to find out whether the workers wished to accept the employer's last offer, as stated by him. Our experience under the War Labor Disputes Act showed conclusively that such an election would almost inevitably result in a vote to reject the employer's offer, since such action amounts to a vote of confidence by the workers in their bargaining representatives. The union would then be reinforced by a dramatic demonstration, under Government auspices, of its strength for further negotiations.

"After this elaborate procedure the injunction would then have to be dissolved, the parties would be free to fight out their dispute, and it would be mandatory for the President to transfer the whole problem to the Congress, even if it were not in session. Thus, major economic disputes between employers and their workers over contract terms might ultimately be thrown into the political arena for disposition. One could scarcely devise a less effective method for discouraging critical strikes.

"This entire procedure is based upon the same erroneous assumptions as those which underlay the strike-vote provision of the War Labor Disputes Act, namely, that strikes are called in haste as the result of inflamed passions, and that union leaders do not represent the wishes of the workers. We have learned by experience, however, that strikes in the basic industries are not called in haste, but only after long periods of negotiation and serious deliberation; and that in the secret-ballot election the workers almost always vote to support their leaders.

"Furthermore, a fundamental inequity runs through these provisions. The bill provides for injunctions to prohibit workers from striking, even against terms dictated by employers after contracts have expired. There is no provision assuring the protection of the rights of the employees during the period they are deprived of the right to protect themselves by economic action.

"In summary, I find that the so-called 'emergency procedure' would be ineffective. It would provide for clumsy and cumbersome Government intervention. It would authorize inequitable injunctions; and it would probably culminate in a public confession of failure. I cannot conceive that this procedure would aid in the settlement of disputes."

The emergency provisions have provoked strikes, not prevented them. These provisions have been condemned by every expert in the field.

(3) *Strikes for "illegal" purposes.*—The Taft-Hartley Act outlaws a number of types of strikes, regardless of the manner in which they are conducted, solely because of their objective. These include sympathetic strikes and so-called featherbedding strikes. Most importantly, the act has been held to outlaw strikes for a closed shop. See *Matter of Amalgamated Meat Cutters*, case No. 21-CB-8, decided March 7, 1949. There are few labor activities more basic than the right of workers concertedly to refuse to work with nonunion members. As was recently pointed out by Justice Rutledge in *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, decided by the United States Supreme Court, January 3, 1949, "Strikes have been called throughout union history in defense of the right of union members not to work with nonunion men."

It is difficult to see how this prohibition in the act can be squared with the protection of the thirteenth amendment against involuntary servitude.

(4) *The rights of strikers.*—Properly classifiable as a serious interference with the right to strike are the provisions of the law barring economic strikers from the ballot where an election is sought during a strike. Under the Wagner Act practice the Board recognized that economic strikers have an important equity in the employment situation which entitles them to vote along with their replacements when an election takes place during a strike.

The provision of the law barring strikers from the ballot, when used together with the section permitting employers to petition for elections and the injunction provisions, is a perfect strikebreaking device. It encourages the employer to provoke a strike, hire strikebreakers, seek recognition, and instigate a stacked election in which the views of the strikers will not be reflected. When the strikebreakers win the election (as they inevitably must since the strikers cannot vote) the strike is automatically made illegal under section 8 (b) (4) of the statute since it is a strike against a certified bargaining agent. The general counsel is then required to seek an injunction to break it. This provision of the law has promoted the use of strikebreakers on a widespread scale. In the questionnaires which I have submitted to CIO unions in a great number of instances it has been reported that the use of professional strikebreakers is on the increase.

An illustration of the strikebreaking technique which the statute makes possible is provided by the Pipe Machinery Co. case (22 L. R. R. M. 1510). The employer in that case enlisted strikebreakers to replace his striking employees, members of the International Association of Machinists. The strikebreakers promptly formed an "independent" union and petitioned for an election. At the election the Board ruled that the strikers could not vote and certified the petitioning union. Thereupon since the strike was a strike against a certified union within the meaning of section 8 (b) (4) (C) of the act, it became an illegal strike subject not only to a cease and desist order but to a mandatory injunction under section 10 (l) of the act as well as a damage suit. The Pipe Machinery case and experience in other cases in which similar techniques have been used, make it clear that it is virtually impossible to prove that the strikebreakers, even where they are professionals, are not permanent replacements. Moreover, it is perfectly possible for the employer, employing a group of strikebreakers, to eliminate certain jobs and break down labor standards and to effectively claim that those strikers who were not replaced may not be permitted to vote on the claim that their jobs have been "discontinued."

An example of the use of the same technique, varied only by the circumstance that a single employee filed a petition for decertification is *Matter of Solar Electric Co.* (23 L. R. R. M. 1030).

Finally, in cases where the Board, in administering the Wagner Act, had reinstated strikers, the Board under the Taft-Hartley Act, has shown an increasing unwillingness to do so, not only in the case of economic strikers who have not been replaced (see *Matter of National Grinding Wheel Co.* (75 N. L. R. B. 905) but also in the case of unfair labor practice strikers. See *Matter of National Electric Products Corp.* (case No. 6–C–1147).

H. SUABILITY OF UNIONS

Section 301 of the Taft-Hartley Act authorizes suits against unions for breach of contract, states that labor organizations which are sued are to be bound by the acts of their "agents" and confers Federal jurisdiction over such suits, not only in the district where the organization has its principal office but in any district which such "agent" or representative is acting for employee members.

As I have already pointed out the salutary protections of the Norris-LaGuardia Act are eliminated both for purposes of unfair labor practices and for purposes of damage suits. We have already seen that for unfair labor practice purposes the Board has held that even a member of an organization is an agent and that the acts of such "agents" may bind not only the local but even the international. It is obvious that this damage suit provision is a perfect vehicle for mulcting a union in damages not only for activities of its own agents but the activities of districts, locals, joint boards, grievance committeemen or all those other individuals who under the democratic structure of a modern labor union may be possibly designated to be its agent.

Under this provision the international treasury to which members from all parts of the country contribute may be emptied because of the irresponsible acts of a single individual in a single plant.

One of the ironies of this law is that on the one hand it seeks to break down union discipline and control in the interests of the freedom of the individual and on the other it imposes indiscriminate liability for acts committed in violation of contract by workers thus emancipated.

The law has made a novel contribution to strikes. It has precipitated strikes over a new type of issue, namely, the issue of union liability. Beginning with the strikes in the automobiles industry when the law was just passed there have been periodic strikes in many industries by unions in order to protect themselves against the imposition of indiscriminate liability for acts over which they have no control.

Here also, as in connection with union security, some employers are perfectly willing to extend protection to unions seeking to make the grievance-arbitration machinery the exclusive remedy for contract breach only to be told by lawyers that such assurances could not be validly given under the law.

The provisions authorizing lawsuits against unions in Federal courts are based upon the wholly unfounded assumption that labor unions frequently breach their agreements, that existing State sanctions for such breaches were inadequate and that an additional Federal sanction was imperatively needed. The recent report of the Joint Committee on Labor-Management Relations makes the point that these provisions have not been extensively used. This in itself is a confession that the section was added not to provide a needed remedy but merely to harass unions.

The Joint Committee on Labor-Management Relations apparently is unaware that in a number of strikes employers used or threatened to use this provision as a means of forcing compliance by a union with the employer's position on a contract and in some instances strikes have been prolonged because unions have insisted that they would not terminate the strike unless the employer waived all claims under section 301.

The plain fact is that Taft-Hartley Federal court suits are not brought primarily to police violations of contract. Employers who desire to live in good faith with their employees are completely aware that a lawsuit is a substitute for sound industrial relations, not a means of achieving them. This obviously must be the case if we are to have satisfactory labor relations in this country. As one authority has put it:

"It would be unfortunate if ther should develop any strong tendency to look to the Federal courts to settle questions concerning the interpretation and application of collective-bargaining agreements. A collective agreement is most workable when it is treated as a constitutional instrument or basic statute charging an administrative authority with the day-to-day application of general aims. The determination of disputes arising during this process is more a matter of creating new law than of construing the provisions of a tightly drawn document. Few judges are equipped for this task by experience or insight; in addition, they would be hampered by the restrictions and delays of legal doctrine and court procedure. Wider voluntary use of arbitration offers a more promising method of settling such disputes. * * *" Cox, Some Aspects of the Labor-Management Relations Act, 1947 (51 Harv. L. Rev. 1, 274, 305).

The damage suit provisions should be deleted because they jeopardize the mature development of the grievance-arbitration mechanism. Moreovver, these provisions place in the hands of antilabor employers a means of blackmailing a union. Damage suits are typically instituted not to make an employer whole for a claimed breach of contract, but to bleed a union and to destroy its treasury. Because damage suits pose such a tremendous threat to the very existence of a labor organization, they embitter industrial relations.

Finally, it is important to point out in connection with this provision of the law that it represents another one of those opportunistic enlargements of Federal jurisdiction which have been typically written into the law for purely antilabor purposes. Consider the situation. Of all the conceivable varieties of breach of contract, breach of a labor agreement alone is made a Federal subject matter regardless of the fact that there may not be a Federal jurisdictional amount of diversity of citizenship.

It is difficult to escape the conclusion that a sound dividing line between appropriate areas of Federal and State jurisdiction in labor relations has been made impossible by the essentially antilabor character of the act and its administration. Thus, under the act, lip service is paid to local labor-relations regulations when they are more restrictive than even the Taft-Hartley Act, as in the case of section 14 (b) dealing with union security. On the other hand, where the assertion of Federal jurisdiction might contribute to a sound and stable labor policy the act withholds Federal jurisdiction, as in the case of section 203 (b) dealing with the Conciliation Service. This section provides that "the Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce, if State or other conciliation services are available to the parties." But the tenderness of the act for the rights of the States suddenly disappears where, for example, the State happens to extend organizational rights to supervisors. See section 14 (a).

I have always had strong doubts as to whether a breach of a labor agreement can constitutionally be made a Federal subject matter regardless of the amount involved or the diversity of the citizenship of the parties. To this serious constitutional question should definitely be added the objection that this novel expansion of Federal jurisdiction is merely based upon an attempt to harass unions.

I. ONE-SIDED ADMINISTRATION

This act seeks to straddle conflicting and mutually hostile concepts. On the one hand it pays lip service to the right of employees to organize and bargain collectively. On the other hand, it creates a new Federal "right," namely, the right not to engage in union activity. This act purports to create a broad shelter for the protection both of the union man and the antiunion man. As has been pointed out many times by experts in the field, those aspects of the law which purport to protect the right to self-organization and collective bargaining can readily be frustrated by the provisions in the law protecting antiunion activities. In short, the two features of the law cannot coexist side by side. Either we have a Federal policy which protects self-organization or we adopt a Federal "yellow dog" policy which protects its opposite. It seems quite clear from the experiences under the act on this point that the act is dominantly one implementing a "yellow dog" policy.

It is, therefore, not entirely accurate to condemn the general counsel and the Board for their one-sided administration of the statute. The statute itself makes one-sideness in administration inevitable. Some examples of one-sided administration follow.

In the group of cases involving the International Typographical Union approximately 11 days elapsed between the filing of the charge and the issuance of the complaint. In the course of the attack by the office of the general counsel on the strike, complaint after complaint was issued against the union in record time and precisely the same issues were placed in protracted litigation. This deluge of complaints was buttressed by an injunction. When CIO unions protested that their charges were not being processed, they were informed that delays were caused by the fact that a large part of the general counsel's personnel was diverted into ITU litigation which became a major project of the general counsel's office.

In the Graphic Arts case the filing employer enjoyed the phenomenal service of having a complaint issued on the very day his charge was filed against the ITU. As a matter of fact, the charging party in that case received another unusual boon to facilitate the disposition of his charge. The trial examiner involved was summoned before this committee and interrogated about the delay involved in the issuance of his intermediate report. We know of no case in which a union filed a charge in which this committee demonstrated a similar solicitude for the rapid disposition of the issues.

In a case in which the Amalgamated Meat Cutters was the respondent, case No. 21–CB–8. the complaint was issued on the same day that the second amended charge was filed.

In another union unfair labor practice case involving the Smith Cabinet Co. and the United Furniture Workers of America, case No. 35–CB–3, a charge which was filed on November 26, 1947, gave rise to a complaint on November 28, 1947, and in a case filed against the same international union by the Colonial Hardwood Flooring Co., case No. 5–CB–4, the amended charge filed on December 23, 1947, gave rise to a complaint dated December 24, 1947.

The committee should bear in mind that all of these cases are not cases which are governed by the statutory requirement for priority. In the class of cases arising under section 8 (b) (4) (A) (B), and (C), in which the statute authorizes priority treatment, the general counsel, of course, is not even permitted to wait until the complaint issues but is required to seek an injunction merely when he has reasonable cause to believe that a complaint would issue.

Another instance of the one-sidedness of the act and its application occurs in the field of employee representation. Under the act, as under its predecessor, when a rival union seeks to organize an already organized plant it must make a substantial showing that the employees desire to change their bargaining representative. The importance of this rule is obvious. It promotes stability in bargaining relations, it discourages raiding, and minimizes the holding of futile elections. However, this requirement does not obtain when an employer files a petition. The employer petition section of the act provides that when a labor organization presents a claim to be recognized the employer may file a petition for an election. The Board has construed this requirement to impose no obligation whatsoever upon the employer to establish some reasonable basis for requiring the Board to hold a new election. He is not required to show that there have been defections from the bargaining unit or to overcome any presumption of the continuing representative status of the bargaining agent. Under this provision, as the Board construes it, the employer has the automatic right to force the election upon his employees, however foregone the result and however clear the fact that the petition has been filed for purposes of creating a pretext not to bargain or for renewing an attack upon the collective-bargaining representative.

Very early in the development of rules for the administration of the act it became apparent that the act would be administered in a one-sided way. An indication of this was the promulgation by the general counsel, in a directive to his field staff, of a rule that charges are to be dismissed unless supporting evidence is produced within 72 hours.

In this directive the regional office is instructed to adopt the following procedure when a charge is received:

(1) The person filing it is "required to produce sufficient affirmative and probative evidence to indicate a prima facie case."

(2) The person filing the charge is to be required to designate the witnesses through whom it is expected the charges will be proved.

(3) The person filing the charge is required to produce such witnesses at the Board office at a designated time not more than 72 hours after filing the charge.

(4) In the event of a failure to produce such witnesses or if the particular witnesses designated by the charging party are unable to substantiate the charges "by competent evidence," the charge is to be dismissed.

In order to appreciate the effect of this new directive, it is important to recall the former practice under the Wagner Act.

Under the former practice, the field director of the Board, through its field examiners, assumed the responsibility of running down charges once they had been filed. The old Board recognized that the Government, as part of its duty in enforcing the Wagner Act, had the responsibility of investigating the substantiating charges which had been filed with it. The Board realized that a union might have a perfectly valid charge and still be unable to substantiate it because of its limited facilities for investigation and detection. The Board recognized that this was particularly true in connection with labor matters since employers concealed their violations of the act in such a clever manner that intensive and professional investigation was required to uncover evidence of their law breaking.

This ruling, which reverses the Wagner Act practice, inevitably produces two results:

(1) It makes the already meaningless labor protections of the Taft-Hartley Act still more meaningless. When employers commit unfair labor practices few unions have the facilities to establish a prima facie case within 72 hours or the resources to produce witnesses at the Board's office and to finance their expenses and lost time.

(2) In contrast, employers are under no such handicap when they bring charges against unions. Employers are far better equipped than unions to meet technical requirements in the law regarding the type of proof which must be offered.

The inevitable effect of the ruling is to give employers a justification for reviving labor espionage. An employer who wants to destroy a union can justify his use of labor spies on the ground that he is merely seeking "evidence" of union unfair labor practice which has to be produced within 72 hours of the filing of his charge.

Under the Wagner Act, the Board denied protection to unions where the union was engaged in the conduct which would force the employer to violate the act, had breached a contract or engaged in activities which were in contravention of some other public policy. However, in Taft-Hartley cases against unions decided by the Board or by trial examiners in which it is perfectly apparent that the employer has refused to deal with the union without any justification and that the labor dispute arises out of such a refusal, the examiners have not applied the "clean hands" doctrine to deny the employers relief from pressures occasioned by their own misconduct.

These are but a few of the instances of one-sided administration of the act which have come to light since its enactment. But the evils in the administration of the law are inherent in its terms. Here are some of the ways in which the law is loaded against unions:

An employer charge of unlawful sympathetic strike must be given priority treatment, regardless of the number of union unfair labor practice charges on the docket.	But a union charge, no matter how urgent, or important, must await its turn in the tedious processes of the Taft-Hartley Board.
If union members strike during the term of the contract or before the expiration of a 60-day notice, in order to change the conditions of the contract, they may be fired summarily without right to reinstatement.	But if the employer locks out the union members for the same purpose, or unilaterally breaches the contract, he may only be charged with an unfair labor practice—and much, much later be told not to do it again.
If the NLRB entertains a charge by an employer of unlawful sympathetic strike, the Board must seek an injunction.	But in no kind of unfair labor practice charge by a union is the NLRB required to seek an injunction.
If the union participates in sympathetic strikes or boycotts which are unfair labor practices, the employer also may sue the union for damages.	But there is no unfair labor practice on the part of the employer which also entitles the union to sue for damages.
If, during a strike for a new contract, the employer hires scabs and petitions for an NLRB certification election, strikers are not allowed to vote.	But all the scabs can vote.
In every grievance, the employer has the right to press his interpretation of the contract.	But in grievances that may be taken up by individuals, the union has no say as to what the contract means.
Unions must file full financial data in order to utilize the NLRB.	But employers need file no financial data in order to utilize the Board.

Union officers must reveal political beliefs and swear to political affidavits before their unions can utilize the Board.	But employers may keep their political affiliations and opinions secret and still retain full access to the NLRB.
Union cases are subject to periodic and continued delay while registration and affidavits are brought up to date annually when new financial reports are due.	Employers, however, are subject to no such delays.
The law prevents union members from combating sweatshop labor within their own industry by refusing to handle nonunion goods.	But the law does not prevent the employer from breaking down union standards in his union contracts by utilization of sweatshop goods; dealing with sweatshop employers.
The law prevents unions from requesting payment for services which are not to be performed.	But there is nothing in the law which prevents the employer from requiring services which are not paid for as in the case of the speed-up and stretch-out.

J. THE TAFT-HARTLEY ACT'S ADMINISTRATIVE AND PROCEDURAL PROVISIONS

Bad as the Taft-Hartley Act's substantive provisions are, its administrative and procedural provisions are even worse. It must be recognized at the outset that the administrative and procedural changes embodied in the Taft-Hartley Act were not enacted in response to any genuine need for administrative and procedural reform of the Wagner Act.

The provisions of the Taft-Hartley Act providing for so-called separation of functions eliminating the review section and creating a labor czar in the general counsel's office are the result of a long campaign to emasculate labor legislation by administrative and procedural devices.

The changes in administration and structure effected by the Taft-Hartley Act are merely a way of insuring that the statute did not serve to promote self-organization or collective bargaining. We should bear in mind that these changes were made after the passage of the Administrative Procedure Act which applied to all Government agencies, including the Board as it was set up under the Wagner Act.

The Administrative Procedure Act was passed after years of intensive study and was sponsored by the American Bar Association. It was preceded by a long series of investigations of procedure, beginning with the President's Committee on Administrative Management in 1935 and included the report of the Attorney General's Committee on Administrative Procedure in 1941. Despite the fact that the administration of the Wagner Act conformed to the Administrative Procedure Act and to sound administration in the field of labor relations, it was discarded.

The administrative and procedural changes embodied in the Wagner Act are part of a stock technique for emasculating social legislation. Whether the field be price control, housing, communications, power, or farm benefits, we find that the attack upon the administrative process is the handmaiden of the attack upon the substantive features of a particular legislation involved.

This attack seeks in the name of curbing bureaucracy to weaken enforcement, to impose upon the statute an administration not in accordance with its terms, to insure delay, to provide for multiple lines of authority. From the point of view of those bent upon weakening social-welfare legislation, this technique is invaluable because it permits them to accomplish their objective with a minimum of difficulty. It enables the enemies of social-welfare legislation even to pay lip service to its virtues and at the same time to insure that its beneficial effect will be diluted, if not completely lost.

Unless the administrative and procedural changes which are embodied in the Taft-Hartley Act are viewed as an instance of the technique referred to, an analysis of those changes cannot deal with fundamentals. The two major administrative changes which the Taft-Hartley Act provides are (1) the creation of a dual structure for the administration of the statute, and (2) the attempted destruction of the institutional administration of the statute and the substitution therefor of a personalized system of adjudication and lawmaking.

The dual administrative structure which makes of the general counsel's office an autonomous and separate entity has actually made the Taft-Hartley Act even more oppressive than its literal provisions.

The result of the dual administrative structure created by the Taft-Hartley Act has been in effect to provide for separate systems of administration of two contradictory approaches in the field of labor relations. As it has worked out in practice the office of the general counsel has dedicated itself to a crusade against unions, to a protection of the new right to be free not to join a union, for the elements in the Taft-Hartley Act which may aptly be termed the "yellow-dog" elements, while the Board is more closely identified with the aspects of the Taft-Hartley Act which involve the protection of self-organization and collective bargaining. Unquestionably, the responsibility of the general counsel for enforcing the act against unions has conditioned the approach of the general counsel's office even to those aspects of the statute which are not antiunion with the result that these, too, receive a treatment which is hostile and antilabor. How could the Office of the General Counsel which devoted its energies to a unique crusade against International Typographical Union be expected to be solicitous of the rights of unions? As a matter of fact, the record shows that it was not as solicitous of those rights. A handy instance of this fact is that of the six injunctions issued under the statute pursuant to a discretionary power to restrain unfair-labor practices. Four were obtained against unions and two against employers.

All of the circumstances under which the Office of the General Counsel was created as a separate entity made it inevitable that it became identified as primarily an instrument for effectuating the many antiunion aspects of the Taft-Hartley Act. Indeed, the Hoover report on the structure of the National Labor Relations Board and its general counsel concedes this fact.

The creation of a dual structure with a separate general counsel's office has involved a further consequence, namely, that this office has become extremely vulnerable to congressional pressure in important areas of policy and administration.

The evils of the dual structure are particularly objectionable in connection with the Office of the General Counsel because the Taft-Hartley Act makes of him the most powerful peacetime Government official which this country has ever seen. In addition to the general counsel's important powers in connection with injunctions and unfair labor practices, the Board turned over to him—most unfortunately in my opinion—the power to seek compliance with the Board's orders, the authority to process petitions in representation cases, the authority to process 10 (k) proceedings, the power to seek 10 (j) and 10 (l) injunctions, and, finally, authority over all personnel with certain limited exclusions.

When this delegation is combined with the general counsel's statutory authority it can readily be seen that there is simply too much power over Federal labor policy concentrated in one individual. It is a ridiculous state of affairs, for example, that the Board under the Taft-Hartley Act exerts no supervision over field personnel and the performance of representation functions for which it, the Board, was primarily responsible. It is a ridiculous situation when appeals from the general counsel's refusal to issue a complaint are taken not to the Board but to the general counsel's office. The Hoover Commission in its study of the administration of the Taft-Hartley Act has pointedly commented on the absurdity of this situation. The arbitrary, and for all practical purposes unreviewable, power of the general counsel is even more dangerous because in many of the areas in which the general counsel has such power, such as the issuance of the complaints, in the seeking of 10 (l) injunctions or in the denial of petitions for certain types of elections, the principles involved were completely novel in the sense that there are very few decided cases to serve as a guide for administrative action.

One clear product of the Taft-Hartley Act's tampering with the Wagner Act's administrative mechanism has been to erect a labor czar with vast arbitrary powers directed primarily against unions. A second result of the dual structure imposed upon the administration of the act is that it has produced a dangerous inconsistency in administration. For example, the general counsel and the Board differ sharply as to what should be the Board's jurisdiction. This might be harmless enough in ordinary circumstances but it has had the effect of extending the application of the statute insofar as sanctions against unions are concerned—the general counsel is determined to "protect" the small-business man from union unfair labor practices no matter how much it strains Federal policy—since the general counsel administers the union unfair labor practice provisions of the law, but restricting the representation features of the statute, an area in which of course the Board possesses the ultimate authority.

Thus, the same union in the same situation may find itself unable to obtain an election because the Board does not wish to exercise jurisdiction but may nevertheless become the object of an unfair labor practice complaint and injunction because the general counsel decides that he must exercise jurisdiction. It is no answer to say that ultimately the Board may decide in the unfair labor practice case that jurisdiction should not have been exercised. This is so because the effect of an injunction obtained upon the general counsel's view of jurisdiction cannot be cured by the Board's ultimate disposal of the complaint. Thus, in the Sealright and other cases the trial examiners have dismissed the complaint after the general counsel has not only issued a complaint but has obtained an injunction under 10 (j) of the statute.

This administrative bifurcation has produced other strange results. Thus, in the Times Square case (22 L. R. R. M. 1373) an employer replaced strikers who filed unfair labor practice charges. No question can exist that the charges were well based. The general counsel refused to process those charges, not because they lacked merit but because he insisted that the charges were filed by individuals who were "fronting" for a noncomplying union. The striking union challenged the votes of the strikebreakers. The Board held that since the general counsel had refused to process the charges the strike must be held to be an economic strike and that the men must be regarded as economic strikers, subject to replacement and so unable to vote. In short, the Board was forced to decide that a nonrepresentative choice was a bargaining agent and that an employer was free in effect to choose his own bargaining agent because the general counsel had refused to process unfair labor practice charges.

In a second case, the Kinsman Transit case (22 L. R. R. M. 1165), an employer discharged an active union man 4 hours before an election. The union objected to the election on this ground. The Board held that since the general counsel had refused to proceed on the charges the election must be presumed to have been conducted free of coercive influences.

One of the greatest evils which has been produced by the dual structure is the fact that all important settlement functions are being endangered because a legal official and his personnel rather than the Board and its personnel are charged with this duty.

Another result of the dual administrative structure has been the fact that it has reduced the Board's prestige and general importance to that of the lowest of any Federal labor agency. While the general counsel has assumed a monopoly in the administration and interpretation of Federal policy, the Board's role has rapidly shrunk. This has been accomplished both by the statute and by the Board's own voluntary abdication of duties.

It should be pointed out, moreover, that the Board's diminished role is even less than would appear. For example, the fact that it is the office of the general counsel and his personnel which has authority in the first instance to receive and process all petitions in representation cases considerably reduces the meaning and effectiveness of the Board's right to act on appeals from a refusal to issue a notice of hearing, from a dismissal of a petition, from procedural matters arising after hearings. This is so because the denial of a petition in the first instance or the refusal to issue a notice of hearing can decisively influence a labor situation and frequently does.

Similarly, the Board's authority to determine unfair labor practice cases is an isolated island in a sea of power dominated by the general counsel. Thus, it is the general counsel, and not the Board, who has final authority to determine whether a complaint shall issue. It is the general counsel, and not the Board, who determines whether, as ancillary to the complaint, a 10 (j) or 10 (l) injunction should be obtained. And even after the Board has decided the unfair labor practice case it is the general counsel, and not the Board, who determines whether or not and under what circumstances to enter upon the decisive enforcement stage.

Moreover, it should be borne in mind that the Board's so-called ultimate authority in connection with representation proceedings is largely illusory. A certification in itself carries no binding effect. And an employer's failure to yield to it gives rise to an unfair labor practice proceeding, in which, of course, the general counsel's authority is dominant.

The decline of the Board under the new statutory structure is, of course, no accident. Since the Board was identified with the enforcement of the Wagner Act, it became necessary for Congress to devise some administrative apparatus for rendering it powerless and as an insurance that an antilabor statute would receive an antilabor administration.

In the name of an objective of separating Board functions, the act has destroyed the Board as a cohesive labor agency, has reduced its prestige, and has invested the Office of the General Counsel, fundamentally a prosecutive and investigative office, with a monopoly of effective power in the administration of the statute.

But the impairment of the prestige and effectiveness of the Board does not result only from the curtailment of its functions. The manner in which the subordinated Board is made to operate under the new statute further contributes to its weakness.

It was the purpose of the Taft-Hartley Act to make the Board operate like a court. This objective the statute seeks to achieve by abolishing the review section which existed under the old Board and substituting in its place a system of legal assistants, each attached to one of the members of an augmented Board of five members, by reducing or eliminating delegation entirely and by wiping out economic analysts as a structural arm of the agency. Serious study of the problem has convinced me that personalized administration in the labor field is dangerous and unwise.

In the first place, when we deal with unfair labor practices we deal with a type of misconduct which is predictable and recurrent to an amazing extent. Certain types of union activities give rise to certain types of employer reactions. Unfair labor practices fall into stock patterns which must be evaluated in an institutional way.

It is both inefficient and fruitless to impose personal administration in an area in which a body of administrative adjudication so readily evolves about standard types of conduct.

In the second place, personalized administration tends to strip the agency involved of its public character and instead make of its adjudications a product—and frequently a compromise product—of clashing private interests. Instead of a group of Board members dedicated to the public interest and objectively matching fact situations against expertly evolved bodies of doctrine we find a Board consisting of an employer member, a union member, a public member, etc., examining cases from the point of view of a particular interest and reaching a result which may or may not coincide with the public interest.

In the third place, this so-called insistence on personalized administration sacrifices the greatest single contribution of administrative approach, namely, the expertise which an administrative agency develops. The locus of this expertise must of necessity be the staff which is educated by and in turn educates the Board members.

In the fourth place, personalized administration means delay, long and unnecessary delay, delay which is fatal to the effective administration of a labor statute.

In the fifth place, personalized administration means that the statute as a rule of conduct, as the sum of a series of decided and well understood cases never becomes established as the law of industrial life. Every lawyer is sure that he can convince a majority of the Board members that his case is different. Every employer is encouraged in his transgressions in the hope that he can sway Board members. An employer bent on violating the law weighs his chances not against the law itself but against the possible reaction of some Board member.

Finally, personalized administration means opening the door to personalized pressure, particularly from Congress. It means stripping an agency of the means of insulating itself from outside pressures and injecting into the decision-making process considerations which are hostile to fair adjudication.

The result of the attempt to convert an administrative agency into a collection of five judges has been in effect to provide a statute with five built-in bottlenecks. The analogy to a judge is obviously strained when each Board member has 15 assistants and a chief legal assistant. What the act needs is administrative procedures; it needs effective staff work; it needs a review section; it needs the power to delegate functions to the Regional Director in representation cases and to the trial examiner in unfair-labor-practice cases; it needs to function as a team. In short, it needs the administrative structure and orientation which the Taft-Hartley Act has taken away from it.

A recent statement, Major Issues in National Labor Policy, summarizing a forthcoming book by Dr. Harry A. Millis, former Chairman of the National Labor Relations Board, and Emily Clark Brown, professor of economics at Vassar College, admirably sums up the fatal defects in the Taft-Hartley administrative structure.

"*Separation of Functions Under the Wagner Act*

"Our detailed study of experience under the 1935 act convinced us that the NLRB had largely solved the problem of combining proper separation of functions with needed unified control of policy. Over the years it had increased its delegation of authority and its own separation, as the decision-making body, from the earlier functions of investigating and prosecuting cases. There were already under the Wagner Act three practically separate parts of the agency: (1) those members of the staff who investigated, handled the great bulk of cases informally, administered the determination of representation questions in the field, and prosecuted the complaint cases requiring formal action; (2) the trial examiners who heard cases; and (3) the Board itself who with the assistance of review attorneys decided the formal cases. Yet the Board was able to maintain the unity of policy which resulted in its very successful record for informal settlements, what the Attorney General's Committee called 'the lifeblood of the administrative process'.

"And over the years it had an unusual success among the Federal administrative agencies in obtaining approval from the courts of its procedures and its policies. The machinery itself seemed to provide adequate safeguards for the integrity of the quasi-judicial process. The Board had developed over the years effective methods of selection, training and supervision of staff, and had established standards of procedure, properly centralized control of policy and decentralization of administration. All of this went far toward providing efficient and fair administration in this complex and difficult field.

"*Separation of Functions Under the Taft-Hartley Act*

"The Taft-Hartley Act, on the other hand, with its rigid prescriptions as to administration and its division of authority between the Board and the general counsel, made it very much more difficult, if not impossible, to provide as efficient and fair an administration as had been the fact before. The increase in the number of Board members and authorization for use of panel system in making decisions were on the whole advantageous. Freeing the Board of some administrative detail also was helpful, though this could and probably should have been done before by the Board itself. But we can find no gain from the division of authority between the Board and the general counsel.

"A major difficulty in administration under the 1947 act arises from the final authority of the general counsel, subject to no appeal to the Board, to dismiss or to decide to prosecute charges of unfair labor practices. While the Board is ultimately responsible, subject to review by the courts, for the interpretation of the act, administrative decisions at an early stage are often crucial for the parties in particular cases. The result is that a case may be handled early on a theory which the Board itself will later reject. But the early action may have been conclusive as far as those parties are concerned. Reversal by the Board perhaps a year later cannot undo the effect of the earlier action. Delay in establishing policies and sometimes injustice to the parties is an almost inevitable result. On the other hand, if the Board is free to consider matters of policy involved in the decision to process or to dismiss a case at an early stage, without considering the details of fact in the particular case, it can avoid the waste and possible injustice of early decisions on basic policy which may later be reversed.

"Differences of opinion between the Board and the general counsel as to the extent to which the Board should assert jurisdiction over enterprises heretofore considered essentially local has been a source of confusion in the field. It has led too to waste effort, and to a measure of compulsion on the Board finally, when it hesitates to reverse the general counsel on a case which has been carried through all the stages of formal action up to the point of decision by the Board. Such a basic matter of policy should be decided by the Board, interpreting the congressional mandate on the point.

"A serious limitation upon the power of the Board to consider all aspects of a case which comes to it for decision arises, also, from the power of the general counsel to dismiss an unfair labor practice case, subject to no appeal. Such an administrative dismissal proved to be the deciding factor in one important case in determining whether a strike was an 'economic strike' or one caused by unfair labor practices, since the Board considered itself bound by the action of the general counsel in dismissing a charge of unfair labor practices. But this alone determined, under the terms of the law, that strikers who had been replaced had no right to vote in a representation election. And that earlier dismissal had been made administratively without hearing, by the general counsel, not by the Board. The requirements of full and fair hearing, sound administration, and unity of policy, all point to the necesisty that the Board have the full authority to make all such vital decisions.

"The degree of concentration of responsibility and authority in the hands of one man, also, is unwise, especially when much of it is subject to no appeal. Inevitably many questions must be decided by subordinates, or else by off-the-cuff decisions, however able and fair the general counsel may be.

"A broader base for responsibility, with freedom to delegate authority as seems wise, gives more protection against mistakes and against pressure from special interests. A board, rather than one individual, should be the locus of authority and responsibility in such a controversial field as this.

"With goodwill and cooperation between the Board and the general counsel it has been possible to administer the act, although with considerable waste motion. But this has been in spite of the prescriptions as to administration, not because of them. And under other circumstances a complete break-down of administration would be possible.

"*The Decision-Making Process Under the Wagner Act and Under Taft-Hartley*

"The other most important change in administration made by the 1947 act dealt with the decision-making process. The Review Section was abolished, and its place was taken by a group of legal assistants for each individual Board member. There seems to have been little understanding by those responsible for these provisions of the actual process of making decisions and of the safeguards which had been developed in a careful procedure for handling a great volume of cases. Perhaps it was thought that the Board members themselves would review the records of hearings and normally draft their own decisions. But this is an obvious impossibility in view of the work load. Under the review system as it had developed in the later years under the Wagner Act, the review attorneys under carefully selected supervisors studied the trial examiners' intermediate reports and any briefs and exceptions of the parties and record of oral argument, before review of the record of the hearings to check as to the adequacy and correctness in law as well as in fact of the intermediate report. In reporting to the Board the review memoranda made clear any disagreement with the trial examiners. All of these reports went to the Board members, each of whom with the aid of his legal assistant was expected to give special attention to any conflicting parts of these documents. The results were then presumed to give a sound basis for each member's judgment as to the facts and the issues, and what the essentials of the decision should be. Memoranda were drafted by the members and circulated. Then after conference and discussion by the Board the decision was made, and directions given for drafting the opinion. Drafts were frequently revised and rewritten by the members. The decisions were thus made by the Board through a constructive process of conference and accommodation of views, though independence of judgment was reflected both in the frequent reversals of trial examiners in part or sometimes in whole, and by dissents and separate concurrences by individual members.

"Taft-Hartley, however, abolished this system developed and tested by experience, and substituted instead a group of legal assistants for each Board member—in effect five little review sections. It was assumed that the Board member would supervise these assistants, and apparently that in some way the decisions would be made by the Board with more direct personal responsibility than had been true before. But no change in structure could eliminate the essential steps of consideration of the intermediate report or hearing officer's report along with briefs and exceptions of the parties, checking all against the record to whatever extent this was necessary, some process of reaching agreement as to the decision, and drafting, checking and final signing of the decision. The lack of a centralized review section introduced inefficiency. Board members themselves are not all lawyers, nor should they be, and they may not be the best qualified to supervise the technical job of reviewing a record; and the supervisors under the Board members may not all be as efficient as the carefully chosen supervisors in a central review section. Differences in ability as well as in policy are difficult to avoid in five separate review sections; and the necessary effort to maintain proper coordination and unity of policy is made extremely difficult, though not insuperable.

"With a volume of cases awaiting decision far beyond that ever handled by a circuit court, and with long records and complex issues of fact and of law to be decided, the Board members need all the help possible in getting and analyzing the information on the basis of which they make the decisions. The problem is how to insure that the review of records is done in such a way as to make decisions as nearly 'foolproof' as possible. It is impossible to believe that there has been any increase in the amount of careful consideration given by each Board member to the decision of cases. The reverse seems almost inevitable. The limitations upon the Board's discretion by such rigid prescriptions as to the machinery for decision-making prevented its developing the most efficient possible devices for handling the great volume of its work. We are convinced that the Board should be left free at its discretion to organize its work at the decision-making point in whatever way seems most efficient and helpful, delegating responsibility as it finds wise, so long as the Board itself keeps its ultimate responsibility for the decisions.

"*Conclusions as to Administration*

"To summarize, a unified administration should be restored, giving the Board all final authority, with the right to delegate administrative responsibility and to determine its own organization on the basis of its experience under both the Wagner Act and the Taft-Hartley Act. The Administrative Procedure Act provides adequate safeguards for the integrity of the quasi-judicial process, in our judgment. Yet it might be thought desirable for the sake of public relations to specify in the Nation Labor Relations Act the administrative separation between those members of the staff who work on the investigation and prosecution, the trial examiners, and those who review records and assist the Board in its decision-making functions. There should, however, be no policy-determining administrator within the agency not subject to control by the Board. And of course the Board should continue to be an independent agency, in order to avoid any possibility of suspicion that it is subject to administrative pressure in behalf of any special interest."

The diffusion of administrative responsibility is one of the oldest methods for extending only paper protection to workers' rights. It is not without its significance that in the Senate report on S. 1958, the bill which ultimately became the Wagner Act, under the heading "Weaknesses in existing law," the committee referred to the "excessive diffusion of administrative responsibility" in preexisting agencies handling labor problems. Seventy-fourth Congress, first session, Senate Report No. 573, page 4.

The administrative features of the Taft-Hartley Act cannot be defended. They must be dropped.

K. WELFARE FUNDS AND CHECK-OFF

Section 302 of the Taft-Hartley Act imposes criminal penalties upon certain so-called improper payments to unions. In its application to welfare funds the section limits the purpose for which trust funds may be held, it requires that they be jointly administered, and that the detailed basis on which the payments are to be made be specified in a written agreement with the employer. Certain other additional requirements are imposed upon the trust fund and its administration.

In addition, a fund established prior to January 1, 1947, is exempt from certain limitations of the act where it contains provisions for pooled vacation benefits.

The criminal provisions of the law are made applicable only in situations where the payments are to be made to the labor organization. It does not apply where the fund is under the sole control of the employer and the employees' contributions are deducted by the employer.

This unique invasion by the Federal Government into the field of insurance originated solely as a legislative act of spite in connection with the labor dispute in the coal industry.

It completely disregarded the large number of welfare insurance systems which had been functioning successfully under systems of administration made criminal by the law.

It was estimated that prior to the Taft-Hartley Act some 4,000,000 workers were covered by some form of health-benefit plan negotiated by unions and employers. These plans cover workers in a great variety of industries, such as clothing, coal mining, textile, etc.

In a study made of plans covering 600,000 workers in 1945, the Department of Labor points out that:

"A little more than a third of the employees covered by health-benefit programs included in this report are under plans which are jointly administered by the union and the employer. Another third are covered by programs for which insurance companies assume the major administrative responsibility; and somewhat less than a third are under those administered by the union."

The Taft-Hartley Act, in decreeing that welfare funds should be administered in one way and one way only, seriously hampered the growth of collective bargaining in this important field. The provision is completely inconsistent with free collective bargaining and imposes a strait-jacket on the growth of health insurance plans. Not a word of evidence was ever adduced in Congress that union administration of welfare insurance trust funds or their form were unsound. It was arbitrarily decided that even though an employer may make a deliberate judgment that he may want nothing to do with the administration of a welfare fund which he supports financially, he must nevertheless share in its administration.

The technical and complicated features of this section gave rise to the March 1948 strike in the coal mines because of the language in section 302 (c) (5) restricting the use of welfare funds for the sole and exclusive benefit of the employees of such (the contributing) employer. In addition, there can be no question that the settlement of the dispute between the musicians union and the recording companies finally reached on December 13, 1948, was prolonged because of difficulty in conforming the royalty payments provided in the fund with the restrictions contained in section 302. Here, as in connection with the field of union security, employers, and unions desirous of continuing or initiating arrangements in accordance with their wishes have been compelled to circumvent the hampering restrictions of section 302. See *Rice-Stix Drygoods Co.* v. *St. Louis Health Institute* ((E. D. Mo.) 22 L. R. R. M. 98).

The act also makes criminal all check-off of union dues from the wages of employees unless the employer has received from each employee a written authorization which cannot be irrevocable for a period of more than 1 year or beyond the termination date of the applicable collective-bargaining agreement.

Prior to the passage of the Taft-Hartley Act, figures compiled by the Bureau of Labor Statistics showed that approximately 6,000,000 workers were covered by some form of check-off provision in 1946. Automatic deduction of dues made criminal by the Taft-Hartley Act was specified for almost 60 percent of the workers while the other 40 percent provided for check-off of union dues in individual written authorizations.

Here too not a single employer appeared before a congressional committee and complained that the automatic deduction of union dues created a condition requiring Federal action. Congress legislated not with reference to any specific evil but solely for the purpose of weakening unions. Agreements providing for the check-off of union dues have been long established in American industrial relations and play an important part. These clauses promote efficiency and order in the policing of the collective-bargaining agreement.

The denial of automatic check-off of the dues of union members in a plant where collective-bargaining rights have been established is the denial of a relatively simple efficient convenience embodied in the check-off and is an insistence on forcing the union into the difficulty, the wastefulness, and the unnecessary expenditure of energies of employees whose attention might otherwise be devoted to constructive administration of the collective-bargaining contract. Where an employer accepts in good faith the principles of collective bargaining and accepts the union as an organization with which he is prepared to live and cooperate during the term of the contract there is usually no excuse for refusal to make the administration of the contract and the operation of the employees' organization as efficient and as simple as possible.

To make the deduction of dues contingent upon individually signed authorizations is to ignore the fact that the check-off is a subject matter of collective bargaining as to which the union as the collective-bargaining representative has a right to speak for the employees in the bargaining unit. It encourages a disregard for the union as the agent of the employees and permits the employer to play the members against the union itself. Moreover, outlawry of the automatic check-off encourages individual employees to evade their fair share of financial responsibility for the cost of running the union.

A very serious objection to this section of the law has been its application to other fields. Many employers have refused to pay union grievance committeemen on the ground that it would be a crime to do so. Union officers have been denied seniority for time spent on union work on the ground that this would be an improper payment within the meaning of the law. Other types of traditional payments or rewards for union officers have been stopped by employers on the ground that they constitute illegal payments.

This section of the law is one of the most complex and ambiguous of all of its provisions. It has provoked serious controversy as to the form of check-off card which would be acceptable with the result that the Department of Justice and the general counsel of the National Labor Relations Board have taken opposing stands with respect to the appropriateness of certain types of voluntary check-off cards. It is important not only that these provisions be repealed and that free collective bargaining be restored but that it be made clear, as I have already indicated, that collective bargaining for check-off provisions validated by the Wagner Act are not subject to the restrictive requirements of local law.

This section of the law reflects an evil which is at the root of the entire Taft-Hartley Act, namely, the dictation by Government of the terms of the collective agreement. The Taft-Hartley Act dictates such collective-bargaining terms as welfare funds, pensions, check-off, closed shop, and feather bedding. And the provisions relating to suits against unions in the Federal courts have dictated the negotiation of exculpatory clauses in contracts. Those who have joyfully injected the Government into collective-bargaining relations apparently fail to realize that this process is a two-way street which will inevitably result in the elimination of traditional management rights in collective-bargaining matters through political pressures. This has been the experience of many European countries.

L. LAWLESSNESS AGAINST UNIONS AND UNION MEMBERS

I have repeatedly throughout this testimony emphasized that the effects of the Taft-Hartley Act have been extremely broad and that a proper view of the impact of this legislation upon labor relationships in this country cannot be obtained merely from an analysis of the law and its administration.

One of the most shocking consequences of the law is the manner in which it has stimulated a wide variety of lawless acts and attitudes on the part of State and municipal authorities. We refer here to only a few of the more outstanding examples of what has occurred.

On April 23, 1948, there took place in Kansas City, Kans., a shockingly inhuman assault upon the striking Packinghouse Workers of the Cudahy Packing Co. by the Kansas City, Kans., police.

According to a staff correspondent of the St. Louis Post-Dispatch, Selwyn Pepper, an investigation disclosed the following facts surrounding the beating of the striking employees by the Kansas City police:

(1) Police acted in response to open pressure from the Kansas City Chamber of Commerce, which issued an ultimatum to the mayor demanding the police "get tough" with the strikers.

(2) Without a court order, police took it upon themselves to reduce the number of pickets on the line from about 15 to 10, then, wielding night sticks, they ordered other strikers standing idly on the sidewalks nearby to get into their union hall. When some of the strikers were slow in moving, the police struck them with their clubs.

(3) Then police broke into the hall and continued beating men and women until all had fled from the building. Assistant Chief Eli Dahlin admitted he lost control of his men. The hall was wrecked.

(4) No arrests were made.

The day before the police attack upon the strikers, the chamber of commerce called upon the mayor demanding that he instruct the police to act against the strikers. The police chief received orders to change the tactics of the police and he reluctantly agreed to crack down upon the strikers.

According to a reporter of the Kansas City Star, Albert E. Robinson, Captain Dahlin, who was placed in command of the police detail at the Cudahy plant, told a group of policemen whom he had assembled for the purpose—about 70 in all—

"We are not going to get pushed around any more. We will meet force with force and we will not yield an inch of ground. If the strikers insist on violence, there are going to be some skulls cracked, because we are going to get tough.

"We are going to limit the pickets to 10 whether we have the legal authority at the moment or not."

The uniformed policemen and others armed with pistols and nightsticks then got into automobiles and rode to the Cudahy plant.

Here is the account of one of the strikers of what happened at that point:

"The cops assembled. Captain Dahlin talked to them, and then they began to clear the sidewalks. I started down the south side of Kansas Avenue and a cop told me, 'Get off the street.' I told him, 'This is a public street; I haven't done anything.'

"He let me have it with a billy club; hit me on the left arm. I cut through some parked cars and started to cross the street. Some more coppers in the street hit me about four licks on the back and hips before I could get inside our hall.

"I went to the front end of the hall and stood at the double door. I noticed the police safety car in front. Captain Dahlin began speaking over a loudspeaker. Then someone closed the double door. Frank Rose, one of our committeemen, opened the door and hollered to the captain that he wanted to talk to him.

"Next thing I knew the captain kicked the door in and glass flew everywhere. He came right on in and the police followed right after. They started hitting me. They were trying to get in and I was trying to get out.

"I fell over two women lying on the floor at the door leading into the hall. (There is a small waiting room between the front entrance and the door to the large meeting hall.) I got up, ran to the side door and was hit two or three times more before I got out.

"I went to the parking lot and Lieutenant Jones came up. He told us, 'Go home before you get it worse.' He asked me if I saw him swinging a club. I told him I didn't and that was true. Jones almost cried. He said, 'I hated to see this but it was orders from higher up.' "

As a result of the completely illegal actions of the police, 10 persons were hurt seriously enough to go to hospitals and about 40 others, including taxicab drivers and other passers-by, suffered injuries.

Another product of the Taft-Hartley Act was the strike of the United Steelworkers of America against the Nashville Corp. On August 20, 1947, the CIO union defeated the machinists in an election 903 to 464. But because the steelworkers had not submitted to the filing requirements of the law, the Labor Board refused to certify it, thus forcing a strike. In its strikebreaking tactics the company not only sought to enjoin peaceful picketing, but also filed unfair labor practice charges against the union for alleged violations of the Taft-Hartley Act. After these charges were dismissed by the general counsel the company nevertheless filed two suits in the Federal court against the same union based on the same claim of alleged violations of the Taft-Hartley Act.

The circumstances surrounding the Nashville Corp. strike illustrate the manner in which the Taft-Hartley Act has popularized lawsuits against unions and stimulated police brutality. Almost 100 separate legal actions were brought against the union and its members, either by the company or by the local law enforcement officials. The great majority of these actions were frivolous and completely without foundation and were dismissed in the courts.

Almost as soon as the strike commenced Lynn Bomar, the head of the Tennessee State Highway Patrol, was called in personally to take charge of the situation. He kept on the scene a large force of highway patrolmen, estimated by some to be as high as 50 automobiles loaded with from 2 to 4 patrolmen in a car. The patrolmen were equipped with tommyguns which they flourished freely and which they used to push the pickets around while they threatened and cursed them. The police simply arrested anyone whom it struck their fancy to arrest. Representatives of the union were arrested, imprisoned, and then released in a systematic way. One individual on the picket line was arrested for vagrancy. Bomar personally took the witness stand to testify that the defendant had made some comments about PAC that Bomar did not like and that the reason the arrest of this particular individual was made was because Bomar wanted to get him away from the picket line. The court dismissed the charge.

A staff representative was present in the vicinity of the picket line, driving his brother's car which bears a Maryland license. He was arrested on the charge of violating the Tennessee automobile license law although he had actually been in the State for a period less than the grace period allowed in the law before local licenses are to be applied for. After this representative was taken to the jail, he was severely beaten and to justify the beating, the charge of resisting arrest was added to the other charges against him.

A third union representative was arrested and charged with public lewdness. This charge was based on the fact that the sound truck which the union had been using to play phonograph records included records, frequently played by unions to bolster morale in labor disputes, which Bomar did not like. This charge was dismissed.

The union brought an action in the Federal court to enjoin Bomar and his State police from interfering with its picket lines. Two of the leading witnesses at this hearing, both of them presenting their testimony against Bomar, were thereafter stopped in a car in which they were riding and charged with reckless driving. They were beaten by the two officers who made the arrest. These officers then took them not to jail or to a court, but to the area of the plant where Bomar was stationed. They then picked up Bomar and drove around in the car with the two union members, beating them again with blackjacks before taking them to jail.

The CIO desires to emphasize to the committee that one of the greatest dangers to peaceful and decent labor relations in this country, a danger which has been intensified by the passage of the Taft-Hartley Act, is the intervention by police officials in labor disputes for the purpose of imposing upon workers the viewpoints of their employers. One CIO union was recently forced to go to court to prevent members of the Indiana State police from attending union meetings, taking notes of what occurred. The court granted the injunction against the State police and pointed out (*Local 303, United Furniture Workers* v. *Gates* (21 L. R. R. M. 2233, 2234):

"The evidence definitely establishes the fact that the presence of the State police has kept the members of the union from openly discussing the matters which relate to purposes of the meetings, for example, the affairs of the union and the strike it is conducting. It is further shown that little actual business is accomplished when the State police are in attendance because the plaintiffs feel restrained from discussing their union problems and affairs at such times. A witness for the plaintiffs testified that reports covering the gathering of funds to support the strike and their disbursement to union members are not read or discussed when the State police officers are present. Another witness testified as follows: 'We can't speak our minds while the police are there.'

"The plaintiffs' undisputed evidence is that during the strike the State police have maintained friendly associations with the officials of the Smith Manufacturing Co., but that their attitude toward the strikers has been unsympathetic and unfriendly. The State police officers have been requested repeatedly by the union representatives and members to leave the meetings and to state their reasons for being there. The officers have refused to leave as requested and also have refused to give any reason for their presence."

Here are other instances of violence against unions and union members.

Tallapoosa, Ga., is a town with a population of approximately 2,000 people. The town depends upon a thread mill which employs approximately 500 persons who live in a mill village. This thread mill is part of a chain of 10 mills located in 7 States including some in New England with which the union has contractual relations. In November 1947, the union assigned an organizer to the mill. She was a widow who had raised six children, the oldest having served in the Army for 4 years. She had worked in cotton mills all her life. She was a resident of Athens, Ga. For approximately 2 months prior to November 17 she went to Tallapoosa each week and remained there 1 or 2 days. She contacted workers and was securing representation cards looking toward an NLRB election. The response from the workers was good and she decided to rent a room and remain in the community for about a week. She finally secured a room in a boarding house. The evening of the very day upon which she rented the room, the wives of the plant superintendent and an overseer visited the boarding house keeper and they and the organizer engaged in some sewing and general conversation. Shortly, thereafter, the superintendent's wife left after a private discussion with the boarding house keeper. Around midnight that night, while the organizer was in bed, four armed men with shotguns invaded her room through a window and five women joined them, declaring that they did not want "no God damn CIO here." They dragged her in her bed clothes from her bed, tied her with a rope, carried her to a waiting truck outside and drove her off a long distance from Tallapoosa where they dumped her outside the road. They left her there with the threat "Don't came back to Tallapoosa or you will be shot on sight."

Cuthbert and Buena Vista, Ga., are two adjacent small towns in the southwestern part of the State, which have a population of about 2,000 people. The towns are dominated by three lumber companies. The CIO organizing committee had organized the workers of these plants as members of the International Woodworkers Union. Despite the fact that such ordinances are clearly unconstitutional, the city council, composed in part of executives of the lumber companies, adopted an ordinance requiring organizers to secure a license. Under this ordinance, union organizers were arrested and are kept under surveillance by the local police. Shots were fired into union meetings. Threats were made to burn the church attended by union members. Nevertheless, the union secured an overwhelming majority of representation cards in the several companies. However, the companies refuse to recognize the union or to consent to an election. Petitions for elections filed in January 1948 went to hearing on April 7, 1948. Though no issues were involved, one of the companies insisted, in a 33-page brief filed on May 24, 1948, after two extensions were granted, that the Board should not process the case because the CIO had not filed documents required by section 9 (f) (g) and (h) of the act. This position is argued in the brief at great length despite the fact that the Board had held that the CIO was not required to file. The International Woodworkers of America has qualified under the act.

A strike occurred in one of these plants and immediate restraining orders prohibiting all picketing were secured. Workers on strike were arrested indiscriminately on charges of vagrancy. In Buena Vista strikers were evicted from their homes. Chattel mortgages on their pigs were foreclosed. Other acts of oppression occurred. A striker was seen talking to a friend. He was immediately arrested on a charge of breach of the peace. When his lawyer came to see him and while he was speaking to his client on his porch, a town marshall rushed up to him and, flourishing his gun, demanded to know by what right the lawyer was speaking to his client. He was immediately joined by an armed group of eight men. They said they came to protect the defendant "against the CIO." The lawyer complained to the sheriff about this show of armed force and was blandly informed by the sheriff that he did not know that this had occurred and therefore would do nothing about it. The case against the defendant was continued from week to week and finally the defendant was held for the grand jury en the charge of breach of the peace and the friend to whom he had spoken was held for the grand jury on the charge of perjury because he had testified that the defendant had made no threats against him. This strike was broken. The workers were blacklisted and were dispersed as laborers in the outlying farm district.

It is significant that the wages in these lumber mills were 40 cents per hour for women and 45 cents to 50 cents per hour for men.

In the small towns in the eastern part of North Carolina, local police terrorize workers by insisting upon attending union meetings and forcing their way into workers' homes to question them about union activities. In Roanoke Rapids, Va., agents of the Internal Revenue Department took workers out of a mill being organized and forced their way into the homes of workers on the pretex that they were investigating income-tax returns which had been filled out with the aid of the union organizer.

In Columbia. S. C., on March 7, 1948, a gang of thugs invaded a union square-dance party, seized the union organizer, dragged him into a side room and there beat him with brass knuckles and a blunt instrument, fracturing his skull in seven places.

In Rome, Ga., the management of a textile plant, intent upon smashing the union, engaged in a course of conduct during the past year refusing to bargain collectively with the union on any issue and refusing to settle any grievances. As the contract neared expiration, negotiations began for a new agreement. Management insisted that before it would discuss any other issues the union abandon top seniority, the voluntary check-off, and assume full liability for strikes and other violations of agreement terms. During the course of the negotiations, company officials began securing licenses for themselves and employees to carry guns. A strike began on March 28, 1948, and is still current. The company secured an immediate restraining order. Many workers have been arrested on a variety of charges. Eviction proceedings have been instituted to oust about 75 strikers from company houses. One unarmed striker was shot by a company overseer. One worker was shot by a scab while sitting in his home. A woman was stabbed. Here indeed is armed warfare. Charges have been filed with the NLRB alleging refusal to bargain beginning April 17, 1947, and continuing to March 1948. An amended complaint was issued by the general counsel on May 18, 1948. No hearing has as yet been held. In the meantime the company has succeeded in bringing in strikebreakers to man its first, second, and now its third shifts.

We do not believe that the instances we have supplied the committee of lawlessness against unions and their members are isolated or unrepresentative. Every day the evidence accumulates of lawlessness, violence, and disregard of the constitutional rights of working people. The actions of State executives in summoning the State police upon the demand of employer interests, the viciousness of many law-enforcement agencies, such as the Tennessee State Police, in mishandling strikers, the readiness of State court judges to issue injunctions banning pickets—all of these sinister developments are definitely related to the Taft-Hartley Act and its impact upon American labor relations.

M. REPRESENTATION PROVISIONS

(1) *Plant guards and professional employees.*—This provision of the Taft-Hartley Act provides that plant guards must belong to autonomus unions and that professional employees, as elaborately defined therein, are to enjoy special unit severance rights. I believe that both these sections improperly interfere with the discretion of the Board in an area where complete flexibility should be

maintained. The problem of shaping bargaining units depends upon such matters as bargaining history, the functional cohesiveness of the groups involved, the effectiveness of a single or a split unit for the purpose of collective bargaining and other matters, a consideration of which should not be foreclosed by statute.

The Taft-Hartley Act provision which requires autonomous unions of guards is an improper interference with the right of self-organization. Before the Taft-Hartley Act was passed, the Labor Board under the Wagner Act established adequate safeguards to insure that the union affiliation of guards would not render them incapable of adequately enforcing their duties. As in the case of supervisors, the Board has expanded the meaning of this section. It has interpreted "guard" to include watchmen and workers who in fact cannot be distinguished from rank-and-file employees. See *Matter of C. V. Hill & Co.* (21 L. R. R. M. 1172; *Matter of Young Patrol Service* (21 L. R. R. M. 1046); *Matter of Chrysler Corporation* (22 L. R. R. M. 1394).

(2) *Company unions.*—The act forbids the Board to consider the fact of affiliation in determining whether an organization is company-dominated both for purposes of the representation provisions of the act and for the purposes of the unfair labor practice sections of the act. Many CIO unions have reported that under the stimulus of these provisions company-unionism has revived and is flourishing in areas where it had been successfully stamped out.

This too is an improper handicap of the Board's discretion. In determining whether an organization is dominated it should be for the Board to decide under all the circumstances whether in fact the organization is a bona fide organization or a dominated one.

The Taft-Hartley Act in foreclosing the exercise of the Board's discretion disregards the historic fact that an inside unaffiliated union which is company-dominated and supported stands uniquely before the employees as the employer's candidate and must be permanently disestablished because, if permitted to continue, it will inevitably be identified with the management which called it into existence and coerced the employees to join it. The appearance of such a union on an election ballot thwarts the purposes of the act.

However, in the case of an affiliated organization the very fact of its affiliation draws to it strength and independence outside of the employer's direction and control. Consequently employer assistance never extends to the point of domination. But to assume, as the act does, that no conclusions with respect to the legitimate character of an organization can be drawn under any circumstances from affiliation or lack of affiliation is simply to blind oneself to the facts of life. Here too, of course, we find another instance of that "falsely conceived mutuality" which robs workers of their rights by insisting upon equal treatment of the traditionally unequal.

(3) *Decertification elections and elections upon employer petitions.*—Both of these types of elections which the Taft-Hartley Act added to the Wagner Act have become routine weapons in the antilabor employer's arsenal. The files of our organization are full of instances reported to us of employers who have instigated decertification petitions and thus actually used the processes of the Board for the purpose of defeating self-organization. Employer petitions are as well simply a means whereby an election may be prematurely engineered through a petition filed after an inside favored group has requested recognition. It is an ideal means for replacing a striking union with a hastily formed strikebreakers organization.

(4) *Other unsound representation provisions.*—The Board's discretion in the field of elections has been strait-jacketed by two other provisions which are worthy of note because our experience so clearly demonstrates their destructive character.

The first of these provisions bars the Board from holding an election for any period shorter than 12 months after a valid election has been held. While under the Wagner Act it was the Board's normal practice to deny election petitions filed within 12 months after an earlier election had been held, nevertheless it exercised its discretion to order such elections within shorter periods where it would effectuate the purposes of the act to do so.

It is vital that the Board have his discretion if employees are to enjoy the full benefits of self-organization. In many instances elections are held under unrepresentative circumstances and an employer may have an expanding labor force which may make appropriate or desirable the holding of a second election long before 12 months have expired. An industry may be of such a changing or seasonal character as to make appropriate the holding of elections within short periods of time.

There is likewise no good reason why the act should impose upon the Board a prohibition against deeming the "extent of organization" a controlling factor in determining an appropriate bargaining unit. The factor of "extent of organization" was developed by the Board as a guide in fashioning units in certain areas where organization would be impossible without it, such as department stores and utilities. The Board determined in such cases that it would be unfair to the already organized employees to force them to wait until an ideal unit of large scope became organized. This provision is a gross interference with administrative discretion and was merely passed to make self-organization more difficult.

N. DEFINITION OF EMPLOYER AND EMPLOYEE

One of the subtler forms of attack upon employee rights embodied in the Taft-Hartley Act is the redefinition of the term "employer" so as to define that term to include "any person acting as an agent of an employer" rather than as the Wagner Act provided, "any person acting in the interests of an employer." This definition had two effects: (1) To limit the employer's liability to common law rules of agency, and (2) it prevented the Board from proceeding against an employer association as an independent respondent when such an association sought to engage in unfair labor practices against employees. Only where the employer association acts as an agent of an employer can the Labor Board now reach it. See *N. L. R. B.* v. *Sun Tent-Luebbert Co.* (151 F. (2d) 483; 154 F. (2d) 108).

The Taft-Hartley Act has opened the door to the antilabor employer association. Information which has come to me clearly shows that employer associations are assuming an extremely active and dangerous role in antiunion activities. The Wagner Act originally defined employer so as to make it possible to proceed against employer associations because it was recognized that antiunion weapons in the hands of employer associations are an even more serious and effective threat to freedom of self-organization than are the same weapons in the hands of a single employer. Employer associations wield special weapons against union members, such as the blacklist, which are not within an individual employer's grasp. The activities of such associations against organized labor constitute one of the most shameful pages in our labor history.

The definition of employee was also changed by the Taft-Hartley Act so as to exclude "any individual having the status of independent contractor." The effect of this has been to make the definition of employment in a Federal statute depend upon local common-law definitions of who is an employee, definitions which evolved in connection with duties unrelated to the purposes or the needs of a Federal labor law. Of course it was the purpose of this changed definition in the Taft-Hartley Act to bar certain individuals from the protection of Federal labor policy. The same kind of thinking was responsible for the restriction of social security coverage which produced, and properly so, such a vigorous reaction among our people.

In order to achieve the purpose of protecting self-organization and promoting uniformity in the enjoyment of Federal rights, the Wagner Act definitions of employer and employee should be restored.

O. DISCHARGE FOR UNION ACTIVITY

One of the hopes of the sponsors of the act was to weaken the protections of unions which it permitted to remain in the Taft-Hartley Act so as to make them ineffective. This technique was used in connection with the protections against discrimination by writing into the law a provision in section 10 (b) to the effect that "no order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

It was this section of the law that President Truman had in mind when in his message vetoing the Taft-Hartley bill he pointed out, "The bill would make it easier for an employer to get rid of employees whom he wished to discharge because they exercised their right of self-organization guaranteed by the act. It would permit an employer to dismiss a man on the pretext of a slight infraction of shop rules, even though his real motive was to discriminate against this employee for union activity."

In an increasing number of cases the Board has absolved employers from charges of extremely discriminatory practices. See, for example, *Matter of Young Patrol Service* (75 N. L. R. B. 404); *Matter of Cleveland Graphite Bronze Company* (75 N. L. R. B. 481); *Matter of Fulton Bag and Cotton Mills* (75 N. L.

R. B. 883); *Matter of Cedartown Yarn Mills, Inc.* (76 N. L. R. B. 571); *Matter of Goldblatt Bros.* (77 N. L R. B. 204); *Matter of Fontaine Converting Works* (77 N. L. R. B. 1386).

The Board's denial of the protection against discrimination appears particularly sharply in connection with the rights of strikers. In *Matter of Fontaine Converting Works* (77 N. L. R. B. 1386), the employees went on strike to obtain a foreman's reinstatement. Although the strikers were plainly fired because of their concerted activity, the Board refused to extend them the protections of the act.

In *Matter of National Electric Products Corp.* (6–C–1147), a union leader was fired and the Board conceded that this was an act of discrimination. It also conceded that any appeal through the established grievance machinery would have been useless. In order to redress this injustice the employees picketed the plant to win the reinstatement of the discharged worker. The employer thereupon fired the pickets as well. The Board nevertheless refused to order the reinstatement of the pickets even though the contract had not been violated by the picketing. The only remedy, said the Board, that the employees had was to file unfair labor practice charges. In short, even though the employees struck against their employer's unfair labor practices, they were not protected by the act.

Board Member Houston in his dissent clearly shows the nature of the Board's retreat in connection with this important protection:

"I am in full agreement with the majority that the discharge of Marfia was discriminatory. I must, however, dissent from the conclusion of my colleagues that the suspension of the picketers was not a violation of the Act because I consider that they were engaged in concerted activity protected not only by the Wagner Act but also under the recent amendatory legislation.

"Although this is a case of first impression, the Board has established a number of guide posts in past decisions which, in my judgment, clearly draw a line beyond which disciplinary action by an employer would not be permitted despite the fact that his employees had engaged in concerted activity in violation of contract. Most pertinent in this connection is the Scullin Steel case in which the Board found that an employer properly discharged employees who engaged in a strike in violation of a contractual provision binding them not to strike during the term of their agreement. We were careful to note, however, in that decision that that employer, quite unlike the employer here, had not engaged in any unfair labor practices. The direct implication of such language was that had such unfair labor practices been shown, a different result would have followed. I should have thought that here where the record is very clear that the discharge of Marfia—an unfair labor practice of the most fundamental character—was the direct cause for the picketing that we would be bound by the implication in the Scullin Steel case. But the majority has determined that no protection ought to be given because the employees should have relied upon the 'remedial processes of the Board.' What this amounts to is that employees may be deprived of a basic right because an administrative remedy for their complaint exists. My colleagues must be aware, however, that the amendments of 1947 which placed restrictions in a number of instances on the right to strike disclose in their legislative history a total rejection of the idea that the right to strike should be restricted further in the manner now utilized by the majority. Omitted from the Labor-Management Relations Act of 1947 was a provision passed by the House outlawing 'any strike * * * to remedy practices for which an administrative remedy is available under this Act.' Moreover, section 13 of the present act reenacts the guaranty of the Wagner Act of the right to strike except as specifically limited by the present act. I have been directed to nothing in the present legislation from which it can be even inferred that Congress intended a limitation of the nature imposed by the Board here.

"Of course, it is true, as my colleagues state, that no-strike clauses are substitutes for economic warfare, and, consequently, are very salutary supports to industrial peace. However, such commitments are found in agreements which must have some inhibitory effect not only on the employees but also on employers. It is something less than just to say that an employer who has secured from his employees a relinquishment of their basic right to strike may remain, nevertheless, quite unhampered in whatever arrangements he has made to impose heavy penalties on his employees solely because they protested, in a traditional way, his disposition to violate the law. And it is something less than equitable to hold that he may do so with impunity merely by insisting that he has a contract forbidding his employees to protest. Yet a decision of this character permits exactly such a result."

In the National Grinding Wheel case (75 N. L. R. B. 905), the employer justified his refusal to reinstate certain strikers on the ground that he had "heard that they had quit." Although the evidence showed that they had not quit, nevertheless the Board held that the employer's belief that they had quit was sufficient to justfy his refusal to rehire them.

The discrimination provisions of the Taft-Hartley Act have virtually ceased to be an effective protection against the still formidable weapon of employer discrimination. The act and the Board's administration of it has encouraged every antilabor employer in the land to gamble on the use of discrimination as a strikebreaking weapon in the hope that it can persuade the Board that the discharge was for "cause."

In dissenting in this case, Board Member Houston pointed out—

"Clench, Davignon, and Heubusch were participants with their fellow employees in a strike for higher wages. Shortly after the strike began, and for an understandable reason—the need to support their families—they applied to other employers for work. Having been advised that employment would involve a relinquishment of their employment with the respondent, and it appearing that this condition was inflexible, they pretended agreement. Upon termination of the strike, and after an invitation by the respondent, they returned and requested that they be given their jobs. They were rebuffed, despite the fact that their places had not been filled, despite the fact that they were not told that there was no work available, and although they at no time had informed the respondent that they had quit. The refusal to reinstate them was made with the assertion that the respondent had learned from 'undisclosed sources' that they had accepted permanent jobs elsewhere and, consequently, had quit the respondent's employ. Slight attention was paid to their repeated disclaimers and they have not been employed. In bare essentials, these are the facts upon which my colleagues have decided that these employees ought not to be reinstated. Although the issue appears quite simple, its disposition by the majority carries the most intensely significant implication that the equality between an employer and his striking employees, sought hitherto so religiously to be preserved in these circumstances, now has been set awry by overweighting the balance in favor of the former.

"We discovered early the necessity for setting out a code of rights and obligations so that an equitable balance might be fixed between the interests of employer and employee in our industrial society, when economic rivalry culminated in a strike. At that point it became important that each contestant should conduct himself with full knowledge not only of his liberties but of reasonable limitations imposed on his conduct by fairness. Our formulation of principles to govern the relationship of an employer and his striking employees took careful account of the need to protect the former in his right to operate his business. That this right should be meaningful, he was left free to replace the strikers. He was also left free to refuse to reinstate the strikers if he had replaced them, if he had no work for them due to a legitimate change in operations resulting in the elimination of the type of job, or if they had seized his property, engaged in violence, or struck in violation of a contractual obligation not to do so. These protections were granted so that he might compete upon a fair basis with the strikers. Correlatively, and in order to establish a milieu of freedom for the striker, his right to reinstatement was protected. Not without qualifications, however. He must have unconditionally abandoned his strike, and he must not have been replaced. These qualifications met, his right to return was guaranteed against discrimination by his employer. These correlative principles are well established. Their essential desirability lies in their definitive justness and in the fact that their applicability is made facile because it is quickly ascertainable from the proof in any case. I have set them out only because, as I have said, I find that the majority, although apparently aware of them, has created an imbalance between them by granting an added defense to an employer which so comprehensively sanctions any refusal to reinstate strikers as to make that right quite empty.

"The majority decision amounts to this: That an employer who has not replaced his striking employees and who has work for them may nevertheless refuse to reinstate them, because he has a reasonable belief that they have disqualified themselves. He may assert any number and variety of excuses, drawn from undisclosed sources and, according to my colleagues' decision, if this Board is impressed with the reasonableness of his attitude he is protected in his refusal. The validity of his defense will not be judged by actuality, i. e., whether the striker in fact was disqualified. This is deemed to be immaterial. Although this concept of reasonableness has a surface appeal and outwardly appears equitable, its ramifications in this context invite gross injustices. Consider with what criteria we should judge an employer's assertion that he barred a striker for whom he had a place because he had heard from an undisclosed source that the employee drank, beat his wife, failed to pay his bills, did not attend church, changed his job frequently, flirted, gambled, or was guilty of kindred immoralities. Consider also that the employee was in fact not guilty of any of these frailties. It would be extremely absorbing even if it were somewhat frustrating to deliberate upon the precise measure of doubt we should have to entertain of his innocence before we should be prepared to certify as reasonable his employer's belief that he was guilty."

An important reason for restoring the Wagner Act is the imperative need to provide effective protections against discrimination.

P. SUPERVISORY EMPLOYEES

The act wholly bars to supervisory employees all rights to self-organization and collective bargaining. Under the act an employer may with impunity discharge a supervisory employee for union activity.

This provision of the act invites industrial warfare and the use of economic power against individuals seeking to exercise a basic right to join a union. By inviting such discrimination the section threatens an evil far beyond its apparent intention. Since the provision permits discrimination against certain employees its inevitable effect will be to create an atmosphere in which all the employees not merely supervisory employees are intimidated. What employee will feel free to join any kind of union when he sees that supervisory employees suffer mass discharges merely because they join a union of their own choice? In short, this section will undermine the basic organization protection for nonsupervisory employees.

This section is based upon the specious argument that unless a line is drawn between the employees and supervisors, labor organizations will divide the loyalty of supervisors to management and impede its functioning. At the time the Wagner Act was passed the same employers who now make this argument also argued that a worker could not be a member of a union and a faithful employee at the same time and that his obligations to management were inconsistent to union membership. The cry of divided loyalty is one which is typically raised for the purpose of defeating organizational rights.

In defining the term "supervisor" the act uses the term so broadly as to include within it many employees who have traditionally been regarded as eligible for union membership and properly within an appropriate bargaining unit.

The effect of the Board's decisions in interpreting this section of the act is to permit employers to remove from the organizational force a large group of personnel simply by designating them as supervisors.

The existence of the present provision in the act denying benefits to supervisors does more than do injustice to a large group of American employees who need the benefits of collective bargaining. It opens the door to widespread evasions of the bargaining obligation and defeat of organizational attempts by unions through the wholesale creation of supervisors as that term is broadly defined in the Taft-Hartley Act.

The attempt of employers to utilize the provisions of the law for the purpose of weakening the union may be seen in the west coast controversy over the including within the bargaining unit of ships' clerks and walking bosses.

All the predictions made by labor with respect to the effect of the denial of organizational protection to supervisors have been verified by our experience with this provision of the law. In such industries as shipbuilding, employers have demanded the dilution of a bargaining unit by exclusion of such type of individuals as leaders and leading men, although prior to the Taft-Hartley Act individuals much closer to mangement were regarded as employees and not supervisors and hence eligible for union membership.

Employers in this and other industries have used the supervisor's immunity from protection to discharge such individuals who have refused to cross a picket line in the case of strikes and to discharge rank and file employees because they struck against management discrimination against foremen. See *Matter of Fontaine Converting Works* (77 N. L. R. B. 1386).

CONCLUSION

I have detailed some of the objections of the Congress of Industrial Organizations to the Taft-Hartley Act. I should emphasize that I have not attempted to discuss all of the ways in which our organization has suffered as a result of the act and its administration. I have not touched upon matters about which labor feels keenly, such as the delays occasioned by the statutes and the great variety of time-consuming elections which were authorized under the statute, the unreasonably short period of limitations for the filing of unfair labor practice charges, the attempted exclusion of unions from the grievance procedure and other matters. This law has not served the needs of industrial peace. It has been bad for business, for labor and for the public. It has turned the clock back on progress in the field of industrial relations.

STATEMENT OF CLARK C. SORENSON, DIRECTOR OF PERSONNEL, HARRIS-SEYBOLD CO., CLEVELAND, OHIO

My name is Clark C. Sorensen. I am the director of personnel of Harris-Seybold Co., Cleveland, Ohio. Our company is one of the largest producers of graphic arts machinery, manufacturing various types of printing presses, paper cutters, and a wide variety of graphic arts equipment. During the last fiscal year our sales were approximately $20,000,000.

In our plants at Cleveland and Dayton we have some 1,600 employees. At one plant, we bargain with the United Automobile Workers (CIO). At the other, we bargain with the United Electrical Workers (CIO). In addition, we bargain with the Pattern Makers League (AFL) and with the International Association of Machinists (Ind.).

My purpose in appearing before this committee is not to discuss the Taft-Hartley Act in its entirety, but to tell you what this act means to me and to my company in the practical conduct of labor relations, and in the operation of our business. We feel that are others better qualified than we are to inform you about the fairness and the importance to employees, to employers and to the public of many of its provisions.

There are six main provisions of the act which, in our own experience, are of great importance to a company such as ours which has bargained collectively with several unions for a number of years. Not necessarily in order of importance, these are the provisions relating to (1) union duty to bargain; (2) union contract responsibility; (3) freedom of speech; (4) secondary boycotts and jurisdictional strikes; (5) exclusion of supervisors; (6) union discrimination, coercion, and interference.

I should like to tell you briefly what each of these provisions means to us, and why we believe that they should be retained.

1. *Union duty to bargain* (secs. 8 (b), 8 (d)).—The ultimate objects of the act are, and should continue to be, the promotion of collective bargaining and the maintenance of stable employer-employee relations. But these are objects which can be achieved only through the maturity of mutual understanding, respect and confidence and the full exchange of facts and ideas across the conference table. Maturity is vital to successful collective bargaining, and maturity comes only through responsibility.

Collective bargaining cannot be a one-way street. Each of the parties must have the duty to try in good faith to reach agreement if the process is to have any long-range chance of success. Particularly as we move from a seller's to a buyer's market and a more normal economic level, it is of the utmost importance that both parties have the duty to bargain in good faith concerning mutual problems as they arise. The "take it or leave it" philosophy should have no part in the settlement of such problems.

Based upon our own experience, there is not the slightest doubt that requiring unions as well as employers to bargain in good faith has contributed immeasurably to accomplishment of the main objects of the act. And the provisions (sec. 8 (d)) maintaining the status quo for a limited period while proposed changes in a contract are negotiated, have done much to substitute sincere bargaining for economic force.

2. *Union contract responsibility* (sec. 301).—By law and even more as a practical matter, collective bargaining does not end with the signing of a labor contract. That is only the important first step. Throughout the life of the con-

tract, provisions must be interpreted, grievances must be adjusted, problems must be faced and solved if the mutual objectives of employees, management, stockholders, and customers are to be achieved.

Like the process of bargaining to arrive at a union contract, the continuous bargaining process under it must be accompanied by responsibility on the part of both parties to observe it. As in the case of any other contract, responsibility is imposed and assured only if there is an effective way to enforce it.

The purpose of providing an effective remedy for breach of the labor contract by either party is not to provide a means of litigating rather than negotiating disputes. Quite the contrary, the purpose is to encourage the realization that true collective bargaining and stable labor relations involve, among other things, observance of the collective agreement by both parties.

Again, it is clear to me that the provisions of the act providing both parties to a labor contract with an effective remedy to enforce it has greatly strengthened the process of peaceful negotiation of differences.

3. *Freedom of speech* (sec. 8 (c)).—Sometimes, as is perfectly natural, there is disagreement between our employees and us concerning the settlement of a dispute or some action which is proposed by one or the other of us. But for practical reasons, the employees are represented in collective bargaining by a small committee. In consequence, unless we are free to present our views and the facts as we see them to all of our employees, we are forced to rely upon a union committee, which is not and should not be nonpartisan, to do it for us. Such a result is obviously not fair to our employees, to the union, or to us.

Moreover, in our experience, freedom of both parties to speak out against actual or supposed unreasonableness or ill-advised action inevitably strengthens the collective bargaining process. In the long run, it exposes and therefore discourages intemperate action and arbitrary demands by either party. In the short run, it provides maximum assurance that a fair and practical settlement will be reached.

Our right to express our views and give the facts as they appear to us cannot be honestly questioned so long as we do not interfere with the legitimate right of our employees to act according to their own lights. Otherwise, we are deprived of our only effective means of insuring full and fair consideration by our employees of our problems and proposals, and of the respective merits of divergent views of the union and of management.

It seems clear to us that particularly as mutual problems increase in this transition period, it is imperative that we be free to speak whenever the need arises.

4. *Secondary boycotts and jurisdictional strikes* (secs. 8 (b) (4), 10 (k), 10 (l), 303).—Many of the printing presses and paper cutters which we manufacture are very large and must be assembled and installed by skilled workers in the customer's plant where they are to be used. Thereafter, skilled servicing is required from time to time. To provide for these services, we maintain a number of sales and service offices throughout the United States and Canada.

These facts, as well as the nature of our products, bring us into close contact with the graphic arts and printing industry, and a number of printing and other craft unions. Aside from the familiar rivalry of CIO and AFL unions, we are constantly exposed to rivalry between craft unions and to disputes between another employer and a union of his employees. In none of these situations do we have a bargaining relationship with the other union or unions in question. Nor do we have any practical way to get to the bottom of the dispute and try to settle it.

The fact that our own labor policies and relations with our employees may be good does nothing to relieve us from the paralyzing consequences of a secondary boycott or strike in connection with a dispute in which we are only an innocent bystander. Yet prior to the Taft-Hartley Act we were helpless to confine the area of the dispute to the parties fundamentally concerned with it, even though the threat was as disastrous to our own employees as it was to us.

The protection afforded by the provisions of the act dealing with secondary boycotts and jurisdictional strikes is vital not only to us but to our employees.

5. *Exclusion of supervisors* (secs. 2 (3), 2 (11)).—Like most companies, our company could not function without effective and loyal supervisors. They are the base of our management pyramid. From the standpoint of labor relations, they are the day-to-day link between employer and employee, carrying our policies and problems to our employees and their proposals and problems to us. In our view, the supervisor's role as the primary representative of management is indispensable to the maintenance of good, and therefore stable, labor relations.

Confronted with the obligations of compulsory union membership under a labor contract, and with the simultaneous obligation to represent management in the supervision of fellow union members, a supervisor is placed in a hopeless dilemma regardless of his sense of duty and loyalty. His effectiveness either as a member of the union or as a member of management is materially impaired. Under the Wagner Act his employer was bound to prevent him from interfering in union activities or affairs, yet was forbidden from interfering with his actions on behalf of a union, although the line of separation was far from clear. His fellow union members were bound to admit him to their meetings and plans, knowing that he represented the management which they might feel impelled to impose or with which they disagreed.

The act's confirmation of a supervisor as part of management is urgently required out of fairness to the employees and their employer, and out of fairness to the supervisor himself. To insure the effective operation of business, the need for such confirmation is likewise clear.

6. *Union discrimination, coercion, and interference* (secs. 8 (b) (1), 8 (b) (2), 8 (b) (5).—The necessity of prohibitions against discrimination, interference, and coercion of employees by unions as well as by employers, cannot be seriously challenged. It is not really a matter of making what is sauce for the goose, sauce for the gander as well. Rather it is the basic problem of insuring that employees are wholly free from improper influences and pressures, and thus are free to consider every question on its merits.

Absence of complete freedom has many practical, and serious, consequences. For example, about a year ago the political beliefs and proposals of some leaders of one of the unions with which we were then bargaining were questioned by employees at one of our plants. These employees thereupon advocated another union. As a result, we were advised by the bargaining union that two of these employees had been expelled from membership in the union.

Prior to the Taft-Hartley Act, we would have faced a very practical dilemma. On the one hand, the maintenance-of-membership clause then in effect would have required us to discharge the two men, even though they had been good workers for 10 years. On the other hand, the National Labor Relations Board would have held the discharges to be discriminatory, and therefore unlawful. But the explicit provisions of the act enabled us to avoid a controversy which theretofore had defied practical solution.

This is only one instance of the necessity of forbidding discrimination, coercion, and interference by unions as well as by employers. It seems clear to us that the provisions of the Taft-Hartley Act which accomplish this must be retained in fairness to employees, to employers, and ultimately to unions as well.

To summarize, then. Our own experience convinces me that the six provisions of the act which I have discussed are of the utmost importance to the maintenance of good labor relations and to the conduct of a business such as ours. Other employers are better qualified than we are to confirm our own belief that, in principle and in actual operation, the Taft-Hartley Act is fundamentally fair.

Statement by Farrell Dobbs, National Chairman of the Socialist Workers Party, on the Thomas-Lesinski Labor Bill

Mr. Chairman and members of the committee, speaking for the Socialist Workers Party, I support conditionally the Thomas-Lesinski labor bill to the extent that it repeals the Taft-Hartley Act and restores unimpaired the original Wagner Act. I urge strengthening of the Thomas-Lesinski bill to provide full and adequate safeguards of the right to strike, which has been gravely undermined during and since the war.

Compulsory cooling-off periods; court injunctions; staggering fines against striking unions; seizure of industries solely to break strikes; bans on strikes of Government employees; threats to draft strikers into the armed forces—all these and other devices of compulsion have been used by Government to restrict, restrain, and deny the right to strike.

A new and most serious attack on the right to strike has arisen through President Truman's claim of "inherent power" to break strikes by injunction. If permitted to stand unchallenged, the President's sweeping assertion of strikebreaking powers would render null and void any act of Congress lifting present restrictions on the right to strike. It is therefore necessary for the Congress to enact legislation specifically forbidding the President to break strikes by injunction.

The right to strike is similarly subject to attack under certain provisions of the Thomas-Lesinski bill.

Title III empowers the President to proclaim a national emergency in major labor disputes, appoint an emergency board to investigate the dispute, and ask postponement of strike action for 30 days. That provision would impair the right to strike because the full weight of Government condemnation would automatically be brought to bear against workers who might decline to stay on the job for 30 days. And it constitutes an open invitation for the President to invoke his claim of "inherent power" to go to the courts for strike-breaking injunctions. Title III should be eliminated in its entirety.

Title I, section 108, would make it an "unfair labor practice" to terminate or modify collective-bargaining contracts without 30 days' prior notice to the United States Conciliation Service. Here again Government compulsion is introduced to restrict free exercise of collective bargaining and the right to strike. Title I, section 108, should be eliminated.

Another infringement of the right to strike is the declaration under title II, section 205, that it shall be the "public policy of the United States" to demand arbitration of disputes growing out of the interpretation or application of collective-bargaining agreements. That provision means the full weight of Government pressure would be used to impose compulsory arbitration in an important area of collective bargaining. Title II, section 205, should be stricken from the bill.

Compulsory arbitration of jurisdiction disputes between unions and a ban on secondary boycotts in such disputes is provided under title I, section 106. If the Government orders compulsory arbitration of jurisdiction disputes, and strongly advocates arbitration of disputes over contract interpretation, then dangerous precedents will have been established for a later attempt to order compulsory arbitration of wage rates, hours of work, and general working conditions. If today secondary boycotts are banned in jurisdiction disputes, tomorrow the ban may be extended to all boycotts. Title I, section 106, should be eliminated.

To secure full protection of the rights of the working people, I urge total repeal of the Taft-Hartley Act and restoration of the original Wagner Act with the following supplementary safeguards:

(1) There shall be no restriction whatever on the rights of all workers, including Government employees, to organize, bargain collectively, strike, and picket.

(2) It shall be unlawful for any agency of Government to restrict, restrain, or deny the right to strike and picket, by injunction, by seizure of struck facilities solely to break strikes, or by any other means.

(3) If a corporation in any basic industry or public utility should cause public hardship by instituting a lock-out, or by precipitating a strike through refusal to bargain equitably with its employees, such corporation shall be nationalized by the Government and its facilities operated under the democratic control of its employees.

Statement by Donald L. Jordan, President, Johnson-Carper Furniture Co., Inc., Roanoke, Va., on H. R. 2032

The House Subcommittee on Education and Labor has requested that I submit my views on H. R. 2032 in writing in lieu of a personal appearance before the committee as I had requested.

By way of introduction, let me state that I am the president of Johnson-Carper Furniture Co., a furniture-manufacturing concern located in Roanoke, Va., and employing approximately 500 employees. The employees of this company have been represented by the United Furniture Workers of America, CIO, for approximately 3 years. The company and the union have worked together and have negotiated collective-bargaining contracts under both the Wagner Act and the Taft-Hartley Act. I can say, without qualification, that the relationship existing between management and the employees under the Taft-Hartley Act has been far more harmonious and mutually advantageous than under the Wagner Act.

The union membership today is about the same as it was prior to the passage of the Taft-Hartley Act. There have been no strikes or work stoppages since the enactment of the new act and there is strong evidence that a sense of responsibility for the observance of the terms of the contract has developed in the minds of the union representatives and employees. Insofar as I know, employees of this company do not object to the provisions of the Taft-Hartley Act or feel that it is detrimental to the best interests of the employees, but, on the contrary, I know that many of our employees feel that this act is desirable in order that it be fair to both labor and management and especially so that it will protect the rank-and-file employee and the general public.

It is my belief that the foregoing statement of conditions would be subscribed to by all manufacturers in the Roanoke area and this would include many industrial concerns. The labor-management situation in Roanoke has been more stable and harmonious during the past year and a half than it has ever been to my knowledge and it is my sincere belief that a great deal of credit for this situation is due to the enactment of the Taft-Hartley Act.

In view of the statements heretofore expressed, I think you will understand that I do not favor the provisions of H. R. 2032 but believe, on the contrary, that the Labor-Management Relations Act of 1947 should continue to be the law of this country with such minor amendments as may be determined as desirable by the Congress.

Statement by John C. Juras, President, Iroquois Foundry Co., Racine, Wis., Relative to H. R. 2032

We are an employer of approximately 100 people. Since the inception of the Wagner Act our labor relations have been just as stormy as the average of industry. Our experience has been that labor (organized) is irresponsible and did not accept its responsibility to any agreement that it had signed with us up and through 1947. From 1938 through 1945 we had one strike of 10 days' duration, innumerable incidents of contract violations, and work stoppages. It was only at the end of 1945 that we decided to keep permanent records of disturbances within the plant in order that we would have something to present to interested parties in the event that it became necessary to prove our record. We therefore did, starting January 1, 1946, record labor disturbances that we considered unwarranted and in violation of a written agreement in effect. Our record is as follows:

From January 1, 1946, through December 31, 1946, we had nine incidents of contract violations and work stoppages. From January 1, 1947, through December 31, 1947, 10 incidents of contract violations and work stoppages. From January 1, 1948, through December 31, 1948, there were no violations of contract or work stoppages, nor have we had any violations of contract or work stoppages so far during 1949. In our opinion, the only reason we had no disturbances in the plant during 1948 and 1949 is due to the fact that the Taft-Hartley law was made a law of the land and it forced upon organized labor (the group we deal with) responsibilities to the fulfillment of their obligations. Without this law we believe they would have continued to operate as they did in prior years.

Therefore, our record proves that any new labor legislation that will be written should include language that will make both parties responsible under new agreements that they may write. Law without such a provision would, in our opinion, be a farce, and democratic processes will break down in the event this particular phase in legislation is bypassed.

Statement by Tyre Taylor, General Counsel, Southern States Industrial Council, in Support of the Taft-Hartley Act

On June 2, 1948, we stated to the Joint Committee on Labor-Management Relations that—

"In the opinion of the council, the Taft-Hartley Act is steadily proving itself to be wise, moderate, and generally effective legislation. The fears of those who opposed it on the ground that it went too far—was indeed a 'slave labor' law—have been proved groundless, while those who went to the opposite extreme in their appraisal have likewise had to revise their initial unfavorable opinion."

The events of the last 10 months have served only to strengthen and confirm the general impression thus outlined to the joint committee. Today, I should like to discuss some of the specific provisions of the Taft-Hartley Act which are not included in the Lesinski bill (H. R. 2032) and which we think are absolutely essential if we are to have a national labor policy in this country which is reasonably fair to all parties concerned, namely, the employers, the employees, and the public. No attempt has been made to list these items in the order of their relative importance for the reason that, as I have just stated, we feel that they are all essential.

PROTECTING EMPLOYERS' RIGHTS

1. *Free speech.*—The depressing story of how this fundamental constitutional right was denied to American employers is too familiar to require repeating. By holding illegal all sorts of statements—in themselves clearly noncoercive—management was effectively deterred from expressing its views. In fact, employers became so confused and intimidated that they dared not open their mouths.

The Eightieth Congress acted to correct this intolerable situation. Both management and labor were given the right to express their views so long as such expressions contained no threat of reprisal or force or promise of benefit.

We feel that this principle of equality should be retained. It is not only the right but the duty of every employer to discuss freely with his employees the effect of union demands and policies on his business. Both have a common interest in the prosperous condition of the enterprise in which they are mutually engaged. To require that management abstain from discussing union actions which vitally affect the interests of both employers and employees is inimical to a democratic economy.

The unions take the position that the right of free speech doesn't have to be established by statute. They contend that the Supreme Court has ruled that an employer may speak freely if he does not threaten or coerce his employees. The trouble with this contention is that it ignores our past experience with an overzealous administration under the Wagner Act. The Board, acting as grand jury, prosecutor, judge, and jury paid only lip service to this principle in many instances. And even under the present law—in which the right of free speech is protected—the Board in the General Shoe case held that such protection does not prevent it from declaring a new election whenever it deems a noncoercive statement to have upset "the requisite laboratory conditions."

It is true that later decisions modified this doctrine, but until the law clearly forbids the Board from compromising the right of every person to free speech in both unfair-practice cases and election cases, there is no assurance that employers will not once again be silenced.

2. *Mutual obligation to bargain.*—For nearly 15 years it has been our national labor policy to encourage collective bargaining. During nearly all of this time, however, the one-sided Wagner Act operated to make collective bargaining a duty of employers only, and many instances arose when powerful unions took advantage of this inequality by presenting their demands on a take-it-or-leave-it basis. Congress when it passed the Wagner Act found that the refusal to bargain led to industrial strife and unrest. This finding is retained in the bill before this committee, yet it proposes to discard the Taft-Hartley provision making the obligation to bargain a mutual undertaking, and once again returns to the thoroughly discredited assumption that only employers refuse to bargain. It is difficult to conceive of any valid objections to equalizing the obligation to bargain. The wisdom and justice behind such a requirement are so undeniable that any proposal to destroy it can only dumbfound honest-thinking citizens.

Spokesmen for the unions have not had the gall to oppose it outright but prefer to say that it is not necessary since the central object of unions is to bargain collectively and they don't have to be required to do it. Of course, this is only another example of labor organizations asking for special privilege. Just as in the case of free speech, they want their rights spelled out clearly in the statute, but not the concomitant rights of employers or the public.

Times have changed since the Wagner Act was passed. The unions have steadily grown in numbers and strength. More and more, they enjoy a heavy preponderance of bargaining power. Where this is true—and from the union's standpoint—bargaining loses a great deal of its attractiveness. It's far more effective for them to dispense with attempts to reach an understanding and insist that there is nothing to talk about. In case there are those who doubt the danger of his happening, I cite the refusal last year of John Lewis to discuss any terms of settlement with southern coal producers.

As it is now both parties are required to give 60 days' advance notice of a desire to terminate or modify an existing contract before resorting to a strike or lock-out. During this time both labor and management have a legal duty to meet and negotiate with each other. Experience has shown that these steps have encouraged the settlement of differences without costly strikes. Nevertheless the proposal is to abandon these preventative measures, apparently for no other reason than a reluctance to admit that there is anything worth saving in the Taft-Hartley Act.

3. *Separation of board functions.*—We in this country have always taken pride in the fact that ours is a government founded on justice under law. It is fundamental to such a system that the function of judge and prosecutor be strictly separated. The evils which result from a failure to follow this principle have been clearly illustrated by the operations of the Board under the Wagner Act.

It is elementary that when an employer is charged with a violation, and the Board has the duty to determine whether a cease and desist order should be issued, it must be impartial in weighing the evidence if justice and fair play are to result. Yet under the Wagner Act and the Lesinski bill the Board is given authority of prosecutor, judge, and jury. Obviously this imposes the impossible burden of serving two masters, and in a labor law which goes as far in governing the relations of men as this one does, it destroys public confidence in the impartiality of our whole system of government.

To be sure, there will be judicial review of final orders by the Board. But this holds no assurance that an aggrieved party can avail himself of the Court's protection. And even where this is possible, he will frequently find no relief since courts have long held to the rule of noninterference with administrative discretion.

If the prosecution functions are returned to the Board, its successful operation will be impaired by an inability to convince employers they will receive a fair and impartial hearing. To employers as well as to a large segment of the public the Board will once more appear as an arm of the labor-union movement.

The Administrative Procedure Act will not prevent this. The separation of functions provided for under that law would not prevent the Board from exercising general supervision over attorneys and investigators charged with the prosecution and issuance of complaints.

4. *Suability of unions.*—I have just stressed the importance of making the obligation to bargain collectively a duty of labor as well as management. It is equally important under our national labor policy to make contracts freely entered into after collective bargaining mutually binding on both parties. Common sense tells us that peaceful labor relations cannot be achieved by bargaining if one of the parties is not held to an observance of his contract. The very essence of any contract is mutuality of obligation. If this is not present there is nothing but a bare agreement.

We feel that it is absolutely essential that Federal courts have the power to enforce collective-bargaining contracts. In many State courts this is not possible, either because unions cannot be sued as an entity or because collective-bargaining agreements are not recognized as legally enforceable contracts. Unless uniform enforcement procedure is permitted in Federal courts, the practical result is that only employers are financially responsible should they refuse to live up to their agreement.

When the Taft-Hartley Act made unions suable in Federal courts, some people predicted that labor organizations would be subjected to harassment by employers filing a multiplicity of suits against them. These dire predictions have never materialized, and experience has shown that a large part of actions filed were disposed of by agreement between the parties. Peaceful settlement of disputes has been encouraged by making unions as well as employers responsible for their actions. Particularly beneficial was the reduction in wildcat strikes which unions themselves have endeavored to prevent, but very often without success. Largely responsible for this was the fact that the Taft-Hartley law does not require a showing of authorization of subsequent ratification in order to determine whether a member was acting as an agent of his union. If collective-bargaining contracts are to serve as a means of preventing labor disturbances, it is essential that this provision be retained.

Secondary boycotts, jurisdictional strikes, and attempts to force an employer to bargain with a union when another union has been certified as bargaining agent are all condemned by the proposed bill as unfair labor practices. However, in view of the fact that the Board takes many months to process such cases, some additional deterrent should be provided. An effective method is to allow suits for damages sustained as a result of such illegal practices.

This remedy has been available for almost 2 years and there is no evidence that it has been abused. Only about a dozen suits have been instituted, and here again court records will show that many were settled out of court. The most recent information I have concerning the disposition of such actions is that in no instance has any union been required to pay damages. The major benefits of holding union suable is not so much that they afford injured parties a means to collect damages but rather that they prevent injury by making unions a responsible entity in our society. This is accomplished without making individual members liable for a money judgment and forecloses any possibility that the labor-union movement will be deprived of its financial support.

5. *Supervisory employees.*—There is no more vital issue in the whole field of labor relations than that of the status of supervisory employees and foremen. In almost every plant—and particularly the large ones—foremen are the most direct contract that management has with production workers. These employers frequently regard the foreman as the boss, and to fulfill this responsibility to his employer he must be prepared to take disciplinary action against men over whom he exercises supervisory authority. Because of this, a very serious problem arises whenever a foreman is a member of the same union as production workers. The difficulty is that a foreman in such a situation is subject to the discipline of the union and must obey all its rules and regulations. If the union has a compulsory membership contract, he can, of course, lose his job should the union expel him from the organization.

Placed in such a position the foreman has the impossible task of serving two masters. No matter what course of action he takes, there is no way for him to avoid trouble.

When the Wagner Act was passed the possibility that foremen exercising managerial authority would be classed as employees under the act was never considered. At first the Board decided they were not, then later it reversed itself an held they could join an independent union. Still later, in the Jones-Laughlin Steel Co. decision, the Board went the whole distance by holding that an employer could be compelled to bargain on wages and working conditions of foremen with the same union that represented the production workers whom the foremen were expected to supervise.

In the Taft-Hartley Act Congress undertook to rectify this mistake by excluding supervisors from the law. The result has been gratifying. Employers for the most part reacted by making foremen a more integral part of the management team and provided them with additional benefits and privileges. The labor unrest that was predicted never materialized. Indeed, the enactment of this provision contributed to the settlement of a strike of supervisory personnel which was in existence at the time the act was passed.

The demands of unions that the foremen be classed as employees under the law jeopardizes these gains made in the last 2 years and unless they are resisted foremen will once again find themselvs torn between conflicting responsibilities.

6. *Jurisdictional strikes.*—The necessity for preventing jurisdictional strikes is universally recognized in this country. The administration and labor spokesmen are agreed that such strikes are indefensible. H. R 2032 makes such strikes an unfair labor practice, and gives the Board authority to settle them.

However, the effectiveness of this bill as a solution to jurisdictional disputes is open to serious doubt. This is indicated by an article in the January 31, 1949, issue of the New York Times, which deals with the efforts of the AFL to settle such disputes in the building industry. The following is a quotation from this article:

"American Federation of Labor building trades unions and the organized contractors have agreed in meetings here to continue indefinitely their joint board for the settlement of jurisdictional disputes, but the administration-backed labor bill is putting a blight on prospects for the machinery's continued success.

"This threat arises from the measure's omission of an injunction provision to prevent interruptions of work while conflicting union claims are being mediated or arbitrated. It has not been necessary to use the Taft-Hartley injunction authority in jurisdictional disputes but the mere availability of the injunction has forced certain unions to respect their own peaceful machinery for settling disputes.

"Labor leaders are strongly opposed to the injunction weapon in principle, but at least some of them recognize privately that as a practical matter it is desirable to have some such enforcement weapon to protect them from each other * * *."

I feel no need to add to this statement for it clearly points out the weakness of relying on a cease and desist order of the Board to protect innocent bystanders who President Truman stated would be injured by a collision between rival unions.

7. *Secondary boycotts.*—Here, too, we find the administration and labor agreed on the desirability of prohibiting a practice but a reluctance to deal with it realistically.

The bill now under consideration fails in three respects to provide adequate measures to curb the evil of secondary boycotts.

First, the definition of a secondary boycott is phrased so as to leave a serious loophole permitting certain types of boycotts that are intended to be prohibited. The definition is framed so that the prohibition applies only to the refusal of employees "to produce, manufacture, transport, distribute, or otherwise work on articles, materials, goods, or commodities because they have been made or are to be manufactured, produced, or distributed by another employer."

The weakness of this definition can be explained best by concrete example. Let us suppose that two unions are engaged in a jurisdictional dispute over the assignment of work in a flour mill. The mill continues to operate and sells some of its flour to a bakery. One of the unions in the dispute calls out the bakery's drivers that deliver its products to consumers for the purpose of forcing the bakery to cease dealing with the flour mill. Under these circumstances, it is highly probable that the union would be successful in contending that it was not engaging in a secondary boycott under the definition contained in this bill. For the Board might well hold that the bakery's drivers were not refusing to handle any articles, materials, goods, or commodities that were manufactured, produced, or distributed by the flour mill. The reason being that flour, once it is made into bread, loses its identity as such, and the drivers would be refusing to handle bread, not flour, which the flour mill neither produced nor distributed as bread.

The second respect in which this bill fails to meet the threat of secondary boycotts is that it does not prevent a boycott which is designed to force an employer to cease doing business with another employer, so long as there is no jurisdictional dispute or question involving bargaining representation involved.

Thus, in the above example, if the flour mill and the union are in disagreement over wages, the union could legally force the bakery to stop dealing with the mill by calling a strike. As often happens in such cases, the bakery may have no other source of supply and is therefore forced to close its doors and lay off all its employees. By such means localized labor disputes are spread through the entire system.

The third defect of the bill is that no effective remedy is provided to prevent strikes to enforce illegal secondary boycotts. To be sure, a complaint may be filed with the Board, but it may be a year or more before a cease and desist order is issued and, even then, violations of the order can continue indefinitely until a court order is granted. The obvious need for a more prompt means to prevent or stop strikes of this nature is nowhere provided for in H. R. 2032. President Truman, in his state of the Union message, condemned strikes to compel an employer to violate the law. Nevertheless, if this bill is passed in its present form, there will be no real protection against the use of this device until it has accomplished its purpose.

PROTECTION OF THE RIGHTS OF EMPLOYEES

1. *Compulsory unionism.*—From the individual employee's point of view there is probably nothing more destructive to his freedom than the proposal to legalize the closed shop. We have heard a lot of loose talk about slave labor in this country. However, most of it comes from union bosses who have done their utmost to impede free access to the employment market by any but their own members.

A slave is a slave no matter who acts as his master, and labor leaders prefer to ignore the fact that compulsory unionism was abolished by the last Congress in order to emancipate labor from their monopoly control.

Two years ago this committee brought to light the many abuses which result from compulsory membership. The examples given demonstrated that this practice stifled democratic processes in the internal affairs of unions and led to a number of restrictive practices which inflicted serious injuries on the public at large. It was shown that a handful of labor leaders not only monopolized employment in an industry, but used their power to paralyze our entire economic system to further their own ends.

A few months ago Mr. Murray, at the CIO convention, criticized a number of officials in affiliated unions for not energetically seeking new members. You will recall that Mr. Murray made it plain that he thought the CIO was being harmed by lazy organizers. Without doubt other labor leaders are also troubled by this problem. There is only one solution for it. It is that unions, like any other private organization, must sell and not force their services on prospective members. Under the Wagner Act a union was not required to give consideration to the wishes of employees in a plant if the employer could be compelled or persuaded to sign a closed-shop agreement. Now that this is no longer possible, it is perhaps not surprising that some unions are finding it difficult to change gears.

It is beginning to be obvious that compulsory unionism is as harmful to unions themselves as it is to the workers and the public at large. The railroad unions have flourished without it and there is every reason to believe any labor organization worthy of representing its members doesn't need governmental sanction to force anyone to join.

Far-sighted union men know this. They also know that if the Federal Government is going to authorize and promote compulsory unionism, it cannot be long before the Government will be asserting complete control over the internal management of unions. One follows the other, for if the laboring man's prerogative to join or not to join a union is not protected, then it is absolutely essential that his every right as a union member be guarded by the Government. There is no way for the country or the unions themselves to avoid this dilemma—either we are to have a free-labor movement with voluntary membership or unions are to become mere adjuncts of the Government with every laboring man a member. I need hardly point out that this latter possibility must be prevented if our democracy is to survive.

The bill now before this committee ignores the danger of closed unionism. It goes even further in this direction than did the Wagner Act by nullifying right to work laws passed by over a dozen States. Seven Southern States now have statutes forbidding the exclusion of persons from work because they are or are not labor union members.[1] The Supreme Court only recently twice ruled that States have the power to enact such laws and thereby rejected the contention of the unions that the Federal Constitution affords protection for union members against discrimination but forbids the States from providing the same protection for nonunion members. Having been denied the constitutional right to drive from employment persons who will not join, the unions are now asking Congress to preempt the right of a State held constitutional by the Supreme Court.

Last June before the Joint Committee on Labor-Management Relations we asked that States be given additional responsibility for maintaining industrial peace. At that time we said, "Good labor relations begin where the problem arises—in the factories and mills, in the towns and cities, and from there to the individual States where special and particular problems are more easily understood and more quickly solved." Then, as now, we pointed out that the tendency to look to the Federal Government to cure all the ills of labor-management relations has become a dangerous fetish, and has engendered an apathy on the part of citizens and local and State government officials in seeking out and applying solutions of their own labor problems.

We urge therefore that if Congress deems it inadvisable to prohibit all forms of compulsory unionism, that it at least retain the mild protection of the employee's right to join or not to join a union which is embodied in our present labor law, and that discriminations not forbidden be permitted only where membership arrangements are expressly authorized by State law and then only under the conditions specified in such laws.

2. *Coercion and intimidation of employees.*—Another important protection to employees not found in the proposed bill is that of making it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their rights given to them by law. To appreciate the potential consequences of this omission, we need go no further than to refer to the record of testimony taken by this committee in its 1947 investigation of coercive picketing. In a large number of instances unions were found to have resorted to physical violence against employees for continuing to work against the wishes of the union. In some cases plants were invaded and workers thrown out bodily by "flying squadrons." Employees risked their lives and property if they dared defy the picket lines.

Under the proposed bill employees would not even have the present mild remedy of a cease-and-desist order by the Board. They would be completely dependent on the union's approval before they could earn their living. The unbelievable examples disclosed by this committee's own records where unions have exerted despotic control over workers' rights make it essential that the present provisions of the Taft-Hartley law dealing with such abuses be retained. And it is further necessary that the Board be authorized to require a union guilty of such tactics to reimburse employees for the wages they have lost.

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[1] Arkansas, Florida, Georgia, North Carolina, Tennessee, Texas, and Virginia.

PROTECTING PUBLIC RIGHTS

7. *National emergencies.*—The dangerous and potentially disastrous situation caused by strikes that imperil national health and safety has evoked widespread concern. It is clear beyond dispute that such strikes cannot be a permissible economic weapon in any organized society. It is equally clear that no government worthy of the name can continue to tolerate them.

How does H. R. 2032 intend the Federal Government to discharge its duty to protect public interest from such strikes? It provides for a Presidential proclamation calling on both parties to continue or resume operations in the public interest while an emergency board conducts an investigation and reports on its findings and recommendations. But suppose one of the parties refuses to obey the proclamation and forces a complete shut-down of a basic industry? The answer to that situation is now a matter of dispute within administration circles. Secretary Tobin says the bill was drafted without an intent to provide the Government with the right to seek an injunction. Attorney General Clark states that in his opinion this right is inherrent and need not be specifically spelled out by law, and President Truman has said he has no objection to allowing the use of injunctions to meet the problem. Labor spokesmen on the other hand continue to maintain their unalterable opposition to a grant of injunction powers over their organizations.

This array of conflicting interpretations and desires on the part of supporters of this bill concerning its intent and purpose in a matter so vital to our national existence is itself convincing evidence of the need for explicit legislation. If these disputes exist before the bill is passed, how can its enactment serve to deter such strikes? Nothing is settled and new sources of antagonism are certain to arise. Surely Congress has a duty to the people of this Nation to take a firm stand against the right of any group to place its interest above national welfare. Six times since the passage of the Taft-Hartley Act the President found it in the interest of the public to enjoin strikes that threatened to paralyze our economic system. During one period, two basic industries—coal mining and rail transportation—were operating only because the Federal Government intervened to prevent a complete shut-down. In the face of this experience—and incidentally Mr. Lewis may be rendering a great public service in now reminding us of this experience—it would be nothing less than an invitation to national disaster to abolish the use of injunctions to protect national health and welfare. We think H. R. 2032 proposes to accomplish this result. Perhaps the Attorney General is correct in stating that the bill does not deny the use of injunctions by the Government. But must we wait until the Nation has suffered a paralyzing blow to find out? Can there be any justification for scrapping our present machinery which has been successfully used in preventing such strikes? We do not think the answer to this question can be in any serious doubt.

2. *Industry-wide bargaining.*—The use of temporary injunctions against strikes that imperil national health and safety, necessary as they are, nevertheless do nothing to prevent or control the basic conditions that give rise to such national emergencies.

Injunctions deal with the result—monopolistic strikes—but they do not remedy the cause—which is union monopolies.

Admittedly this problem is one of the most difficult in the whole field of labor relations. The extreme measure of permanently banning such strikes is in the judgment of most people not desirable. Mere prohibition does not settle the dispute which is a necessary prerequisite to a successful settlement.

Instead, we suggest that the committee consider eliminating certain conditions which make such strikes possible, and to accomplish this we respectfully submit the following proposals:

(1) Amend the bill to include the railroads and require that bargaining units in the coal, steel producing, and rail transportation industries be on a company-wide basis, with all other bargaining units restricted to a metropolitan district, county, or a company-wide basis; and

(2) Amend the Clayton Act and the Norris-La Guardia Act to make unlawful any combination, contract, conspiracy or concerted plan of action between any person or corporation represented in different bargaining units, whose operation is required to be autonomous under proposal No. 1 above, where the object of

such activity is to formulate a policy with regard to the terms or conditions of collective bargaining agreements, or to agree on a time or plan for carrying out a strike, lock-out, slow-down, or other interference with trade or production.

With regard to the first recommendation, it seems clear that no effort to solve monopolistic strikes can succeed unless the bargaining units are dissolved into autonomous agencies for negotiating collective bargaining agreements. Proposals for doing this should recognize the need for more complete decentralization in industries where monopoly unions are the strongest and where cessation of operation, if even for a short time, will lead to a national emergency.

In the case of coal, it may be safely asserted that peace will never prevail in this industry as long as Mr. Lewis can dictate the same terms and conditions to all operators and at the same time call out all miners to enforce his demands.

In all of these industries we have not only a case where one union can close down the entire industry, but also a condition where a shut-down even for a brief interval will seriously impair the economic life of the Nation. In other industries where the problem is not so serious, it may suffice to split up bargaining units on a geographical basis (i. e., metropolitan areas or county), with an exception allowed for company-wide bargaining in all cases.

Our second suggestion is made for the purpose of insuring the autonomous operation of bargaining units required to be dissolved under point one. It would be worse than useless to require bargaining on a company or metropolitan area basis and allow an international labor organization to control the terms of a contract which a local union can sign. It is said that you cannot prevent local unions from making the same demands and that applying the antitrust laws would not be effective. Of course this is speculative until it is tried, but we believe that if the local unions had complete freedom of action they would exercise it. Many employees in a local plant resent the fact that they have no freedom to agree on the conditions of their employment. But so long as the international union can require that it be made party to every agreement and can exercise the right of veto over such agreements, they are helpless to do anything about it.

3. *Welfare funds.*—The tremendous growth of union-management welfare plans within recent years makes it necessary that more serious attention be given to their operation and effect, as well as that our national policy with regard to them be clarified.

When it enacted the Taft-Hartley Act Congress recognized that these funds often amount to huge sums and, unless some control is placed on their establishment and operation, abuses will occur which injure their intended beneficiaries and the public generally. Therefore the act required several conditions to be fulfilled in an effort to assure that they would be properly administered. The chief beneficiaries of this protection are the employees themselves and it is to be regretted that H. R. 2032, intended to be in the interests of labor, neglects to provide these minimum safeguards.

In our view it is encumbent on Congress at the very least to retain intact the provisions of the Taft-Hartley law controlling such funds. Anything less than this will open the door to widespread maladministration and eventually lead to sizable losses. Considering the size and number of these funds which have grown up over the country, there is a public interest involved in making sure that they are managed in a democratic and trustworthy manner.

In this connection, we feel that two problems in particular—neither of which is provided for under existing law—merit special consideration by this committee.

The first is the current ruling of the Board which makes welfare plans a subject of compulsory bargaining. Employers who oppose this do so because their experience has taught them that welfare programs are not suited to the process of collective bargaining. In the first place, these plans are enormously complicated by actuarial considerations, as well as the ability of each employer to meet certain commitments. The difficulties involved very often make it impossible for an employer to follow a plan which the bargaining union may have in effect with another employer, and neither can he establish several separate plans to satisfy the demands made on him when more than one union is representing his employees. In view of these facts, continued retention of the compulsory bargaining rule may serve to lessen rather than promote new welfare programs from coming into existence.

Secondly—and from a long-range point of view—it is even more important that the committee give consideration to the effect on our economy of welfare plans financed from royalty payments.

It is clear that such payments are a charge on the entire economy. The resources available for their payment are not limitless and continued expansion can only mean that members of certain unions will receive more than their share, while other less fortunate employees will receive less or nothing.

In this connection it is important to bear in mind that in the case of certain employee's trust funds the Internal Revenue Code not only frees the trust itself from tax but employees are not taxable on the amounts paid into the trust by their employer.

On the other hand, if you and I, or any of the millions of people who are not members of such welfare plans, try to provide for the needs of old age or sickness by purchasing insurance, we receive no tax deduction on what it costs us.

Right at this very moment, now that prices are no longer increasing and the argument of higher prices-higher wages has lost its force, some unions have swung over to demanding welfare plans for their members. If the impetus to these demands continues and more of these plans are established, the Government is going to be faced with a serious drain on its tax revenues. Then we shall wake up to the fact that these arrangements are having an adverse effect on the ability of the Government to satisfy the demands placed on it by all of its citizens. Both as consumers and taxpayers the public is paying the bill and sooner or later Congress will be forced to take more—not less—interest in their operation and the effects they have on the economy as a whole.

4. *Non-Communist affidavits.*—Now that Communists in this country and elsewhere have publicly declared their allegiance to Soviet Russia in time of war, it would seem mandatory from the standpoint of national security that its adherents be denied places of authority in the labor union movement. We are now engaged in resisting Communist domination in every part of the globe and are spending tens of billions of dollars every year to do it. To say that we can afford to lower our guard against this menace at home is foolish beyond comprehension. We therefore earnestly urge that Congress strengthen existing safeguards against these enemies of mankind by denying the facilities of the Board to any union that has Communist members on its executive committees or councils. And while the number of Communist or fellow-traveling employers is believed to be insignificant, there is no good reason we can think of why this same requirement should not apply to management.

STATEMENT OF L. B. BEWLEY, DIRECTOR OF INDUSTRIAL RELATIONS, STOCKHAM VALVES & FITTINGS, BIRMINGHAM, ALA., AND AS CHAIRMAN OF THE LEGISLATIVE COMMITTEE, ASSOCIATED INDUSTRIES OF ALABAMA, ON AMENDMENTS TO THE TAFT-HARTLEY ACT

I think that the general acceptance of the clever title "slave labor bill" attached to the act by union leaders is one of the phenomena of the past 2 years in this country.

Apparently many otherwise well-informed persons have been taken in by this dishonest label.

Various times since I heard this piece of propaganda I have asked our shop committee to point out one provision which enslaves labor. To date I have had no response to that invitation—and I have an intelligent, outspoken committee.

We must reject that propaganda for what it is—a lie. Some union leaders created this false label because, for the first time, they have been placed under obligation to conduct bargaining and other union affairs in a manner fair to the public, employers, and workers. For the first time they, the alter egos of their organizations, have been required to assume the responsibility which rightly goes with their important roles in the national economy. But these reasons, they knew, would have no vote appeal.

Granted that when the Wagner Act was passed unions may have needed a biased set of rules to permit them to gain strength at the bargaining table, it cannot be denied that they now have attained and perhaps surpassed the bargaining power of employers. It is therefore proper and in the public interest that we have a set of rules which permits the two parties to meet on an equal basis. The Taft-Hartley Act furnishes those rules.

The record of strikes in this country before and after passage of the act speaks for itself. In our plant, employing 1,600 workers, we had a general illegal strike in each of the years 1944, 1945, and 1946, and during these years we had numerous instances of illegal work stoppages involving varying numbers of workers. Each occurred under a no-strike clause contract. Since the end of the 1946 strike, in September, we have not had a general strike and we have had only one work stoppage which involved 10 workers. Our experience is typical of the experiences of companies generally in the industrial Birmingham district which are unionized.

It may be argued that unions have not struck because they are afraid of suits for breach of no-strike-clause contracts under section 301 of the act. However, this is not the answer in Alabama for unions have been suable under the laws of this State since 1921. Other States, among them California, Colorado, Minnesota, and Wisconsin, have similar laws.

Most bargaining contracts provide for the ultimate settlement of differences by arbitration or mediation. The right to press charges of unfair labor practices against employers remains the same as in the Wagner Act. In view of these protections is it asking too much that unions be held responsible for breach of contract provisions in the same manner that any other person or entity would be held responsible for their breaches?

The old cry "management by injunction" has been revived since passage of the act. One without knowledge of the facts would think that this equitable remedy—as ancient as our law—had been overworked against unions during the past 18 months. There are three instances under the act in which an injunction may be obtained:

First, the Board may seek an injunction in aid of an unfair labor practice complaint issued by it;

Second, the Board must seek an injunction in a secondary-boycott case and in case of a jurisdictional battle between unions, if it has reasonable cause to believe that the charge is true;

Third, the President may instruct the Attorney General to seek an injunction where a strike or lock-out affects an entire industry or substantial part thereof and may endanger the national health or safety.

Since the passage of the act injunctions were sought in only six cases under the first category—only three were granted. Under the second, injunctions were sought in 29 cases—only 15 were granted. And, under the third, six petitions were filed and all were granted.

It is observed that petitions for injunctions against secondary boycotts and jurisdictional strikes were more numerous. If there ever was a case where, in equity and good conscience, an employer's business should be saved from harm it is the case where he is an innocent bystander in a struggle between a union and another employer or between two rival unions.

Furthermore, with proper safeguards such as this act affords, I fail to see why an employer should not have protection against irreparable damage to or destruction of his business by an action of labor unions. Equity protects him against such threat on the part of any other persons or group of persons. What virtue is possessed by members of labor unions which entitles them to be free from the restraint of a court of equity where they elect to follow a destructive procedure rather than to pursue the ample remedies afforded them by the act?

Recently Attorney General Clark said that the President has "inherent power" to enjoin strikes which threaten the national health or safety. One wonders why this "inherent power" was not used when a railway strike was threatened 2 years ago. Instead, the President asked Congress to empower him to draft railroad workers into the armed forces. If the President has this "inherent power," then it seems to me that the unions should welcome provisions of law which specifically define the time, place, and method of exercising such power.

Finally, it was said that the Taft-Hartley Act would destroy the unions. I have seen no evidence that this prediction has come true. On the contrary, according to the Department of Labor, unions added about 600,000 members during 1947 and 1948, and, according to the CIO's official publications, "Operation Dixie" was a huge success in 1948. I suggest that union officials, representing independents as well as those representing the large national organizations, be questioned on the comparative growth of their respective unions for the 16-month periods before and after the effective date of the act. In our own plant—an open shop—the ratio of union members to eligible workers has remained unchanged during such periods.

Associated Industries of Alabama, with a membership of 600 employers, joins me in urging the Members of Congress to deal with this important legislation on a nonpartisan basis, and to examine carefully the criticisms of the act, many of which are repetitions of catch phrases calculated to enlist the sympathy of the uninformed.

STATEMENT BY E. J. KESSLER, REPRESENTING THE PERSONNEL DIRECTORS CLUB OF THE MANUFACTURERS ASSOCIATION OF LANCASTER CITY AND COUNTY, PA.

My name is Edward J. Kessler. I am director of labor relations for Armstrong Cork Co. and reside in Lancaster, Pa. I have been in the employ of the Armstrong Cork Co. since 1920, in the capacity of laborer, foreman, superintendent, assistant plant manager, and for the past 8 years as the director of labor relations. I am not a lawyer.

I am appearing on behalf of the Personnel Directors Club of the Manufacturers Association of Lancaster City and County, Pa. This association comprises 270 manufacturing concerns which employ a total of approximately 40,000 workers. Labor organizations have bargaining rights in about one-fourth of these manufacturing establishments.

It is not my purpose to defend the Taft-Hartley Act but rather to outline certain basic ideas which in my opinion should underlie any labor legislation. My statement revolves around three major principles—all based, I believe, on certain fundamentals essential to a free democratic government. These principles are first, the importance of the individual, which I believe is embodied in that portion of the preamble of our Constitution that purposes "To insure the blessings of liberty," and which is reflected in the oft-repeated comment of equality before the law; second, a basic concept of democracy that there is a responsibility or obligation with every right, duty, or privilege; and third, the supremacy of the national welfare over any individual group of selfish aim.

Under the first of thees principles—that of the importance of the individual and equality before the law—belongs the right of individual determination of joining or not joining any organization whether it be one concerned with labor, religion, or politics. Compulsory membership is offensive to our basic idea of liberty.

Each individual should be free from coercion, either physical or mental, in making his choice of membership or nonmembership in an organization, in deciding whether or not he wants to be represented for purposes of collective bargaining, and in selecting which of any number of individuals or organizations shall be his representative. The right to continue at work even when the majority of our associates decide not to work deserves as much protection as the rights of those who elect to refrain from working.

Equality under the law demands that both the employee and the employer as well as their respective organizations have the same right to express and publicize their opinions and beliefs. Any restraints on freedom of speech that are imposed on one must in all fairness be imposed on the other. Even in the operation of our own Government the minority in bodies such as this committee is always given the opportunity to express its views, going even so far perhaps at times to imply threats or retaliation.

It seems to me that under the principle of equality the employer should have as ready access to the National Labor Relations Board to file petitions for elections or to present charges of unfair practices as any employee or employee organization.

Under the second fundamental idea of democratic government—that each right or duty has a corresponding responsibility or obligation, it seems to me that if the law gives a labor organization the right to seek and demand the privilege to bargain with an employer, then it must likewise impose on such labor organization the corresponding duty to bargain. Bargaining is not a one-sided affair. We have had a number of strikes in our community where the union came to the bargaining table with the insistence that its demands be met if operations were to continue without interruption.

The whole idea of responsibility, as we understand it in this country, includes the belief that a principal must assume responsibility for his agents. From the labor-relations standpoint, this has two angles. First, supervisors are definitely agents of management in that they carry out orders, direct the working force, maintain discipline, and in large measure reward good work. They do unquestionably represent management in the handling of grievances in their early stages, and management must accept the responsibility for their actions. It is inconceivable to include this group of management agents, even though they be employees, with those other employees who have a legal right to bargain with management but who have no responsibility for the direction of the business.

The second angle of this agency idea is the one that applies to labor organizations. Just as management is made up of individuals with varying degrees of authority, so is a labor organization and the organizer or field representative of a labor organization invariably acting under instructions from the top officials of the organization. These subordinate individuals can't be severed from a responsibility standpoint from the directing heads of the organization any more than the supervisors can be separated from management.

The theory of responsibility must reach to the sanctity of contract. Parties to a labor contract, particularly where the Government says that there must be a contract if one party desires it, should be responsible parties and should be answerable for performance thereunder. Violations of labor contracts should be reparable at law just as any commercial contract. Responsible parties should, in all fairness, have no objections to being held accountable for any damage or loss that they might cause.

The third principle that must be recognized in labor legislation is the supremacy of the national welfare. Certainly no one would disagree with the statement that no individual right takes precedence over the welfare of the country as a whole. Consequently, some means must be provided in any labor law to prevent any individual group or combination of groups of people from cutting off the lifeblood of the Nation. One of the prime duties of the Federal Government is to defend the country not only from enemies from the outside but also from disruptive forces from within.

Since the standard of living of all of us in the United States has been so far above that available to people elsewhere in the world, largely because of our productive capacity, it seems unnecessary to dwell on the fact that if this high standard is to be preserved, imposed inefficiencies such as result from make-work and featherbedding rules and boycotts and jurisdictional disputes should be disclaimed as a matter of policy of the Government and restrained insofar as practicable.

It so happens that the Taft-Hartley Act embodies many of the features which I believe should be included in any labor legislation. It is unfortunate that a rather large amount of the unfavorable reaction to this law should be based on bad labels pinned on it such as "The Slave Labor Law," "Promanagement Law," "It Will Be Used To Break the Unions." This is particularly disappointing when it seems evident that the general public favors by a large majority many of the ideas included in the law. For example, a recent well recognized public opinion poll indicates that more than 70 percent of union members and an even higher percentage of the general public are in favor of:

(*a*) Requiring unions to issue financial reports.
(*b*) Prohibiting Communists from union leadership.
(*c*) Establishing the union shop only with a majority vote.
(*d*) Allowing companies to sue labor organizations.

Practically 60 percent of union members and more than 70 percent of the general public are shown by this same poll to favor:

(*a*) Requiring a 60-day cooling off period.
(*b*) Permitting employer to ask for union election.
(*c*) Prohibiting jurisdictional strikes.
(*d*) Outlawing closed shop.

In considering the repeal of the Taft-Hartley Act and in your deliberations on any substitute legislation, I urge that every provision be measured against the yardsticks of these principles—equality before the law, the importance of the individual, the necessity of having responsibilities accompany rights and privileges, and the supremacy of the national welfare.

STATEMENT BY HAROLD W. STORY, VICE PRESIDENT, ALLIS-CHALMERS MANUFACTURING CO.

My name is Harold W. Story, and I reside in Milwaukee, Wis., where I have been associated with the Allis-Chalmers Manufacturing Co. since 1919.

I have been vice president and general attorney of this firm since 1934; and, in this capacity, in charge of the technical problems of the company's struggle with the Communist leadership of local 248, UAW-CIO, over a period of 13 years.

I participated in the first social-security conference held in Washington in November 1934.

I have been a member of the statutory legislative advisory committee established under the Wisconsin Employment Relations Act since its formation in 1940.

I am a member of the advisory council of the industrial relations center of the University of Wisconsin.

In these capacities, I have become familiar with many of the problems which confront your committee in the working out of a national labor relations policy. I have prepared this statement to give my views based on my experiences, both academic and practical, in the field of labor relations.

SPECIFICATIONS FOR A SOUND NATIONAL LABOR POLICY

The problem—a national labor policy.—Stripped of its current emotionalism, the problem before Congress today is to define by legislation a national labor policy.

President Truman's specifications.—It is a truism that continuation of American democracy depends upon the protection of fundamental rights of individuals and of the public.

President Truman recognized this in two well-considered statements.

On June 12, 1946, the President said:

"We accomplish nothing by striking at labor here, at management there. There should be no emphasis placed upon considerations of whether a bill is 'antilabor' or 'prolabor.' Where excesses have developed on the part of labor leaders or management, such excesses should be corrected—not in order to injure either party—but to bring about as great an equality as possible between the bargaining positions of labor and management. *Neither should be permitted to become too powerful as against the public interest as a whole. Equality for both and vigilance for the public welfare—these should be the watchwords of future legislation.*" [Italics added.]

In his recent inaugural address, the President again stated: "Democracy * * * is charged with the responsibility of *protecting the rights of the individual and his freedom in the exercise of his abilities.*" [Italics added.]

Thus, President Truman has himself laid down for Congress the specifications for the formulation of a national labor policy, namely, legislation designed (1) to promote the public welfare and (2) to protect individual rights.

In building the national labor policy, it is logical to use as a foundation the basic right of individuals to self-organize for the purpose of collective bargaining and to exercise that right—affirmatively and negatively—with freedom.

Upon this foundation there should be erected a complete national labor policy prescribing the manner of exercise of this basic right and setting forth any limitation thereof which might be required in the public interest or for the protection of individual rights.

Specific questions of legislative policy.—In order to point out the legislation needed to round out a national labor policy, certain specific questions will be presented and discussed.

Proper approach to problem.—In line with the specifications declared by President Truman, it is hoped that your committee will consider these questions, not from the standpoint of whether they are "antilabor" or "prolabor"—but whether they are needed for the protection of the public welfare or for the protection of the rights of the individuals involved.

These questions should also be considered in the light of the power, both economic and financial, which unions have acquired since the enactment of the Wagner Act.

The automobile, steel, coal, maritime, and railroad unions have recently demonstrated that they now have the power to paralyze great segments of our economy. Thus, one of the original purposes of the Wagner Act, namely, to provide equality of bargaining power to employees, has not only been accomplished but actually surpassed in these areas.

QUESTION 1—SHOULD A NONCOMMUNIST AFFIDAVIT BE REQUIRED OF UNION OFFICERS AND OTHER EXECUTIVES?

Some members of your committee will recall the situation with which Allis-Chalmers and its employees were confronted when I testified before this committee in February 1947.

For the benefit of those who were not here, our plant had been struck for 10 months by the Communist leaders of local 248, UAW-CIO. The full and documented record of these union leaders, as well as the decade of violence and destruction they caused, is set forth in the brief filed with your committee at this time.

In June of 1947, the anti-Communist provision became effective. A few months thereafter the leaders of local 248 announced their resignations.

That these resignations were forced by the anti-Communist provision is proved by a statement in the November 26, 1947, issue of the union daily.

The statement said: "Yes, it is too bad this step had to be taken. Allis-Chalmers workers are now seeing the Taft-Hartley law in action;" and further, "The Taft-Hartley law has *forced us* to change our weapons and revise our method of attack." [Italics added.]

How true are those words.

The Allis-Chalmers employees did see the non-Communist affidavit requirement in operation. They did see the Communist leaders resign and the international union move in with an administrator who made it possible for the election of a democratic trade-union leadership.

Our experiences of the past year clearly reflect the great change in labor-management relations which resulted from the removal of a leadership which apparently could not sign the affidavits.

Immediately upon the establishment of a trade-union leadership, an interim agreement was reached between the new leadership and Allis-Chalmers. This provided for a check-off and grievance procedure.

Collective bargaining then continued and in December 1948, the first full contract in 5 years was signed by Allis-Chalmers and the new leadership of local 248.

On December 20, 1948, after the contract had been ratified at a meeting of the union membership, the Milwaukee Journal said in an editorial entitled "Miracle on South Seventieth Street:"

"This is the Christmas season so perhaps it is not too unusual for miracles to occur. Anyway, one has just happened in West Allis. We will call it the miracle on South Seventieth Street. That's where the Allis-Chalmers Manufacturing Co. general office is.

"Outside the gates of this enormous plant there has occurred in recent years the most violent labor strife in the bitterest strikes ever held in Wisconsin. Men and women have been injured, property destroyed, riot conditions have prevailed at times.

"Thousands of workers were off the job for periods of more than a year in several strikes. Hate ran high. The whole of West Allis suffered. How else could it be with the greatest industry half paralyzed for long periods?

"Inside of the largest union, local 248, UAW-CIO, there was bitterness, too. A handful of purposeful leaders, apparently more devoted to Soviet interests and to world communism than to the American worker, managed to control the union. Some of them stopped at almost nothing—not even at ballot fraud. There was no democracy in the union.

"Things are different today and that is what has brought about the miracle on South Seventieth Street; Local 248, UAW-CIO, is still there but it isn't the same union. It is a new union with an old name. The voices of the Communists and their followers are stilled; their power is broken. The ringleader is facing a 2- to 6-year prison sentence.

"Today the membership runs local 248 democratically.

"For a long time negotiations have been in process between the union and the company management. They have been very different from negotiations, or what were *called* negotiations, in the past. Both sides have sat at the bargaining table in good faith. We weren't present so we don't know exactly what happened. But we have heard from both sides that there has been honest bargaining—tough bargaining perhaps, but honest bargaining just the same. It was give and take, but it wasn't hot-headed shouting; it was not a mere exchange of charge and countercharge, nor a competition in invective, either in the sessions or outside them.

"Finally terms of a contract were agreed to. The union members didn't all like them. Some wanted different terms. A minority report was submitted to union members. Then everything was threshed out in a democratic union meeting. In due time, the membership voted, *after hearing all arguments*. The contract was approved, unanimously.

"And that brings us directly to the miracle on South Seventieth Street. A contract, mutually and peacefully agreed to by union and management, was signed there Monday.

"May we, and we are sure thousands of Greater Milwaukeeans will want to join us, wish you all at Allis-Chalmers—union members and management alike—a very, very Merry Christmas, indeed." [Italics added.]

Similarly, at other plants throughout the Nation, the Communist union leaders in many instances have been forced to resign their union offices.

Thus, the effectiveness of the anti-Communist affidavit requirement of section 9 (h) has been well demonstrated by the value already derived from it by industry and unions. Furthermore, even the Government has taken cognizance of this fact.

Not long ago Mr. David Lilienthal, Chairman of the Atomic Energy Commission, ordered General Electric not to recognize the officers of United Electrical Workers local in their atomic plants because the officers had failed to file the non-Communist affidavit.

In the Atomic Energy Commission's motion in the United States court in the District of Columbia to support Mr. Lilienthal's order, the following language was used:

"The dangers arising from Communist control of a union representing labor employed in the production of fissionable materials hardly requires lengthy elaboration. In the field of atomic energy, at least, continuity of production and the safeguarding of restricted data are both vital to the national defense. *Past experience, notably in the strike of the Milwaukee plant of the Allis-Chalmers Co. in the interlude between the Russo-German Pact of 1939 and the German attack on Russia in June of 1941, teaches that labor unions under Communist leadership, however innocent the rank and file membership, may be used to halt production in the interests of a foreign power.*" [Italics added.]

The value of these non-Communist affidavits takes on added significance when it is considered that many labor leaders and friends of labor favor them. A few are Mr. David Dubinsky, of the Germent Workers; Mr. Green, of the A. F. of L.; and Mr. Tobin, the Secretary of Labor. Other labor leaders, such as Walter Reuther, of the United States Automobile Workers, who originally opposed the affidavits, have apparently found that Communists' inability to comply has been helpful in cleaning the Communists out of unions.

In view of the troubled international situation and the past efforts of Communist leaders to sabotage defense preparations by strikes and other defensive tactics, it is more important than ever to use every means to prevent Communists from controlling unions through subterfuge or otherwise.

For that reason, it is obvious that section 9 (h) should be retained. The only question is whether the scope of the provision should not be broadened.

Experience has shown the evasion possibilities where the Communist union officers have resigned and taken other posts of great influence in union affairs but with no official status under the union's constitution and bylaws. Such a post is that of education director, which is ideal for the dissemination of the Communist doctrine. Other similar subterfuges have been employed to evade signing the affidavits.

Accordingly, in view of President Truman's recent characterization of American Communists as "traitors," it would seem a necessary safeguard to extend the scope of the section to prevent such subterfuges.

Thus, my recommendation for the legislative answer to this question is (1) to retain the provision of section 9 (h) and (2) to enlarge its coverage so that it will apply to all executive holding policy-forming positions or other positions where Communist influence may be effective.

QUESTION 2—SHOULD THE RIGHT OF AN EMPLOYEE TO SEEK OR RETAIN EMPLOYMENT BE DEPENDENT UPON MEMBERSHIP IN A LABOR ORANIZATION?

Phrased more directly, the question would be:

"Should compulsory unionism be sanctioned from the standpoint of the public welfare and the free exercise of fundamental individual rights by employees?"

Definition of compulsory unionism.—The term "compulsory unionism" means any contract requirement which makes an employee's job dependent upon his membership in good standing in the union. The contract requirement may take the form of a closed shop, an all-union shop, or maintenance of membership.

How compulsory unionism functions.—In operation, compulsory unionism means that an employer must discharge an employee when so requested by the employee's bargaining agent.

The absoluteness of the right of a union leadership, under the War Labor Board directed type of maintenance of membership clause, to demand discharge of an employee is well demonstrated by the decision of an impartial referee in an Allis-Chalmers case (Referee Decision No. 131, local 248, UAW-CIO, and West Allis Works). In this decision the referee said:

"Although a union member who had executed a maintenance of membership card faced expulsion from the union because of acts which either he, or the company, asserted he was bound to perform in the fulfillment of his obligation to the company, the tribunal which shall determine the correctness of formal charges filed against him or the sufficiency of his defense is the membership of the union acting under union law and through its duly constituted committees or agencies, *and neither the company nor the referee has any power to review, question, or reverse union action.*" [Italics added.]

Union control of the right to work, a public-policy question.—The right to work means, of course, the right to a means of livelihood without resort to public assistance.

Compulsory unionism enables a union leadership through the "good standing" device to control at its will the right to work. Thus, compulsory unionism enables a union leadership to utilize for its own ends the most coercive human pressure, namely, the control of the individual's means of livelihood.

Certainly no one would urge that the fundamental right of individuals to self-organize, that is, to belong or not to belond to a labor organization, should be destroyed or even abridged except in the public interest, i. e., for the common good.

This principle is recognized by the Reverend William J. Smith, S. J., a well-known authority on labor unions, in his book entitled "Spotlight on Labor Unions."

On page 56 he states:

"It cannot be denied that the right to work is a sovereign right. But it should likewise be made crystal clear that the right to work is not an absolute right any more than the ownership of property is an absolute right. They are both conditioned by the principle of the common good. Labor has a social aspect as well as property.

"Whether or not a minority of workers must cede their right to work as individuals and join up with their fellow workers in a closed-shop agreement depends upon a simple question: '*Is the closed shop a necessary means for the existence and the proper and efficient functioning of the union?' If it is, the common good of all the workers must be given priority and preference over the individual whim or dissident desires of the individual workers.*" [Italics added.]

The two views on the question.—There are two opposing schools of thought in the country as to the function of unions in our free society.

One school believes that a union is merely a voluntary association which occupies a place in our society, which is either useful or destructive, depending upon the purposes and actions of the particular union leadership. This school feels that if the usefulness of a union is not sufficient stimulus to gain support of an overwhelming majority of those in the collective-bargaining unit, the union is not entitled to gain support through the coercion of compulsory unionism.

The union, according to this school, is merely an administrative agency mechanically necessary to carry on the work of collective bargaining for all employees in the bargaining unit.

The members of this school decry the legalizing of compulsory unionism as a violation of human rights—the constitutional right of freedom of contract. They desire a legislative declaration that compulsory unionism is contrary to the public interest.

The opposing school of thought believes that unionism, both from a social and a practical standpoint, is vitally necessary to the welfare of our society. It seems to consider the union as a sort of spiritual or social collective bargaining entity without which there can be no fair treatment of employees by an employer.

This school includes many religious and intellectual groups whose sincerity and soundness of purpose are beyond question.

The members of this school have the conviction that unions cannot survive without the assistance of compulsory unionism. Stated in another way, they believe that the union needs some type of "union security" to fulfil its function.

Analysis of the view that compulsory unionism is necessary.—By critical analysis, let us consider whether there is any sound basis for this conviction; and in so doing, keep in mind the tremendous financial and economic power possessed by unions today.

"Union security" is an appealing term which implies the necessity for providing protection to the union against some force which threatens its status as a bargaining agent.

But what are the forces which might threaten the security of a union? They must be either (1) the employer, (2) another union, or (3) the employees eligible to membership exercising their right to self-organization.

Are certified unions protected against interference by employers?

The National Labor Relations Act, of course, protects the right of self-organization (i. e., unionism) against interference by the employer. The Labor-Management Relations Act of 1947 contains all of the protective "unfair labor practice" provisions of the NLRA.

So also do most State labor laws.

No question has been currently raised as to the adequacy of the provisions of the LMRA from the standpoint of affording protection to employees and their unions against interference by the employer.

Hence, it may be assumed that there are at present State and Federal labor laws affording adequate protection to unions against the employer. However, if the protection is not adequate, these laws may be strengthened in order to insure adequate protection upon a proper showing of the fact.

Are certified unions protected against "raiding" activities of other unions?

The answer is "No" largely because that kind of protection would be contrary to the fundamental principle of the National Labor Relations Act, namely, the right of self-organization.

To be a "right" at all, the right to self-organize must be a continuing "right" which would permit employees to select a different bargaining agency as they see fit but with such restrictions as might be administratively desirable from the standpoint of short-term stability.

Moreover, it is the responsibility of unions themselves to work out the solution of this particular problem by establishing an antiraiding gentlemen's agreement.

In addition, it would be a simple matter for a trustworthy union leadership to bargain for an "antiraiding" clause (similar to that in most Allis-Chalmers contracts) which would prohibit union activity on company premises on behalf of any competing union.

However, in view of the ever-present threat of Communist union leaderships, it is extremely doubtful whether antiraiding protection to unions would be in the public interest. This is indicated by the raiding activity now being conducted against certain unions which appear to be under the domination of Communist leadership.

Since unions, as a class, have the power to prevent raiding, it is illogical for them to urge the necessity of compulsory unionism for that purpose.

Is the certified union protected against the acts of employees in the bargaining unit?

The foundation of any national labor policy is the guaranty of the right of employees to self organize for the purposes of collective bargaining or other mutual aid or protection.

Legally, there are two distinct types of activity in this connection. One is the participation in the election (or rejection) of an exclusive bargaining agency. The other is the exercising of the prerogatives of membership in the union.

Thus, the question under discussion must be applied to two groups of employees, namely, (1) nonmembers of the union, and (2) members of the union.

Accordingly, the first part of this question is whether the certified union is protected against acts of nonmembers.

The National Labor Relations Board, even under the Wagner Act, did, with considerable inconsistency, protect the right of self-organization of nonmember groups in working against a certified union.

Nevertheless, it has tacitly sanctioned the Allis-Chalmers policy of protecting the certified union against acts of nonmembers on company premises.

This Allis-Chalmers policy was expressed in a published statement to employees explaining the meaning of a certain provision of the 1938 contract with local 248, UAW-CIO, as follows:

"* * * The union cannot force an employee to join the union. But, on the other hand, no employee who stays out of the union will be permitted to talk against the union on company premises. This is just fair play."

This policy was effectuated by a contract provision prohibiting any competitive organizing activity on company premises by nonmembers of the certified union. The contract clause read as follows:

"No employee will be permitted to engage in any activity in any way related to or connected with the work of a labor organization or of collective bargaining on company premises, except as provided in the agreements with labor organizations certified as the exclusive bargaining agencies in the various bargaining units in the plant."

Incidentally, a violation of this contract provision is an unfair labor practice, enjoinable upon complaint of the certified union under section 111.06 (2) (c) of the Wisconsin Employment Relations Act.

Thus, it appears that protection against this nonmember group can normally be obtained by collective bargaining. But in any event it can be obtained through legislation establishing a code of fair conduct for the nonmembership group and a method for its enforcement through the unfair labor practice procedure of the LMRA.

The second part of the question is whether the certified union is protected against the acts of its own members.

The protection which leaders of a certified union have in mind is a bloc against the right of the members to work for a change in the leadership of the certified union or a change in the bargaining representative itself.

This kind of protection, of course, is the nullification of the employees' basic right of self-organization. It can be accomplished only through a deal between the employer and the certified union for a compulsory unionism clause. The sanctioning of this contractual arrangement was contained in section 8 (3) of the Wagner Act and is now incorporated in the administration bill.

Thus, the whole question of compulsory unionism is whether the substantial nullification of the right of self-organization is in the public interest.

On what grounds do unions justify compulsory unionism?

The unions' position is stated by the Reverend Jerome L. Toner on page 190 of his dissertation, "The Closed Shop in the American Labor Movement," as follows:

"Unions have always defended their legal right to ask for a closed shop * * *. They have also stressed the moral right to seek a closed shop, claiming that this rests on the social necessity of unions and the dictates of simple justice. Since unions are usually necessary to enable workers to obtain what is their due and since unions generally cannot long exist and properly perform their function without closed-shop conditions, unionists insist that it is the duty of every worker to join a union. * * * Mere financial payment by nonunionists is not enough, according to the unionists; actual membership is required."

Summarized, the union claims are that (1) unions are a social necessity, (2) unions cannot exist without compulsory unionism, and (3) it is the duty of every employee to join the union.

The statement that a union cannot exist without compulsory unionism is not true. The record of unionism throughout the United States during the past 10 years is replete with examples of unions which have grown strong without the aid of compulsory unionism. Railway unions are shining examples.

The experience of Allis-Chalmers is proof enough. Strong unions of all types represent its employees at nine plants without the aid of compulsory unionism.

Next, let us consider the other two union claims together, namely, (1) the social necessity for unions and (2) the duty of the employee to join the union.

These claims are also unfounded. All unions do not have good leadership. Hence, every union is not a social asset. Obviously, no employee has the duty to belong to a socially undesirable union. On the other hand, he has the positive duty of organizing to oust the bad leadership or to select a different bargaining agency. But compulsory unionism is the very device which can be used to prevent him from doing this, particularly if the union has a communistic leadership.

What are the real reasons why union leaders want compulsory unionism?

Off the record, union leaders will quite frankly admit that they desire compulsory unionism for two reasons, namely, (1) the power to discipline employees and (2) the assurance of financial support for the union.

The power to discipline is the power to force employees to support the policies of the union leaders. In large unions these policies are usually formulated by union leaders without benefit of democratic expressions from rank and file.

The danger of this autocratic power, the possibility of its abuse, and the necessity for protection of the individual employees against its misuse is now being generally admitted by authorities on the subject.

The danger of this power is pointed out by the Reverend Toner, in these words:

"An important aspect of the power of the closed shop to control job opportunity and tenure is the dangerous power which it vests in union leaders who do not represent the interests of the rank-and-file membership. The almost irresistible impulse to perpetuate their positions sometimes leads them to utilize constitutional devices to centralize authority in executive hands. Any attempt to organize an opposition may be penalized by charges resulting in suspension or expulsion from the union, which automatically means dismissal from a closed-shop job. Such strategy is carried on by perversion of parliamentary procedure just as effective as gangster domination. Unless the worker is protected from this kind of abuse under the closed shop, it may prove more harmful than employer exploitation and discrimination. *Not until the employee who is suspended or expelled from a union is able to go to a Labor Board, Federal or State, and has his case heard will this danger, almost inherent, although infrequent, in the closed shop, be removed.*" [1] [Italics added.]

The need for protection of employees against abuses of compulsory unionism is shown by the following quotations:

"*Labor unions are, of course, human institutions and are thus subject to the vices as well as the virtues of their leaders.* In that respect, the closed shop presents the same dangers that are inherent in the concentration of power in the hands of officers of any institution—political, economic, or social. But it is obvious that the danger is much more minatory when the power is held by union officials who, through the usurpation of power of voluntary associations, may almost at will refuse membership to some workers or rescind it from others. In either case, under such abuses of the closed-shop principle, the result is to deprive a man of the opportunity to earn his living. *Therefore, in order to safeguard that opportunity, while at the same time permitting the proper functioning of the closed shop, two important provisions are needed: (1) Every union must be open generally to qualified workers on reasonable and nondiscriminatory terms; and (2) workers who have been refused membership and those who have been suspended or expelled from a union should be permitted to appeal their cases to an impartial chairman or a labor board.*" [2] [Italics added.]

"We think that the Board should have power to order a union to cease discriminating, or inducing an employer to discriminate, under such circumstances.

"But should there be a broader protection against unreasonable expulsion or refusal of membership under a union-security agreement? Taft-Hartley, we think, went too far in preventing any power of discipline by a union by expulsion and requiring discharge as a result. Yet occasional abuses have been prevented by this provision. *Is not this a point on which agreement should be sought from the unions as to standards of behaviors, with some provision for appeal to the Board when necessary against unreasonable exclusion?*" [3] [Italics added.]

"I have no desire to weaken the bargaining power of unions. *But I am greatly concerned that the rights of the individual workers, which the Wagner Act established as against the employers, shall be preserved within the organizations that the law fosters to protect the workers' rights against employers.* Only if the unions are democratic both in the sense of protecting individual rights and in the sense of affording full participation in all decisions, can they rise to their full possibilities as instruments of industrial democracy in a free society." [4] [Italics added.]

"*How might Congress have dealt with this issue (compulsory unionism) more fairly?*

"By requiring that all discharges under union-shop conditions be reviewed by an impartial umpire or by the Board itself. This would have protected the rights of the individual worker without weakening the effectiveness of the union shop." [5]

The attitude expressed in the foregoing quotations is that the arbitrary power of discipline made available to a union leadership through compulsory unionism may be desirable in certain situations; but that employees must be protected against the misuse of this power by union leaderships.

Let us carefully analyze the practical application of this general endorsement of compulsory unionism.

It means the endorsement of the use of this powerful weapon by union leaderships which may be communistic, or of questionable ethics, or possibly merely incapable of the exercise of sound judgment in the area of economics.

It is a specific endorsement in such situations because, from a practical standpoint, it is impossible to prove to their objectionable characteristics in advance of the actual realization of the destructive effect of the activities of such leaderships. In other words, proof of the objectionable character of union leadership is always after the fact of the destructive utilization of the power of compulsory unionism.

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[1] The Closed Shop, Rev. J. L. Toner, O. S. B., Catholic University of America Press (1941), p. 166.

[2] The Closed Shop, Rev. J. L. Toner, O. S. B., Catholic University of America Press (1941), p. 191.

[3] Harry A. Millis, former NLRB Chairman, and Prof. Emily Clark Brown, Vassar College, in their recent book, Major Issues in National Labor Policy, as reported in the 1949 Daily Labor Reporter No. 8, p. D–1.

[4] David A. McCabe, Department of Economic and Social Institutions, Princeton University, before the Senate Labor Committee, February 10, 1949, as reported in the 1949 Daily Labor Reporter No. 28, p. E–1.

[5] Primer on the Taft-Hartley Law, Rev. George A. Kelly, Christopher Press, 1948.

The experience of Allis-Chalmers with local 248, UAW-CIO, from 1937 until 1947 clearly illustrates the point.

During this long period of destructive control of local 248 by a communistic union leadership, the company was convinced of the communistic affiliation of the notorious Harold Christoffel and his satellites. But it was not until the Milwaukee press exposed the true character of this leadership—as late as 1946—that public opinion took charge of the situation and made possible the ousting of this clique.

However, during this entire period the company had the heavy burden of fighting the continual demands of the Communist leadership for the power of compulsory unionism under the appealing guise of union security.

In the final analysis, the tacit sanctioning of compulsory unionism by the "hands off" attitude of section 8 (3) of the Wagner Act, which is incorporated into the administration bill, would have certain destructive effects:

First, it would destroy the protection now afforded to employees by the L. M. R. A. from misuse of the device of "good standing as a condition of employment"—a protection generally recommended in the quotations of Reverend Toner et al. (supra);

Second, it would provide a fruitful source of labor disputes and potential strikes, now made illegal by the L. M. R. A.;

Third, it would again place upon employers the responsibility of resisting the pressure of strikes clearly against the public interest called by communistic union leaderships in support of demands for compulsory unionism; and

Fourth, it would again permit compulsory unionism to be utilized for the selfish interests or motives of union leaderships or employers.

The time is long past for the laissez-faire attitude of section 8 (3) of the Wagner Act. In view of the tremendous financial and economic power now possessed by international unions, the use of the coercive power of compulsory unionism has become a matter of vital public policy, and therefore, governmental responsibility.

What is the responsibility of government in this connection?

Prof. Sumner Slichter, Father Kelly, Father Toner (supra), and other authorities on the subject, apparently would be satisfied with some procedure whereby a member could appeal to an impartial referee or a State or Federal Labor Board.

Probably these suggestions were not intended to contain the complete thought of the authors on the subject. But in any event they inadequately perform the desired purpose of protecting union members against the abuses of compulsory unionism for two reasons:

The first reason is the fact that the coercive abuses of compulsory unionism can occur without actual discharge. In other words, the mere threat of possible discharge is usually enough to coerce the average union member into acquiescence to any particular policy urged by union leaders.

The second reason is that the mere opportunity for appeal of a discharge on the ground of no "cause" or "unjust cause" would leave the decision entirely to the judgment of the appeal board as to the employee's duty to the union. This judgment would vary widely depending upon the particular philosophy of the board upon the question of preservation of individual rights as against the theory that employees' rights must be abrogated in favor of the social desirability of a union.

The question of the duty of an employee to his union brings into bold relief the conflict between the guaranty of the employee's right to organize and the union's right to represent all employees in the bargaining unit.

This thought seems to be indicated by David A. McCabe in a statement (supra) as follows:

"I have no desire to weaken the bargaining power of unions. *But I am greatly concerned that the rights of the individual workers*, which the Wagner Act established as against the employer's, *shall be preserved within the organizations that the law fosters to protect the workers' rights against employers'*." [Italics added.]

This "concern" can be met only if the Government meets its responsibility through appropriate legislation establishing an objective standard of behavior of employees toward their union (as suggested by Prof. D. A. McCabe (supra)). Then "cause" for so-called "disciplining" of members of a union would be limited to violation of such standard behavior.

Because of the foregoing reasons, the Government has the responsibility of making a different approach to the problem. But what is the proper approach?

Upon the basis of two arguable assumptions, i. e., (1) unions are a social necessity and (2) unions cannot exist without compulsory unionism, the proper approach to the problem would be to work out a program of legislation which would provide any protective security needed by unions without the coercive powers (and possible abuses) of compulsory unionism.

What different kinds of security are obtained by unions through compulsory unionism? They are:

(1) Financial protection;
(2) Protection against raiding by rival unions;
(3) Protection against acts of the employees in the bargaining unit; and
(4) The hiring hall.

Can these protections be provided by legislation?—As to financial protection.—When the employees in a collective-bargaining unit, by a majority vote, have elected a union to represent them in collective bargaining, it might fairly be required as a condition of the election that each employee in the bargaining unit should be required to bear his proportionate share of the expense of the union in carrying out its administrative duties as bargaining agent.

Legislation could readily be devised to provide that such expense be checked off by the employer and paid to the union. Only items should be included in the budget of administrative expenses of the union which are incurred in carrying on its day-to-day operations in connection with the bargaining unit. Any extraordinary expense, such as those for political action committees, insurance funds, strike benefits, and the like should not be included in the administrative budget, but should be met by voluntary dues payment.

There is no obstacle to passing legislation for compulsory payment to meet the administrative budget of the bargaining agent. The only real problem would be to define the items which would be included in unions' administrative expense.

As to protection against raiding unions.—By administrative rule, the Board under the Wagner Act gave substantially 1 year of anti-raiding protection. The LMRA by substantive provisions does likewise.

Whether more protection should be provided as a matter of public policy is a grave question. But if proof is furnished showing such need, then any additional protection could be guaranteed through the device of an unfair labor practice.

As to protection against employes of the bargaining unit.—It would be a simple matter to create a code of fair behavior for employes in relation to their bargaining agent. It would mean merely designating as unfair labor practices the employe's acts found to be improper.

In this way, employes would be assured of a fair trial of any alleged violation of such code charged by the certified union.

No difficulty would be presented in stopping unfair labor practices of this kind. The problem would be in defining what acts of the employes should constitute unfair labor practices.

As to the benefits of the hiring hall.—The hiring hall is the contractual device that changes an all-union shop into a closed shop (closed union). It requires the employer to hire only persons supplied by the contracting union.

The hiring hall is potentially discriminatory and monopolistic and violative of the intent of the antitrust laws.

For that reason, the closed shop is obviously more dangerous from the standpoint of public welfare and the rights of individuals than any other type of compulsory unionism.

As a legislative matter, the hirng hall can be legalized by a very simple provison. The difficult problem would be to write into the law all the needed safeguards, if it should be decided by Congress that the hiring hall was not contrary to public policy.

The foregoing analysis indicates that the suggested direct approach to the problem of union security is feasible. In other words, all the protection afforded to a certified union through compulsory unionism can be obtained through affirmative legislation by Congress and without the undesirable consequences of compulsory unionism.

However, this question is complicated because of (*a*) the wide difference of philosophical approach to the problem by the two schools of thought, and (*b*) the need for exhaustive factual research.

For that reason, it appears that the question cannot fairly be decided upon the basis of the type of testimony presently available to the committee, but should be reated from the objective standpoint recommended in the conclusion of this statement.

Many months of study would be required to do the necessary research.

A review of the existing protection of the certified union discloses no reason why, in the interim, the provisions of the existing law, with reference to compulsory unionism, should not remain in force.

Inferentially, there is adequate protection of the union against interference by the employer under existing law because the provisions in this respect are practically identical with those of the Wagner Act.

There is adequate antiraiding protection of the certified union under the present law.

The financial security afforded by compulsory unionism is available under existing law.

Because of the hiring hall's potential for antitrust law violation and discrimination against individual rights, it should not be legalized prior to a considered decision reached after an exhaustive study to determine (1) whether the hiring-hall clause should continue to be prohibited or (2) whether it should be legalized under certain circumstances and with defined safeguards.

Upon the basis of the foregoing analysis, it is recommended that the Hoover Commission, or other similarly constituted body, conduct an exhaustive research upon the whole subject of compulsory unionism and particularly the following pertinent questions:

(1) Does existing law adequately protect the certified union against interference by the employer?

(*a*) If not, what additional provisions of law are necessary?

(2) Does existing law adequately protect the certified union against "raiding" or other interferences by competing unions?

(*a*) If not, what additional protection should be provided in the form of unfair labor practices?

(3) Under what circumstances, if any, is compulsory unionsism required in order to afford financial security to a certified union?

(*a*) Should each employee in the bargaining unit be required by law to bear his proportionate share of the administrative expense of the certified union?

(*b*) What items of expense should be included in an administrative budget?

(4) With adequate protection against interference by the employer and raiding unions, and with adequate financial security, can the certified union exist as a constructive collective-bargaining force without compulsory unionism?

(*a*) What behavior on the part of an employee would constitute an improper interference with/the functioning of the certified union?

(*b*) What acts of an employee constitute an improper interference with the certified union so that they should be included in a code of unfair behavior and classed as unfair labor practices?

(5) Under what circumstances, if any, should the "hiring hall" be sanctioned?

(*a*) If the hiring hall, under some circumstances, is sanctioned, then what safeguards against discrimination, monopolistic practices, and violations of the spirit and purpose of antitrust laws should be provided as a condition of the sanction?

In making the study, the joint committee should be guided by President Truman's specifications for a sound national labor policy explained in the preface of this presentation.

Accordingly, they should keep in mind that a national labor policy established to protect the right of self-organization and collective bargaining should conform to the following principles:

(1) Protection of the public welfare;

(2) Protection of the rights of individual employees; and

(3) Maintaining "as great an equality as possible between the bargaining positions of labor and management."

QUESTION 3—SHOULD INTERFERENCE WITH THE RIGHT TO WORK BY ILLEGAL PICKETING BE AN UNFAIR LABOR PRACTICE?

This question has two parts: First, what is illegal picketing, and second, should it be classed as an unfair labor practice under a national labor policy?

What is illegal picketing?—Illegal picketing is any kind of picketing which is not "peaceful" as judicially defined.

"Peaceful picketing" is picketing which advises the public by printed and spoken word of the existence of a strike and the reasons for the strike. The purpose of this picketing is to enlist public support of the strike.

The courts have given peaceful picketing the benefit of a constitutional guarantee as a form of "free speech." But the constitutional guarantee of free speech does not protect slander, threats of violence, and other tortious utterances.

Unfortunately, picketing is not customarily peaceful. On the contrary, the usual type of picketing seen today in industrial strikes is the complete blockade of plant gates by a mass of pickets in lock step slowly circling in front of the plant gates.

This is in accord with unions' general position—tacitly understood, although not frankly declared—that the purpose of picketing is to stop completely the operations of the employer.

In this connection, it may be interesting to recount certain happenings during the 1946 Communist-dominated strike at the West Allis works of Allis-Chalmers in Wisconsin.

According to the Milwaukee press, the recording secretary of the Communist-led local 248 addressed a mass meeting of employees in this manner:

"The union expects 100 percent allegiance to the walk-out," he said, warning, "Some of the boys think they are big enough to stand by themselves. But we'll deal with company stooges. *Nothing alive will walk into that plant.*" [Italics added.]

Again in an editorial in the CIO News, the local 248 leadership stated:

"* * * A few pickets at a gate cannot stop a bunch of scabs determined on going in to work; but a mob of pickets can keep any plant shut."

Mr. R. J. Thomas, then international vice president of the UAW-CIO and now on the national staff of the CIO, publicly urged bigger and better picket-line violence.

On November 25, 1946, during the height of the violence of that strike, the company sent the following telegram to Mr. Philip Murray, president of the CIO:

"Press reports indicate that you are urging mass picketing of our West Allis works by persons who are not our employees. We are assuming that the press reports have not correctly interpreted your statement because mass picketing which interferes with the pursuit of work is a violation of State statutes and of State labor laws which protect equally the right to work and the right to strike.

"The Wisconsin State Labor Board, after lengthy hearing, found that the leadership of local 248, UAW-CIO, was conducting picketing in violation of law and ordered discontinuance thereof The courts have issued an injunction based upon the State's action.

"You occupy an enviable position in the field of labor as head of the CIO. Your leadership will mean much to the future of organized labor and unionism.

"With the conviction that it is not your desire even to condone, much less urge, violation of State laws by illegal picketing in this community, we are calling this situation to your attention so that you may, if you deem it necessary, take steps to insure that your statements have not been thus misinterpreted."

Mr. Murray did no respond to this telegram nor did he make a public statement condemning the violence, even though it was common knowledge that the violence was being incited by communistic local union leaders.

The true significance of the unions' position is more obvious when viewed in the light of the fact that local police protection is usually inadequate to cope with tremendous mass picketing in large industrial strikes.

For example, the picketing in Allis-Chalmers' Communist-led strike in 1946 occurred in the city of West Allis, Wis. On some days the pickets numbered more than 2,000. The entire effective police force of the city numbered about 40 officers. The police force was quite naturally inadequate to control picket-line violence involving thousands of pickets

Accordingly, the conclusions can be drawn:

(1) By common practice, picketing is customarily illegal; and

(2) Normally, illegal picketing interferes effectively with the right to work, and hence results in a loss of production for interstate commerce.

Under these circumstances, should illegal picketing be treated as an unfair labor practice?

The Wagner Act was held to be constitutional on the ground that under the commerce clause of the Constitution the Federal Government has the responsibility for protecting interstate commerce.

Where illegal picketing is causing an interference with the right to work, and hence production for shipment in interstate commerce, the Federal Government not only has the right but also the responsibility to remove the illegal interference with interstate commerce.

Because of this responsibility and the inadequacy of local police power, the Eightieth Congress enacted section 8 (b) (1) (A) of the L. M. R. A.

This provision makes illegal picketing an unfair labor practice, and hence subject to a cease-and-desist order of the National Labor Relations Board.

The effective application of this provision was demonstrated in the Board's decision in the Sunset Line & Twine Co. case.

In this case the Board found that automobiles of nonstrikers and supervisors attempting to gain access to the plant were blocked by massed pickets. Other automobiles were violently shaken, with the threat of overturning. Observing the mass picketing, drivers of other cars turned back without attempting to enter the plant.

In its decision the Board ordered the union to cease and desist from such illegal picketing.

The unions' intention to utilize illegal picketing as a union device to close down plants is clearly shown by the statements of Mr. Philip Murray, president of the CIO, and Mr. Arthur J. Goldberg, CIO general counsel.

Mr Murray said:

"Just last week the Taft-Hartley law was held to outlaw picketing, however peaceful and orderly, if engaged in by a solid number of strikers. I say to Taft and Hartley and their candidates for President that labor will not permit this invasion of our clear constitutional rights"

And Mr. Goldberg said:

"The decision of the National Labor Relations Board issued today in the Sunset Line & Twine case completely exposes the claims of Republican supporters of the Taft-Hartley Act that it is a mild law. The decision also makes it clear that the Labor Board is determined to enforce this antilabor law in as harsh a manner as possible."

Thus, these statements disclose one of the obvious reasons why the unions are urging the passage of H. R. 2032, which would eliminate section 8 (b) (1) (A) of the L. M. R. A.

The effect of this elimination would be to relieve the National Labor Relations Board of its responsibility to prevent interference with interstate commerce by illegal picketing.

Thus, the situation would be restored to that under the Wagner Act. In other words, there would again be interference with interstate commerce by illegal picketing.

Stated in another way, the repeal of section 8 (b) (1) (A) of the LMRA would mean that Congress was giving tacit sanction to illegal picketing interference with interstate commerce.

A few brief remarks seem appropriate with reference to certain statements made in this connection by Mr. G. P. Van Arkel, formerly general counsel of the NLRB, in an interview with the staff of United States News and World Report and published in the February 11, 1949, issue.

One question was:

"You don't think the right to work should be protected by statute?"

Mr. Van Arkel's reply was:

"If the right to work is interferred with by anything which we would define as improper—I mean by that by violent methods or anything of that sort—you have your local police officials there ready to take care of it. Beyond that, I don't think you have to go."

Inasmuch as it is common knowledge that the police forces of small communities are not adequate to prevent violence, it is difficult to understand why Mr. Van Arkel would make a statement of this kind.

It would be interesting to have Mr. Van Arkel's comment on the situation confronting the 40-man police force of the city of West Allis when, during Allis-Chalmers' 11-month Communist-led strike in 1946, over 2,000 pickets committed acts of violence.

With what sincerity could Mr. Van Arkel say that police officials of West Allis were "ready to take care of" the situation?

In answer to another question:

"What about mass picketing—do you think there should be anything about it in the new Wagner Act?"

Mr. Van Arkel replied:

"Again it seems to me that the regulation of that kind of thing by the Federal Government means setting up a Federal police court."

Certain acts of employers are treated as unfair labor practices and subject to cease-and-desist orders of the National Labor Relations Board. If this sets up a police court for transgressing employers, then there is no reason why the same should not be done for transgressing employees and union leaders.

Actually, however, a cease-and-desist procedure is not a police court procedure but, if it were, a police court procedure for employees would be no different than one for employers.

The attitude of Mr. Van Arkel in this regard is significant because it is indicative of the purpose of the Wagner Act as administered by the old National Labor Relations Board and its policy-making staff.

It shows once again what might be expected if section 8 (b) (1) (A) of the LMRA were repealed.

For that reason, it is recommended that illegal picketing, which interferes with the right of employees to work and, therefore, constitutes an interference with production for interstate commerce, should be declared an unfair labor practice and, hence, be subject to the cease-and-desist order of the National Labor Relations Board.

QUESTION 4—SHOULD JUDICIAL AND PROSECUTING FUNCTIONS OF A LABOR BOARD BE SEPARATED?

There are two major functions of a National Labor Relations Board, namely, (1) judicial, and (2) prosecuting.

The judicial function covers decisions on all questions of unfair labor practice. The prosecuting function covers the prosecution of unfair labor practices before the Board.

Thus, the prosecuting function is like that of a district attorney.

No one would urge that the function of the district attorney be combined with that of the trial court. And yet that is exactly what the combination of these two functions of a labor board would mean.

The judicial function has always been typified by a blindfolded goddess who dispenses even-handed justice to the parties.

The picture of a typical district attorney is rather different. One sees a keen-eyed, aggressive lawyer whose primary functional responsibility is to win convictions.

The prosecutor must be partisan. The judge must be impartial. The fusing of these two functions would result in a degenerating change in the exercise of the judicial function.

In this connection, it seems fitting to make the prophecy that the time is not far off when the governmental attitude will change from that of fostering unions to that of controlling their tremendous power and regulating their activities in the public interest.

When that occurs there will be built up a code of unfair labor practices applying to the employer, the employees, and the unions.

When that time comes the unions will be joining with the employers in demanding a separation of the prosecuting and judicial functions so that they may be assured of an impartial hearing upon unfair labor practice charges made against them.

At that time consideration may be given to a complete change of approach to the problem of unfair labor practices. It is not inconceivable that the judicial structure of the Wisconsin Employment Relations Act will be adopted.

The Wisconsin act sets up a code of unfair labor practices for the employer, the employee, and third parties.

A complaint charging the commission of an unfair labor practice is initiated by the aggrieved party. It is filed with the Board acting as a court as in any other lawsuit. The defending party answers the complaint. After the issue is joined the case is tried like any other lawsuit by the submission of evidence in proof of the complaint and by refuting testimony of the defending party.

There is no function of the prosecuting attorney in the Wisconsin procedure. Thus, from the standpoint of even-handed justice, the judicial procedure of the Wisconsin Employment Relations Act is better than the procedure of either the Wagner Act or the L. M. R. A.

It is recommended that Congress adopt the judicial procedure of the Wisconsin Employment Relations Act, but failing in that, then to create separate and independent divisions to handle the judicial and prosecuting functions of the agency charged with the administration of the national labor relations policy.

QUESTION 5—SHOULD STATES' RIGHTS BE PROTECTED IN A NATIONAL LABOR POLICY?

In the area of a national labor policy there is the possibility of conflict between States'-rights reservation clause (art. X) and the commerce clause (sec. 7, art. 1) of the United States Constitution.

The extent to which States' rights may be invaded by legislation under the commerce clause can only be decided by the United States Supreme Court.

It would seem to be sound congressional policy to protect States' rights as far as possible in order to establish a block against Federal control in matters of local public interest.

Your committee has now under consideration a proposal (sec. 107, H. R. 2032) which would nullify the statutes of 13 States placing restrictions upon the use or operation of compulsory unionism in such States.

Whether the United States Supreme Court would hold this nullifying provision to be a violation of the States'-rights clause is a matter of conjecture. However, it seems a certainty that no national labor policy is sound which attempts to nullify the statutes of 13 States enacted as matters of local public policy.

Hence it is recommended that this nullifying provision form no part of our national labor policy.

QUESTION 6—SHOULD THE EMPLOYER BE REQUIRED TO BARGAIN COLLECTIVELY WITH THE MEMBERS OF HIS MANAGEMENT GROUP?

When we speak of "management representatives" we refer not only to foremen and other supervisory employees but to all administrative and professional employees in the management group (such as inspectors, time-study employees, plant-protection personnel, and confidential employees in the industrial-relations and pay-roll fields).

Upon the understanding that the reference to foremen applies generally to the entire management group, let us consider from a practical standpoint the status of the foreman in the complex operational structure of a manufacturing company which is as finely balanced as that of the human body.

To carry out the metaphor of the human body, the brain is represented by top management with its policy-making and leadership functions. The muscular system is represented by the rank-and-file employees who perform the work of production. The motor system is represented by the foremen who implement the policy-making and leadership activities of management.

No matter how fine the brain or perfect the muscular part of the body, any substantial interference with the efficient operation of the motor system causes a paralysis of the muscular functions of the body.

So it is with the industrial body. The failure of any appreciable number of foremen to perform their duties efficiently has the inevitable result of paralyzing production.

The economic progress of our country has, in a large sense, been due to the efficiency of the "body" of industry.

Thus, the basic question is: What will be the effect upon the productive capacity of our country if the employer is required by law to bargain collectively with his foremen?

In order to determine whether the functions of the foreman actually constitute the motor system of the industrial body, let us examine in detail the scope of the foreman's duties.

It is the foreman who says, "I need more men." In other words, he initiates hiring. It is the foreman who is in charge of the important on-the-job training of employees in his department. It is the foreman who knows the ability or lack of ability of his employees, and thus has the responsibility of initiating promotions, demotions, and transfers. The foreman is the man who irons out minor frictions that normally develop between employees, thus maintaining order. When breaches of order occur, it is the foreman who initiates corrective discipline.

The foreman also is charged with the duties of recommending merit increases, assigning overtime, and, in general, applying the collective-bargaining agreement.

The foreman, too, is primarily responsible for the administration of production procedures and the efficient distribution of the working force. It is the foreman who says to the employee, "Joe, I want this job done this way," and says, "Pete, I want you on this job today, and Mike, I want you over here."

And all the while he is expected to keep one eye on the costs within his department so that his company can meet the sharp competition that is inherent in our economy.

When an employee has a complaint against the company, who receives it? His foreman, who may adjust the complaint immediately. Normally, the foreman is the first recipient of any formal grievance presented by a union.

In this position, the foreman is the first management representative to spot the weaknesses in the application of company policies. His keen observation of these weaknesses is a primary factor in establishing sound company-employee relations policies.

There are many other duties of the foreman which do not fall into any regular classification; yet they are strictly management functions. For instance, the foreman is responsible for the paper work which is the key to such important confidential management functions as cost accounting and pay-roll procedure.

Thus, the foreman is responsible for implementing management policies. In short, he is an essential part of management.

The foregoing demonstrates clearly the importance of the foreman as an essential part of management.

Thus the real question is: How does unionization of the foreman destroy his effectiveness as a part of management?

The answer is twofold in that (1) the foreman's loyalty is divided between top management and his union and (2) the union acts as a wedge, creating an ever-widening breach between top management and foremen.

True, these two points are interwoven, but to fully understand their implications they must be considered separately.

On the first point, when an employee becomes a member of a union organized for the purpose of collective bargaining, he assumes the duty of fulfilling certain obligations to that union.

When an employee becomes a member of management, he assumes the obligation of performing his duties as a part of management.

No matter how ideal a management's relations with a union may be, areas of conflict are certain to arise.

If a foreman is a member of a union, he is confronted with the hopeless dilemma of reconciling his management duties with his obligations to his union.

Complete fulfillment of both obligations is frequently impossible. Whatever course the foreman takes is open to the charge of "bad faith" either by his employer or his union.

It is, indeed, the old story, all over again, that "no man can serve two masters."

As to the second point, it is the normal attitude of a union leadership to have the union act as a wedge between the company and union members. In order to "sell" the union to its members, the union leadership normally seeks to emphasize its importance to members by acting as an intervening agent in all phases of employer-employee relationship.

This has been our experience during the past 10 years in negotiations with unions representing production employees.

There has been a studied attempt on the part of union leaderships to prevent a close relationship between management and employees. For example, union leaders have attempted time and time again, in negotiations, to prevent the employee from presenting his work problems directly to his foreman. Instead, they have sought to force the intervention of the union steward.

What has occurred in the relationship between management and the production employees would inevitably be repeated if an employer were required to recognize a foreman's union for the purpose of collective bargaining.

The interposition of this union wedge into the management system would result in a failure of the foreman to effectuate management policies. This would be the "interference with the motor system" which would cause creeping paralysis of the productive efficiency of the company.

For the foregoing reasons, it seems clear that the proper legislative answer to the question is that the employer should not be required to bargain collectively with any of the members of his management group.

CONCLUSION

The formulation of a sound labor relations policy is one of the most important and difficult tasks confronting Congress today.

The importance of the task arises from the fact that a national labor policy inevitably has an impact on every phase of our society: Social, economic, and political.

The difficulty in performing the task is twofold:

(1) The tremendous quantity and quality of objective research necessary to obtain the required factual data; and

(2) The necessity for a philosophical and realistic objectivity in research and in the correct evaluation and implementation of the data in terms of legislation for a sound labor policy.

By creating the Hoover Commission, Congress has already adopted the idea of the necessity of comprehensive research by an outside organization in connection with the complex problem of reorganization of the executive branch of the government. The problem of formulating a labor policy is at least as difficult and, hence, should require the same type of research.

Of course, Congress must always exercise the function of making the ultimate legislative decision required for the establishment of the national labor policy; but the procedure of the congressional committee is not conducive to making the factual research which should form the basis for legislative policy making.

This is due in part to the fact that the witnesses who appear before congressional committees naturally make their presentations as partisan supporters of their own beliefs. My own presentation is no exception, even though I have attempted to be objective in voicing my opinions.

For the foregoing reasons, it is recommended that not only the subject of compulsory unionism, but also as much of the entire field of labor relations as may be necessary for the formulation of a sound national labor relations policy, be referred to the Hoover Commission, or similarly constituted organization, for research and policy recommendation.

Statement by A. F. Whitney, President, Brotherhood of Railway Trainmen, on the Proposed National Labor Relations Act of 1949

The effort of many columnists and radio commentators to delay and, if possible, defeat the repeal of the Taft-Hartley Act, reminds me of the penetrating truth expressed by Henry George, "A great wrong dies hard."

We cannot fully comprehend the grave issues involved in this legislation without reflecting on the industrial history of America. Early efforts of working people to improve their wages, living standards, and working conditions were thwarted by judge-made law holding that trade-unions were conspiracies in restraint of trade. The commodity theory of labor prevailed for many years in this country. Then, in 1914, the Congress enacted the Clayton Act, in which it declared: "The labor of a human being is not a commodity or article of commerce."

The decade following World War I experienced the most shameful era of laissez-faire economics that ever existed in this Nation, prior to enactment of the Taft-Hartley Act. The success of the "open shop" drive of the 1920's resulted in the decline of trade-union membership from over 5 million in 1920 to 3.5 million in 1929. During this period of industrial prosperity, the workers did not participate in it, as hourly and weekly earnings remained almost stationary. Increased productivity, made possible by technological changes, was accompanied by output restrictions, and as a result employment was barely maintained. Unemployment ranged from a low of 10 percent in 1920 to a high of 27 percent in 1921, and averaged about 15 percent during the decade of the 1920's. Full employment of our physical and manpower resources was not a characteristic of the "prosperity" of this period.

Between 1929 and 1932, industrial employment declined 40 percent, while unemployment increased fourfold. Earnings for those who had work declined about 60 percent. The Wagner Act aided materially in reversing these harmful trends and it is not surprising therefore that the masses of the American workers have been seriously concerned over demands to modify, and, what is falsely called to "equalize," the Wagner Act, which propaganda program by the monopolists brought about enactment of the Taft-Hartley Act.

During the 1920's, profits soared and the percent of national incomes shifted more and more from consumers to profit-takers. Monopolies and cartels expanded, while trade-union membership declined. And then came the black autumn of 1929, with the financial crash which engulfed all segments of our economy.

Even before the election of Franklin D. Roosevelt in 1932, it was becoming apparent to the more reasonable employing and financial interests that our full economy could not survive unless something was done to restore purchasing power. Reasonable men realized that a stronger labor movement was indispensable to this end. In the closing period of the Herbert Hoover administration, the Norris-LaGuardia Anti-Injunction Act was enacted by Congress, and a grateful Nation applauded the end of the evil of "government by injunction" in the human relationships of industry.

Senator Robert F. Wagner, of New York, introduced the National Labor Relations Act of 1935. Hearings were held. There was a growing belief that a strong labor movement and the democratic processes of collective bargaining were essential to a restoration of living standards and mass purchasing power necessary to the survival of our free-enterprise economy. In a world of growing dictatorships, that was America's democratic answer to the problems growing out of economic distress. Mr. H. M. Robertson, general counsel, Brown & Williamson Tobacco Corp., testified as follows in support of the Wagner Act:

"We felt that if the present economic system was to continue, it was inevitable that in the future there should be the organization of labor, and that real collective bargaining would eventually be made effective."

The Wagner Act became law in 1935, and for the first time in American history workers were guaranteed by statutory law the right, long exercised by employers, to form and join organizations o ftheir own free choice. The National Labor Relations Act did not affect the employer who honestly recognized the democratic right of his employees to organize.

We then witnessed the genuine truth that "A great wrong dies hard." An army of keen lawyers, employed by the National Association of Manufacturers, solemnly declared that the Wagner Act was unconstitutional. However, in 1937 the United States Supreme Court declared the Wagner Act constitutional. But the battle for freedom for American workers had just begun. In 1937 and 1938, the United States Senate established a Committee on Oppressive Labor Practices.

As we listen to the NAM interests orate about violence in labor disputes and the alleged necessity for curbing labor and protecting the public interest, let us ponder the findings, based upon sworn testimony, of that Senate committee. It found that some large corporations maintained arsenals of industrial munitions. Thugs, guns, and explosives were used by these employers to crush labor's democratic rights. The Chicago Memorial Day massacre and the Little Steel murders of workingmen proved that great wrongs die hard. And, let me remind you, that the NAM has only but begrudgingly recognized the principle of collective bargaining in its official pronouncements in recent years.

The Wagner Act freed the American workers, improved living standards and assisted American business. Between 1935 and 1947, over 7,000,000 employees voted in representation elections, conducted by the National Labor Relations Board, with 80 percent voting in favor of union representation. But a small percentage of eligible industrial employees were protected by collective-bargaining agreements in 1935, while almost half were covered by 1947. Those who orate about curbing the so-called labor monopoly should take note of the fact that only about one-fourth of the workers are organized in trade-unions at this time.

The Wagner Act stimulated that righteous principle of collective bargaining and improved labor-management relations. Evidence of increased acceptance of collective bargaining under that act is furnished by strike statistics. In 1937, at the beginning of the effectiveness of the Wagner Act, 60 percent of the workers were involved in strikes which included the issue of union recognition. In 1946, only 12 percent were involved in such strikes. Employers could have avoided about half of the strikes under that act by recognizing the democratic right of their workers to organize.

There is such a thing as repeating an untruth so often that honest men come to believe it. One of the false claims was that the Wagner Act restricted the employers' freedom of expression. The falsity of this claim is proven by full-page newspaper ads, tiresome magazine articles, Nation-wide radio programs, and millions of tricky pamphlets, all smearing organized labor, and condemning its leaders as selfish, dictatorial trouble-makers, bent upon getting something for nothing and wrecking the country, calculated to poison the minds of the public against labor unions, all of which constituted a conspiracy against the working people of the Nation.

Historically, it is unlawful for any man to threaten and intimidate a person in the exercise of his lawful rights, except that prior to the enactment of the Wagner Act, it apparently was not unlawful for an employer to threaten and intimidate his employee's democratic right to form and join labor organizations of his choice. The Wagner Act outlawed such employer intimidation.

I assert that there was no mandate from the people for the enactment of the Taft-Hartley Act, since but 39 percent of the people voted in the 1946 election that created the unforgettable Eightieth Congress.

Before we leave consideration of operations under the Wagner Act, let us inquire into the economic effects of this act. There was an increase in the organization of workers; wages increased, and employment improved, while national income going into corporate profits increased from 5.3 percent in 1935, the year the Wagner Act was enacted, to 12.2 percent in 1947. During the same period, there was a decrease from 65.3 percent to 63 percent in the share of the national income going to employees. From 1935 to 1947, the over-all increase in corporate profits after taxes was 687 percent, as compared with an increase in wages of 244 percent. Between 1945 and 1947, the increase in corporate profits after taxes was 108 percent. Certainly these economic facts do not demonstrate any need for shifting power from labor to the corporations and monopolists, which was the solemnly avowed purpose for the Taft-Hartley Act.

Had the Wagner Act served its purpose or outlived its usefulness at the time it was corrupted into the Taft-Hartley Act? As recently as May 1946, Gerard Reilley, former member of the National Labor Relations Board, and certainly one who cannot be considered as prejudiced in favor of labor, said:

"You know as well as I do, that the process of converting the theory of collective bargaining into practice is far from complete, that the law of the land has yet to become the law of thousands of our industrial plants. As I see it, in the very near future, the acceptance and practice of collective bargaining in certain areas may well be put to as severe a test as any one of our other institutions have had to face. Let us not forget what happened after World War I, when the 'open shop' plan swept certain areas and left a wake of disrupted unionism."

We were well on our way to achieving the laudable goals of the Wagner Act by 1947, when the conspiracy against collective bargaining manifested itself in the form of the Taft-Hartley Act. Under the Wagner Act, a favorable climate for collective bargaining had been achieved. There were areas in our industrial economy that still needed to be organized. For instance, there is no reason why a clerk in a 10-cent store should have to depend upon her parents to supplement her small earnings in order to exist. In the interests of all the people, and in the interests of our free enterprise economy, millions of unorganized workers should now be organized. If you will review the hearings on the Taft-Hartley Act, you will observe that it was from those employers with an antiunion record that the principal amount of testimony in favor of the Taft-Hartley Act was given. So impressive is this, that it must have been planned that way.

We come now to a consideration of the period following World War II. There were many strikes in that period. The presence of the Wagner Act or the absence of the Taft-Hartley Act was not responsible for these strikes. Only one living in a fool's paradise could reach that conclusion. After World War II, in addition to the usual confusion and economic disruption that arises out of going from a wartime to a peacetime economy, the take-home pay of millions of workers was harshly reduced as a result of loss of overtime pay and down-grading. This fact, alone, would naturally lead to industrial unrest. But there were other and unusual factors in this postwar economy. Corporations made millions of dollars out of the war. Monopolies grew in power and size. They were allowed to purchase Government war plants and equipment for a few cents on the dollar. They were riding a crest of wealth and arrogance unequaled in our history. But, to cap the climax, Congress enacted a law providing for "kick-backs" in corporate taxes, and they were allowed extravagant amortization write-offs of wartime purchases, which had the result of making it possible for corporations to enjoy substantially as much profits for idling as for producing. Thus, there was little incentive for employers to make fair and peaceful settlements with their employees.

Added to these economic stresses on workers, as against the cloistered and sheltered position of the employers, the economic soothsayers of the NAM and their voices in the Congress solemnly assured us that if we got rid of price control and allocations of scarce articles, prices would decline and there would be no scarcities. I need not detail the results of this false counseling. Workers were caught between run-away prices and take-home wages. Congress failed to raise minimum wages. It did nothing about the serious housing [illegible]rtage. It failed to secure workers in their health or their jobs. It enacted the old Charlie Chaplin stunt of standing on the board, while trying to pick it up. Many Members of the Congress decried strikes and joined the monopolists in the demand that labor be curbed. The infamous Taft-Hartley Act was the result.

The Taft-Hartley Act has not contributed to industrial peace or improved the basic soundness of our economy as the Wagner Act did during the most devastating economic catastrophe of our national history. Anyone acquainted with the economic injustices following World War II, would anticipate many strikes and much strife. However, the decline in strikes during the life of the Taft-Hartley Act has been less favorable than the period following World War I, when the economic injustices which I have described were not present. Between 1920 and 1921, there was a 32-percent decline in strikes, as compared with the Taft-Hartley era of 1947 and 1948, when there was only a 15-percent decline.

We have been amused by the orations of some people to the effect that the Taft-Hartley Act has not enslaved anyone yet. With corporate profits soaring beyond anything the most avaricious profiteer could have dreamed of, even during the peak of the wartime profits, with corporations giving labor $1 in wage increases and taking $2 or $3 in price increases, who can honestly assert that the Taft-Hartley Act, rather than staggering profits and prices, is the cause of declines in strikes during the life of that act?

The Taft-Hartley era is comparable to the "open shop" era of the 1920's, and the economic trends of both eras have much in common. Now, as then, a larger and larger share of the national income is going to the profit-takers. Corporate earnings are going up three times as much as consumer incomes. Shadows of the 1929 crash are lengthening. The fundamental principles of the Wagner National Labor Relations Act are as vital today as they were in the 1930's and following.

Monopolies are stronger and more threatening to our free enterprise economy today than ever before in history. Strong, healthy labor unions are one effective economic counterinfluence to the evils of financial and industrial monopoly. Monopolists know this. That is why they have tried the "stop-thief" technique of calling organized labor a monopoly."

Gentlemen, understand this: Those who describe as monopoly the efforts of working people to organize to improve their wages and working conditions, do not believe in the democratic principle of collective bargaining They wish to destroy trade unions as an effective means of perpetuating their monopolies. Anyone who does not understand that the Taft-Hartley Act is a conspiracy of the monopolists to crush free labor in America, understands neither the Taft-Hartley Act nor the serious monopoly problem with which this Nation is threatened. Those who most loudly proclaim the free enterprise economic system are the ones who are doing most to wreck it, for we will never have free enterprise without free labor.

It was during the Hoover administration that the Norris-LaGuardia anti-injunction law was enacted by Congress, and "government by injunction" in the human relationships of industry was brought to a richly deserved ending. This cry to return to government by injunction in free America is disheartening. Again, it is only the monopolists and their voices in and out of Congress who want to go backward beyond Herbert Hoover and beyond the Clayton Act of 1914 and legislate on labor as though it were a commodity, and subject human beings to a sinful, un-American "government by injunction."

In the field of labor legislation, we should never lose sight of two fundamental facts of economic life. The incentive against nonproduction is far greater against labor, deprived of its income during a strike, than against management, which seldom misses a pay check or skips a meal. Secondly, to deprive labor of the right to strike, places it at the mercy of the industrialist and encourages the industrialist to become arrogant and ruthless. These facts exist, whether or not a worker may be employed in a so-called essential industry. With the scales of justice already heavily weighted against it, we must not further unbalance them by returning to government by injunction.

In the field of so-called essential industry you are reminded that the workers suffer the same inconveniences and hardships during a strike situation that employees in a nonessential industry who are on strike suffer, and both groups meet the same hardships and inconveniences during a strike situation that other citizens in the community do, plus the loss of wages during the life of the strike.

Why not turn our attention to the industrialists in the dispute? Surely no reasonable person will assume that labor is responsible for every strike, since many strikes are provoked by management, and labor after exhausting its efforts to correct the injustices must surrender or strike. Injunctions never solve labor disputes or promote justice. They usually protect the unjust in their injustices. The injunction in labor disputes is the weapon of the coward, and represents a form of hideous dictatorship. The purpose of the injunction in 90 percent of labor-management disputes is to blackjack labor, deny it its economic rights, and at the same time strengthen the position of ruthless management.

We should likewise remember that when we legislate against labor, we are legislating against all of the American people. Economic justice is often stifled by the rendition of unfair decisions against labor, because powerful industrialists and monopolists largely control the means of communication.

We should glorify the fact that for many years our people progressed and prospered in an atmosphere which prohibited "government by injunction." For 17 months monopoly has been riding high under the Taft-Hartley Act, and the net profits of industry in 1948 reach 21 billion dollars. Its reign of injustice is growing stronger and more threatening as the years pass by and its arrogant demand that the Congress reserve for it the injustices in the Taft-Hartley Act should be sternly denied, with a wholesome respect for the voice of the people who spoke on November 2, 1948.

Gentlemen of the committee, the country is not nor has it been threatened by the activity of organized labor, since it has contributed more in supporting the arm of democracy than any other group. It is not organized labor that threatens our way of life nor hampers production, so essential to our people. It is the mischief and the conspiracies of that totalitarian group who are selfishly, arrogantly withholding reasonable wages and appropriate working conditions from the millions of workers under the Taft-Hartley monstrosity, that have endangered our economy and caused a reign of unrest and confusion.

We have given careful consideration to S. 249, the proposed National Labor Relations Act of 1949. Its objectives in ridding the country of the Taft-Hartley Act are laudable. Its understanding of the human relationships in industry is reflected by its emphasis on voluntary procedures around the collective bargaining table, instead of compulsion by courts or mandatory arbitration boards. In proposing these ideals, it is of the essence of American democracy and freedom. Surely there never was a time in world history, when it was so vital to human welfare to demonstrate to a war-torn, confused and troubled world that what it most needs is more, not less, democracy, more free enterprise, less monopoly and cartel power over the destiny of the people.

It is our understanding that sections 204 and 205 dealing with settlement of disputes arising under existing agreements, while stating obviously desirable objectives, do not carry with them the sanction of governmental compulsion; if they did, we should feel that our country was committing itself to compulsory arbitration. The provisions dealing with secondary boycotts are, in our judgment, so limited that they do not interfere with the legitimate objective of every trade union to eliminate sweat-shop and substandard competition; it is clear that, unlike the provisions of the Taft-Hartley Act, they do not compel union members to act as strikebreakers by force of law. The provisions dealing with jurisdictional disputes are carefully considered to reach the underlying problems. unlike the Taft-Hartley Act they provide ascertainable standards for decision of these problems and do not, as did Taft-Hartley, under the pretense of dealing with jurisdictional disputes, strike down legitimate efforts of trade unions to preserve themselves against the competition of nonunion men.

We enthusiastically support the reaffirmation of the Norris-LaGuarldia Act contained in this bill, and its elimination of the injunction as an employer weapon in labor disputes. The removal of the dangerous right to sue for breach of a collective agreement with its unlimited damages, the restoration of political freedom to the trade-union movement, the elimination of the insulting anti-Communist affidavit requirements, the removal of the NLRB general counsel as a labor czar, the ringing reaffirmation of the right of free collective bargaining on such matters as union security, the check-off, health and welfare funds and all other matters, the dropping of the stupidly devised union security elections, all these are matters which, in the light of our experience under the Taft-Hartley Act, are desirable and long overdue.

We must not be content to find a bill which will be better than the Taft-Hartley Act, for human ingenuity could not devise a worse law and a child could find a better one. We must find the right national labor policy. It is our judgment that the bill now presented places the maximum permissible limitations upon the freedom of the trade-union movement called for by the legitimate interest of employers, and that no bill should be adopted which goes further than this. With an amendment which I will explain, it is our hope that this bill will be speedily adopted to replace the noxious Taft-Hartley Act which was so thoroughly repudiated on November 2.

Before closing my testimony, I should like to call to your attention what I believe to be a rather serious mistake in S. 249. Please refer to section 405, page 21, "Exemption of Railway Labor Act." Only titles II and III of S. 249 are made inapplicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended. I can think of no good reason why title I of the proposed law should not also be included in this exemption. Obviously that part of title I relating to repeal of the Taft-Hartley Act and establishing the National Labor Relations Act of 1935, and the creation of the Board thereunder, would have no appropriate application to the subject matter covered by the Railway Labor Act. Other parts of title I would seem to have no reasonable applicability to the subject matter covered by the Railway Labor Act. Secondary boycotts and jurisdictional disputes are not a problem in the railway industry and some of the language in title I of S. 249 might interfere with the established procedures under the Railway Labor Act.

Even if it were deemed desirable to make any changes in the provisions of the Railway Labor Act, such changes should be brought about by amending that act, rather than by confusing its terms with the legislation now under consideration by your committee. In other words, I propose that the same complete exemption of the subject matter covered by the Railway Labor Act that was provided for in the National Labor Relations Act of 1935 be included in S. 249.

Strike-benefit payments, legal fees, and other expenses of the Brotherhood of Railroad Trainmen on various bus properties

[January 1946–July 1947]

Name of bus property	Number of days on strike	Strike benefits paid	Legal and other expenses	Combined cost
1946				
Santa Monica Municipal Bus Lines			$900.00	$900.00
Rockland Coaches	17	$7,567.00		7,567.00
1947				
Somerset Bus Co	105	10,947.80		10,947.80
Oklahoma Transportation Co	41	12,165.46	1,600.00	13,765.46
Burlington Transportation Co	7	7,652.24	10.35	7,662.59
Pasadena City Lines	10	3,133.02		3,133.02
Glendale City Lines	10	1,499.85		1,499.85
Santa Fe Trails (West) Transportation Co. (paid before Aug. 1)		17,233.30		17,233.30
Total cost		60,198.67	2,510.35	62,709.02

[August 1947–January 1949]

Name of bus property	Number of days on strike	Strike benefits paid	Legal and other expenses	Combined cost
Sante Fe Trails (West) Transportation Co	59	$36,508.99	$916.06	$37,425.05
Maine Central Transporation Co	18	4,008.95	1.35	4,010.30
Gibson Lines	67	14,450.00	45.79	14,495.79
Jacksonville Bus Lines	17	1,528.47		1,528.47
Rockland Coaches	56	32,267.24	1,224.21	33,491.45
Texas, New Mexico and Oklahoma Coach Lines	64	28,033.06	4,429.46	32,462.52
Burbank (Calif.) City Lines	3	149.85	5.40	155.25
Total cost		116,946.56	6,622.27	123,568.75

Kraft Foods Co.,
Chicago 90, Ill., March 18, 1949.

Mr. John Lesinski,
Chairman, Committee on Education and Labor,
House Office Building, Washington 25, D. C.

Dear Mr. Lesinski: This letter is being written at the request of Mr. John Lesinski, chairman of the House Committee on Education and Labor for the purpose of presenting to the committee the views of the Kraft Foods Co. with respect to various issues which have been presented in connection with pending Federal labor legislation.

We are opposed to any labor legislation which discriminates against and does not recognize the rights of union labor, unorganized labor, employers, or the public. We believe the Federal labor legislation should recognize and protect the rights of all such groups and, to this end, should be so framed as to place an equal burden of responsibility on both employers and unions.

This company for a number of years has negotiated annually approximately 140 separate union agreements covering employees in its various branches and plants throughout the country. Based upon this experience in the field of labor relations we wish to present the following recommendations with respect to a number of the issues which are currently being considered by your committee:

1. *Union and closed shop.*—We believe that organized labor and employers should be free to collectively bargain union-shop agreements. We would have no objection to the elimination or repeal of the union-shop referendum provision from the present law. However, we strongly urge that Federal legislation should not be so drafted as to prohibit States from adopting such laws as they deem appropriate with respect to union security agreements, including both closed- and union-shop provisions. We believe that compulsory hiring halls and "closed unions" should be outlawed. Closed unions are un-American. They frequently result in minority groups being denied employment; encourage labor monopolies; and create artificial labor scarcity particularly in trades or crafts.

2. *Check-off of union dues.*—Management and organized labor should be free to bargain collectively on the matter of the check-off of union initiation fees and dues. However, such deductions should be prohibited except where the employee has voluntarily consented thereto in writing. The check-off of union assessments of fines should be outlawed. With respect to the check-off of union dues and initiation fees, we believe that it is not the right of management and organized labor to arbitrarily withhold any part of an employee's earnings without the sanction of the person who has worked for and earned such money. Special assessments and fines are so often arbitrarily fixed without the consent or approval of the persons against whom they are levied that we feel they should be excluded from permissible check-off items.

3. *Freedom of speech.*—The law should specifically guarantee freedom of speech to both union and employer represenatives. The employer in exercising such right should not be permitted to intimidate or coerce his employees or make any promise of benefit to influence them. In the case of unions, the right of free speech should not include the right to threaten employees with force or reprisals. The opinion has been expressed that a free-speech provision is not necessary in the Federal labor law since the right of free speech is guaranteed by the Constitution of the United States. However, in order to assure that there will not return to the restrictive and unfair construction of the constitutional guaranty of free speech as applied to employers which obtained under the Wagner Act, we believe it essential that the free-speech provisions contained in section 8 (c) of the present law be retained.

4. *Featherbedding practice.*—Employers and unions should be prohibited from entering into agreements which countenance featherbedding rules and practices. Featherbedding can result only in economic waste and exploitation of the public and, hence, as a matter of public interest, should be declared unlawful.

5. *Contractual responsibilities.*—Both unions and employers should be made legally responsible for the performance of their respective obligations under labor-management contracts entered into through the process of collective bargaining. Unions should not be deprived of the right to strike to enforce lawful contract demands made upon the employer. However, once a contract has been entered into by the parties, both should be required to abide by the terms of the agreement; and, if either party fails to do so, it should be required to answer therefore in a court of law. The union as a contracting party should have the right to sue and be sued as a legal entity separate and apart from its individual members.

6. *Sympathetic strikes, jurisdictional strikes, and secondary boycotts.*—The law should protect employers against sympathetic strikes, jurisdictional disputes, and strikes and secondary boycotts. In the case of sympathetic strikes, the employer is in no manner involved in a labor dispute and, hence, should not be made the victim of a quarrel between a union and another employer in which dispute he has no interest and over which he has no control. In the case of jurisdictional disputes, the employer likewise has no voice or control in the matter and, hence, the employer should not be made the victim of such interunion disagreement. Secondary boycotts cannot be justified. No employer should be subjected to strikes, picketing, etc., where the object thereof is to cause an interruption of business relations between such employer and another concern and thus indirectly bring pressure to bear upon the other concern with whom the union may have a dispute.

7. *Collective bargaining.*—Both management and unions should be required to bargain in good faith. We believe it is ridiculously inadequate to require one party to bargain in good faith and at the same time not exact the same requirement from the other. The law should require both parties to meet and in good faith make every honest endeavor to settle their differences.

8. *Bargaining representatives.*—Both management and unions should have unfettered freedom in the selection of their bargaining representatives.

9. *Strikes affecting national interest.*—The law should contain specific procedures for the handling of strikes which may have a detrimental effect upon the public health, welfare, and economy.

10. *Political contributions.*—The law should forbid the use of union funds for political campaign purposes. However, union representatives should not be deprived of the right of free speech in such campaigns. Corporations are prevented by law from utilizing corporate funds in political campaigns, and that is as it should be. The same logic and the same philosophy which justify the prohibition of the use of corporate funds for such purposes applies equally to the use of union funds.

11. *Non-Communist statements.*—The provision in the present law requiring the filing of non-Communist affidavits by union leaders has, in our opinion, accomplished considerable in smoking out and eliminating the Communist element from organized labor. We believe such a requirement should be retained. We feel it is only equitable that employer representatives likewise be required to file similar affidavits.

12. *Petitions for elections.*—We urge that the provisions of the present law permitting unions, employees, or employers to petition for representation elections be retained. Prior to the enactment of the present provision, employers were often subjected to strikes and picketing by unions as a part of an organizing campaign, when in fact the union represented only a minor fraction of the employees for whom representation rights were claimed. The employer had no redress in such cases until the enactment of the present law which gave him the right to request an election. This we believe to be a fair and desirable provision.

Likewise, we urge the retention of the provision of the present law which permits employees under certain circumstances to petition for decertification elections whereby the employees may terminate the authority of a union as their representative.

Each of these separate points mentioned above could be elaborated upon at length. However, in the interest of brevity, we believe it more desirable to present this brief short outline rather than a voluminous statement.

Yours very truly,

Kraft Foods Co.,
Bryant H. Prentice, Jr.,
General Personnel Manager.

Two Rivers, Wis., *March 18, 1949.*

Hon. John Lesinski,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.

Dear Mr. Lesinski: My name is Joe Wood. I work at the Paragon Electric Co., Two Rivers, Wis., at $1.20 per hour. I am a veteran of the First World War and a lifetime member of the American Legion and past commander of my post. I started in 1916 as a foundry worker, became a machinist, and have been continuously employed in factory work ever since. I feel that I have been through the mill and know the working man's problems.

When I heard that hearings were being held to change the present labor law, it disturbed me very much, and I talked to my friends about it. We made a pool to send me to Washington to testify. I wired for permission to appear before your committee, but, since that is impossible, I am writing you instead, as you suggested.

I am for anything that will improve my interests as a working man. I am against anything which claims to improve my interests, but which actually will hurt me in the long run.

Outside labor organizers caused me loss in pay and many problems. This was not the result of unionism as such, but was due to the irresponsible, radical leaders whose jobs depended on stirring things up all the time. In my opinion, this was Communist-inspired. I know that these outsiders do not represent the thinking of the workers.

I worked in factories before the Wagner Act, under the Wagner Act, and under Taft-Hartley. In the old days the bosses took advantage of the working man. Under the Wagner Act, the labor leaders went too far the other way.

Before the Taft-Hartley law, we workers were always caught in the middle. Under the Taft-Hartley law, we got more breaks. There are less strikes, and unions have grown. Because the Communists are being squeezed out, there is a better feeling between management and workers. The worker has more to say about union affairs. Work has been steadier, and without these interruptions we are taking more money home.

I believe that labor leaders have covered up the parts of the Taft-Hartley law that helped the workers.

I like these things about the present law:

(1) The working man now runs his union.

(2) He knows what happens to his dues.

(3) A man doesn't have to join a union to get a job unless he wants to.

(4) A worker knows whether he is led by an American or a Communist.

Some labor leaders have not recognized that the American way is sharing responsibility. Workers have a responsibility; management has a responsibility. Whatever law is written will be most effective if it recognizes that fact.

Sincerely yours,

Joe Wood.

St. Paul & Tacoma Lumber Co.,
Tacoma, Wash., March 18, 1949.

John Lesinski,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.

Dear Mr. Lesinski: I have received your letter of March 14, 1949, suggesting that a written statement be filed with your committee in line with my letter of February 4, 1949, addressed to the House Committee on Education and Labor.

My name is Harry W. Naubert, personnel manager for the St. Paul & Tacoma Lumber Co., of Tacoma, Wash. I have been employed by the company for 33 years.

The company operates logging camps, a sawmill, and a plywood plant in Pierce and Thurston Counties, Wash., and employs about 1,400 people. The great majority of the employees are members of a union, the International Woodworkers of America, affiliated with the CIO, with headquarters in Portland, Oreg.

My chief reason for writing you is to recommend continuance of section 8 (3) (B) of the Labor-Management Relations Act of 1947, which reads:

"*Provided further*, That no employer shall justify any discrimination against an empolyee for nonmembersip in a labor organization if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Prior to passage of the act, it had become a fairly common practice for the union representing our employees to impose fines, or threaten to impose fines, on individual employees of the company, in matters regarding performance of assigned duties on a given job, or for almost any reason. Usually, this interference was in direct conflict with the company's orders and immediately created an intolerable situation, placing the individual employees, faced with taking conflicting orders from two opposed authorities, in an impossible position.

The above section has been a real protection in such situations, as the employer operating under a union-shop clause is not required to discharge employees except for failure to pay standard dues an initiation fees; in fact, he would commit an unfair labor practice were he to do so. I strongly urge continuance of this provision.

Section 2 (11) defining supervisors is another valuable provision of the act in that it prevents unions from forcing supervisors into the union, thereby weakening their slupervisory functions and dividing their responsibility. I beleve it should be retained.

For the sake of brevity and saving the committee's time, I have stressed the above two points only. There are many other important and fair features of the law which will undoubtedly be emphasized by testimony from other interested persons.

Thanking you for your courtesy and consideration, I am,

Very truly your,

Harry W. Naubert, *Personnel Manager.*

EXCERPTS FROM OFFICIAL REPORT OF PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD—DORSEY TRAILERS, INC., AND UAW-CIO, CASE NO. 15-C-1315, DOTHAN, ALA., JUNE 12, 1947

Trial examiner, John H. Eadie.
Attorney for the union: Thomas S. Adair.
Witness: W. L. Dewberry (of Elba, Ala.).

(DEWBERRY under direct examination by ADAIR:)

[P. 1043] Q. How old are you, Mr. Dewberry?—A. Thirty-two years old.

[P. 1044] Q. Were you working at Dorsey Trailers, Inc., on November 19, 1946, at the time of the strike?—[P. 1045] A. Yes, sir; I was. I didn't work that Tuesday but I worked that Monday; I was sick.

Q. Do you remember anything that happened the night before that meeting?—A. Yes, sir.

Q. Tell us about it.—A. (continuing). I say, Brother Harper and Brother Kimmie Dorsey was over [p. 1046] there at my house that night.

By Mr. ADAIR:

Q. That Police Chief Harper you're talking about?—A. Yes, sir.

Q. And Mr. Kimmie Dorsey; you're speaking of the assistant superintendent at Dorsey, Inc.?—A. I won't say what he is over there; he works over there.

Q. Did I understand you to say they came to your house?—A. Yes, sir.

Q. What was said, if anything?—A. Well, they asked me did I want to make some money.

[P. 1047] Q. Who asked you?—A. Mr. Harper.

Q. Police Chief Harper?—A. Yes, sir.

Q. And what was your reply?—A. I asked them how.

Q. What did he say?—A. Told me to slip a gun in the car.

Q. What did you ask him then, if anything?—A. I asked him whose car.

Q. Whose car?—A. Yes, sir.

Q. What did he reply?—A. Mr. Harden.

[P. 1048] Q. Mr. Harden.—A. Uh-huh.

Q. All right. Go ahead with the conversation.—A. And so he offered me $25. I told him I didn't want to do that, that was too dirty. He said we wouldn't go back to work until we got that man out of town. I told him he would have to get somebody to whip him and run him out of town.

Trial Examiner EADIE. Who said that?

The WITNESS. Mr Harper.

Trial Examiner EADIE. Mr. Who?

The WITNESS. Harper.

Q. And who else was in the car with him?—A. Mr. Dorsey, Kimmie.

Q. Mr. Kimmie Dorsey?

Trial Examiner EADIE. Mr. Kimmie Dorsey, has he been identified?

Mr. ADAIR. Yes, sir; as assistant superintendent.

Mr. BYRNES. He hasn't been identified as assistant superintendent at all.

[P. 1049] By Mr. ADAIR:

Q. What was said then?—A. Saying, "Who could we get to whip that big man?"

Q. Did Mr. Harper say that?—A. Yes, sir.

Q. That's Chief of Police Harper?—A. Yes, sir.

Q. What did you reply, if anything?—A. I told him I believe we could, I could.

[P. 1050] Q. What did you tell him?—A. I told him I'd see could I.

Q. Did you ask him who Mr. Harden was?—A. Yes, sir.

Q. What did he say?—A. Union man.

Q. What did he ask you then, after you told him that you thought you could get somebody?—A. He asked me, "Reckon how much would it cost?" I told him, "I believe we could get it done for $50."

By Mr. ADAIR:

Q. Did he say anything about getting up the $50?—A. Yes, sir; he told me.

Q. What did he say?—[P. 1051] A. He told me where he would leave it at.

Q. As I understand you, Chief of Police Harper told you where he would leave the $50?—A. Yes, sir.

Q. Where did he tell you he'd leave it?—A. Down with Macon Miller.

Q. Who is Macon Miller?—A. He were working down there for his daddy at the service station.

Q. What did he tell you about leaving the money there?—A. He told me I could go by, pick it up.

Q. Did he tell you when you could go by?—A. Yeah, he said next morning.

[P. 1056] Q. Well, what was the subject of your conversation with David Burk?—[P. 1057] A. I asked him did he want to make $50.

Q. What did he say to you?—A. "Yeah, but how?"

Q. What did you reply?—A. I told him to whip a man.

Q. Whip a man?—A. Yes, sir.

Q. And what was his answer about whether or not he wanted to make a little money by whipping a man?—A. He didn't give me no answer right then. He said, "We'll see about it."

By Mr. Adair:

Q. Did you go all the way to town with David?—A. No.

Q. Tell us what you did.—A. When we got to this end of the bridge, coming toward town, I left David, told him I'd see him in a few minutes. I turned and went off by Joe Collins' house.

Q. All right, what took place when you got to Joe Collins' house?—[P. 1058] A. Well, just before I got to Joe's house, his wife was out there washing. I asked her where Joe was. She said he was in the house. I went on there and talked to him.

Q. Did you go on in and talk to Joe?—A. Yeah.

Q. What did you talk to Joe about?—A. About making that $50.

Q. Did you tell Joe about your conversation with the Police Chief?—A. No, sir; not right then.

Q. Now, what did you and Joe do? You were at his house talking to him; now, what did you do after that?—A. Well, we walked on down the road and I can't be positive. I couldn't tell you everything we said to each other.

Q. Well, did you go to town or—— —A. Yes, sir.

Q. Where did you go?—[P. 1059] A. Went down in front of the poolroom where David was.

Q. That's David Burk?—A. Yes.

Q. The three of you got together, then; did you?—A. Yes, sir.

Q. When you talked to Joe about this proposition at first, what did he say to you about it, if anything?—A. Well, he didn't say we would or we wouldn't; he just said, "We'll see about it."

Q. Did he say whether or not he knew Harden?—A. No; he didn't know him. He asked me who he was.

Q. Did you tell him?—A. Yes, sir; told him he was a union man.

Q. What did he say then?—A. He just asked me what sort of size man he was, how big was he.

Q. Did Joe ask you anything about what had happened if you—all got hurt or got arrested or anything like that?—A. Yes. I told him if we got a tooth knocked out or an eye put out, they'd pay for it.

[P. 1060] Q. Now, what made you say that to him?—A. Just 'cause.

Q. Because what?—A. They told me that.

Q. Who told you that?—A. Mr. Harper.

Q. Chief of Police Harper?—A. Yes, sir.

Q. He told you if you got a tooth knocked out or an eye put out or injured in any way that he'd pay the hospital bill or somebody would?—A. He didn't say who'd pay for it; he just said it would be paid.

Q. Did you ask the Chief of Police in presence of Mr. Dorsey about what would happen if you got in jail?—A. He said we wouldn't get in jail.

[P. 1061] Q. Did he say whether or not there'd be a fine?—A. No, he didn't say; he just said we wouldn't get in no trouble.

[P. 1065] Q. What did you do after you got back from taking that drink?—A. Well, we just sort of hung around and waited for Mr. Harden to come down.

Q. You knew he was up in the union hall?—[P. 1066] A. Yes, sir; saw him go up there.

Q. Well, now, you testified that—something about $50 was going to be left for you. Did you check up on that?—A. Yes, sir; I went back out there after we took that first drink of rum.

By Mr. Adair:

Q. Now, you testified that Mr. Harper had a discussion with you about $50. What did you do about the $50, if anything, that morning?—A. I went up there and got it.

Q. Went over there and got it?—[P. 1067] A. I went up there; it was just over that block there.

Q. Where did you go?—A. I went up there and saw Macon Miller.

Q. What did you say to him?—A. I asked him did Mr. Harper leave anything there for me.

Q. What did he say?—A. He said, "Yeah."

Q. What else did he say?—A. He just give it to me and I walked off.

Q. Where did he get the money?—A. Got it out of his billfold.

Q. What denomination was it?—A. Two $20 bills and a 10.

[P. 1068] Q. What was said about the $50 when you got back and showed it to Joe and David?—A. Joe told me to give it to him and I told him I wasn't, not until the fight was over.

By Mr. ADAIR:

Q. Did you tell him why you weren't going to give it to him till the fight was over?—A. I told him he'd have to whip that man or I'd take it back, one.

[P. 1069] Q. Well, did Mr. Harden eventually come down?—A. Yes, sir.

Q. What time?—A. It was between 12 and 1 o'clock.

Q. Tell us what happened when he came down.—A. Well, a bunch of guys came down with him. He went over there to the Gulf filling station and went in the rest room and so we followed them all over there.

Q. Now, you say "we" followed him over there. Who followed him?—A. Me and Joe and David.

Q. You say he went in the rest room?—A. Yes, sir.

Q. What did you do while he was in the rest room?—A. We didn't do nothing but sit out there and wait.

Q. Tell us what happened when he came out of the rest room.—A. He went talking to Mr. Jeff Boutwell.

Q. And how far away from Mr. Harden were you then?—A. I imagine we was somewhere around 20 feet, just guessing at it.

Q. What happened then?—[P. 1080] A. David called him.

Q. David Burk called him?—A. Yes, sir.

Q. What did he say to him?—A. Told him to come around there.

Q. Well, did he come when David told him to come?—A. Yes, sir.

Q. What was said then, and who said it?—A. Joe asked him were his name Mr. Harden.

Q. What did he say?—A. He said, "Yeah."

Q. What was said then?—A. Joe asked him didn't it look like he'd caused enough trouble there at town pulling that strike and everything and running around tearing down signs.

Q. What signs was he talking about?—A. What Mr. Wade Reynolds put up.

Q. And what were these signs that Mr. Wade Reynolds put up?—A. Said be over there at the courthouse at 1 o'clock if you want to go back to work.

Q. Well, what did Mr. Harden reply?—A. He told him he wasn't there when the strike was pulled.

Q. Said he wasn't there when the strike was pulled?—A. He said he had called it off, ready to go back to work, and they was locked out.

[P. 1072] Q. What was said and who said it after Mr. Harden made his statement that "I wasn't here when the strike took place and it's been called off and [P. 1073] now we're locked out?" What was said next?—A. Then Joe told him, well, he said, "You made women and children go without something down here; if I was you, I'd get out of town." So Mr. Harden told him that he come down there representing the union and he weren't the running kind.

Q. What was said then?—A. Joe hit him.

Q. Joe hit him? What did he hit him with?—A. He hit him with his fist.

Q. Where did he hit him?—A. Right there, on the cheek.

Q. Then what happened?—A. He hit him up under the chin with his right fist.

Q. Was it a left that he hit him with on the cheek?—A. Yes, sir.

Q. And did he uppercut with the right then?—A. Yes, sir.

Q. Then what happened?—A. He—Joe—well, it looked to me like Mr. Harden was trying to fight back and Joe hit at him again, missed him, and David Burk run up there and hit him.

Q. Do you know what David Burk hit him with?—[P. 1074] A. Yes, sir; David hit him with his fist then.

Q. Was Harden knocked down?—A. Yes, sir.

Q. Did he get up?—A. Yes, sir.

Q. What happened then?—A. Joe hit him again.

Q. Was he knocked down again?—A. Yes, sir; he were knocked down two times.

Q. Describe the rest of the fight to us.—A. Well, that was just about all of it. I went and got ahold of David. I told him, says, "That's enough" and Brother Harden says, "Right over there is my car. If you'll let me get my hat I'll go to it."

[P. 1075] Q. Did—was Harden hit with anything besides fists?—A. I didn't see nothing but fists.

Q. Was he bloody?—A. Yes, sir.

Q. Was he groggy?—A. Yes, sir.

Q. Why did you say that you thought he had enough?—A. Because he was bleeding all over the head.

Q. Any other reason?—A. Yes, sir; he was sagging.

Q. Sagging?—A. Sagging; looked like a drunk man.

Q. What happened then?—A. They run over there and got in the alley.

Q. Who went over there?—A. Joe and David.

[P. 1078] Q. What, if anything, happened to this $50?—A. Yes, sir.

Q. What happened to it?—A. I give Joe 20 of it and David 20 and I kept 10 myself.

[P. 1079] Q. What did you do when you got to town?—A. I went to the store down there and got two shirts and I walked back out and I saw Mr. Harper.

Q. What kind of shirts were these you were getting?—A. I got Joe a khaki shirt like he got on; I got David a white one.

Q. And why did you get them shirts?—A. David's was tore and Joe's was bloody.

Q. And you say you saw Mr. Harper when you came out?—A. Yes, sir.

Q. Is that Chief of Police Fred Harper you're speaking of?—A. Yes, sir.

Q. Did you have any conversation with him there at that time?—A. Yes, sir.

Q. What was said?—A. Well, I just asked him about it. He told me to come on back to town; wasn't nobody going to bother me.

[P. 1080] Q. After you picked them both up, where did you go?—A. We went downtown.

Q. After you got back to town, did you see Chief of—City Chief of Police Harper any more that afternoon?—A. Yes, sir; but it was pretty late we saw him.

[P. 1081] Q. Did you speak to him?—A. Yes, sir.

Q. What was said?—A. Well, he told me that James Nevels and Ben Logan ought to have had hell beat out of them.

Q. What did you reply?—A. I told him I couldn't whip James Nevels with my fist because he was too big, but I believe I could whip Ben Logan.

[P. 1082] Q. What did you do then?—A. I went out there and tried to pick a fight out of Ben.

Q. Tell us about that. What did you say to him?—A. Well, I went over there and called Ben off. I told him he'd been doing some—he had been doing some talk and he'd better get his damn ass out of town before he got hell beat out of him.

Q. Did he reply to you?—A. Yeah, he says wasn't no use of that. "Don't do that way."

Q. Did you say you were trying to pick a fight with him?—[P. 1083] A. Yes, sir.

Q. Well, what happened then?—A. He didn't—just like everything I said suited him.

Q. Everything you said suited him?—A. He acted like it did.

Q. Were you unsuccessful in picking a fight with him?—A. Well, to tell you the truth, I was about drunk. It didn't make me much difference; I was about drunk, anyhow.

[P. 1086] Q. Well, did you have a conversation with Police Chief Fred Harper some time after this fight?—A. Yes, sir.

Q. And where did you see the chief at that time?—A. I saw him down by the city hall.

Q. And who struck up the conversation?—A. He did.

Q. Did you open it or did he?—A. I won't say. I might have walked up there and said, "Good morning," or something like that.

Q. And what was said?—A. He wanted me to burn Mr. Logan's car.

Q. He wanted you to burn Mr. Logan's car?

Q. What did he say to you about burning Mr. Logan's car?—A. He just said he'd give me $25 if I'd set it on fire.

Q. That's Mr. Ben Logan, the secretary-treasurer of the union?

[P. 1087] Q. Did he tell you how he thought it could be burned?—A. Said chuck a cigarette in the seat.

Q. What did you say in reply to his offer of $25 to burn Ben Logan's car?—[P. 1088] A. I didn't give him no answer; I just walked on toward the house. It were about dinner time.

[P. 1089] Q. Now, Bill, this is June 1947. Have you had any conversation with Mr. Fred Harper within the past month?—A. Yes, sir.

Q. When did you have a conversation with Police Chief Fred Harper within the last month?—A. I won't say exact date, but it's been about 2 weeks ago, something like that.

Q. Was it before this hearing started?—[P. 1090] A. Yes, sir.

Q. And where did the conversation occur?—A. By the city hall.

Q. City hall?—A. Right there between the city hall and the post office.

Q. How did the conversation start?—A. Well, we were just there talkin'.

Q. Who was there talking?—A. Me and him.

Q. By "him," do you mean City Police Chief Fred Harper?—A. Yes, sir.

Q. And what was your conversation?—A. He says, "Somebody ought to run over Mr. Harden."

Q. Did he say anything about—strike that, please.

[P. 1091] Just what did he say about "Somebody ought to run over Mr. Harden"?—A. He said, "Somebody ought to run over Mr. Harden, be worth a hundred dollars."

By Mr. Adair:

Q. He said it would be worth a hundred dollars to run over Mr. Harden?—A. Yes, sir.

Q. What did you say?—A. I told him somebody might get in trouble.

Q. Did he say anything else?—A. Yeah, he said could run over him on the sidewalk and it would be accident.

Q. Well, now, how did you take that?—A. I just walked on off.

[P. 1092] Q. Mr. Dewberry, I want you to think carefully now and give us just as close as you possibly can just what City Police Chief Fred Harper's words were about the sidewalk.—A. He just said, "Run over him up on the sidewalk; could be an accident; tie rod or something could come loose."

Q. City Police Chief Fred Harper, that's the same gentleman that you identified, sitting right out there?—A. Yes, sir.

Q. Do you know whether or not Mr. Harden was in town on that day that you talked with police chief, City Police Chief Fred Harper?—A. Yes, sir.

Q. He was in town?—[P. 1093] A. Yes, sir.

Q. Did you see him in town?—A. Yes, sir; I saw him go up the stairsteps that morning.

Q. What stairsteps?—A. The union hall.

Witness: Joe Edward Collins (of Box 313, Elba, Ala.)

(Collins under direct examination by Adair:)

[P. 1138] Q. Mr. Collins, are you employed?—A. No, sir.

Q. How long have you been unemployed?—A. I quit day before yesterday.

Q. Where were you working at that time?—A. Mr. Dorsey.

Q. At Dorsey Trailers, Inc.?—A. Yes, sir.

Q. What was your job there?—A. I was just general flunkey, working on the outside.

Q. What was your hourly rate of pay?—A. 75 cents.

Q. 75?—A. Yes, sir.

Q. How long had you been working there?—A. About 4 or 5 months.

Q. Were you working at Dorsey Trailers, Inc., before the strike?—A. No, sir.

Q. November 19?—A. No, sir.

Q. When did you go to work with Dorsey Trailers?—A. Some time in January, I think.

[P. 1139] Q. Did you have any conversation with Bill Dewberry in December relative to beating a man up?—A. Yes, sir.

Q. Will you tell us when that was, what it was about?—A. Best of my recollection it was on Tuesday morning—that's December the 17th. I am not positive now. He came up to the house, and I was laying across the bed readin' a book and he asked me did I want to make $50. I asked him how. He said whip a man, and I said, "What man?" And he said, "Mr. Harden, that union man." I said, "I never saw that man; I can't go down and jump on a man I've never seen." He said, "Yeah, but we can make $50 right quick." So I decided I'd go with him. We walked on downtown.

Q. Where did you go downtown?—A. Down at the poolroom.

Q. What poolroom is that?—A. William Bullard.

Q. Where is it located, in relation to the union hall?—A. Next door.

Q. The buildings adjoin; is that true?—A. Yes, sir.

Q. Now, the stairs that come down out of the union hall, where are they located with respect to the entrance to William Bullard's pool hall?—A. East from the poolroom. Street's running west—east and west—and the union hall is east of the poolroom.

[P. 1142] Did you see the $50?—A. Yes, sir; I saw a roll of money—I couldn't identify it to be that much.

Q. Did he give you any of it?—A. No, sir.

[P. 1143] Q. Did you ask him for any of it?—A. Yeah, I told him to come on and give me some of it and we'd go on and get us some more whisky, and he said, "No, if we don't whip that man we've got to carry it back."

Q. Did any of the police officers come up while you were sitting there?—A. Yes, sir.

Q. Who came up?—A. Fitzhugh Calhoun.

Q. Is he a local police officer?—A. Yes, sir; supposed to be.

Q. What did he do when he got there?—A. He sit down aside us on that bench.

Q. How many of you were there?—A. David and myself sitting on the bench, and Bill, he was standing around.

Q. Mr. Fitzhugh Calhoun, the local policeman, sat down there; is that right?—A. Yes, sir.

Q. What was said, if anything?—A. Bill told him in case that man come down the stairs, why, he was in a bad place.

Q. What did he say?—A. Well, he said, "I'm going now." He got up and taken off.

[P. 1144] Q. Did you wait there until Mr. Harden came down out of the union hall?—A. Yes, sir.

Q. And what happened then?—[P. 1145] A. He came out of the rest room and talking to Mr. Jeff Boutwell. He got through with him and started on, and David called him.

Q. Did he come over?—A. Yes, sir; he walked over there.

Q. What was said?—A. I asked him was he Mr. Harden. He said, "Yes, sir."

Q. Did he answer you?—A. Yes, sir.

Q. What did he say?—A. He said he was the man; he was Mr. Harden.

Q. Then what was said?—[P. 1145] A. I asked him wasn't he ashamed to pull that strike down there and make the women and children do without stuff for Christmas. He said he had pulled the strike off; he wasn't present at the time.

Q. Said what?—A. Said he had pulled the strike off since he got there; he wasn't present at the time.

Q. He wasn't present when the strike was called?—A. Yes, sir.

Q. Did you say anything else you remember?—A. I don't—I'm not positive just what was said. I told him the best thing he could do was to leave town.

Q. What did he say to that?—[P. 1146] A. He said he was representing the union and he wasn't the running kind.

Q. Wasn't the running kind?—A. Yes, sir.

Q. What happened then?—A. Well, that was about all. We started fighting then.

Q. How did the fight start?—A. I hit him.

Q. What happened after you hit him?—A. Well, just kept hitting him.

Q. You kept hitting him?—A. Yes, sir.

Q. Were you the only one hitting him at that time?—A. Right at the first I was; yes, sir.

Q. Did anybody else subsequently hit him?—A. Yes, sir.

Q. Who hit him?—A. David.

Q. Were you and David hitting him at the same time?—A. No, sir; I swung at him one time and missed him and David run in and I turned around and come back and picked up my cap and his hat. He was sitting down on his knees out there on the sidewalk.

[P. 1146] Q. Who was?—A. Mr. Harden.

[P. 1147] Q. Did you go back in and hit him some more?—A. Yes, sir; I hit him one more time.

Q. What did you hit him with that second time?—A. My fist.

Q. What did you hit him with the first time?—A. My fist.

Q. Did you have anything in your fist when you hit him?—A. Yes, sir.

Q. What did you have in your fist?—A. Had my knife.

Q. Knife?—A. Yes, sir.

Q. What size knife was that?—A. Well, it was just a little, small, two-blade knife.

Q. Was that knife projected out from your fist or was it completely inside your fist?—A. It was sticking out a little.

Q. Did you hit him with the jaws of the knife that were sticking out?—A. That was my intention.

Q. And what part of his body were you hitting him with the jaws of the knife?—A. In his head.

Q. In his head?—A. Yes, sir.

[P. 1148] Q. What was the conditon of his head after you got through hitting him with the knife?—A. It was in pretty bad shape. It was pretty bloody.

Q. And how did the fight end?—A. Bill came out there and told us that was enough.

[P. 1148] Q Bill who?—A. Dewberry.

Q. And did you then quit hitting him?—A. Yes, sir.

[P. 1149] Q. When was the money passed out?—A. Quick as Bill walked up to us.

Q. Huh?—A. As quick as Bill come in the alley where we was.

Q. How much money did he give you?—A. He give me $29 and David $29 and kept $10.

Q. Do you know why he only kept $10?—A. He said he was going to get something out of it.

Q. Did he do any of the actual hitting himself?—A. No, sir.

Q. He was just the promoter; is that right?—A. Yes, sir.

Q. Did you stay around Elba or did you leave town?—A. We left town.

[P. 1155] Now, on the day that you were supposed to appear for trial, did you appear?—[P. 1156] A. Yes, sir.

Q. Tell us what occurred.—A. Walked up to the city hall and Mr. Harper met me there.

Q. That's Chief of Police Fred Harper?—A. Yes, sir; and said Mullins wasn't in. He give me $19 and told me that that was to pay my fine, in case there was anyone in there that shouldn't be.

[P. 1157] Q. Did you take the $19?—A. Yes, sir.

Q. What did you do after you took it?—A. Walked on in the city hall and the mayor came in.

Q. Did the mayor come in then?—A. Just—yes, sir; just a little after he handed me the money.

Q. And what happened when the mayor come in?—A. He went in to his desk and sat down. I walked around in there and told him I was back again.

Q. What did he say?—A. He says, "So early?" I says, "Yes, sir." He says, "Well, how do you plead? Guilty or not guilty?" I told him I was guilty.

[P. 1158] Q. What did he say?—A. He told me it would be $104.50.

Q. One hundred and four dollars and a half?—A. Yes, sir. I told him I was pleading guilty for Burk and myself.

Q. You told him you were pleading guilty for Burk? [Witness nods head affirmatively.]

Q. Was Burk there?—A. No, sir; he was gone to Georgia to get a truck.

Q. What did the mayor say about Burk not being there, if anything?—A. He didn't say anything.

Q. When he said, "The fine's $104.50," did he say that was for you or for Burk or for both of you?—A. That was $104.50 apiece.

Q. Apiece?—A. Yeah, for each one of us.

Q. Did you pay off?—A. I told him I didn't have that much money.

Q. What did he say?—A. He told me my fine had already been paid and marked it up on the books.

[P. 1159] Q. Well, now, what happened to this $19 that was given you outside?—A. Mr. Harper, he followed me and got it back. [Laughter.]

Q. Do you remember just what you said to Mr. Harper when he followed you out?—A. I told him I didn't need the money.

Q. That you didn't need the money?—A. Yes, sir.

Q. What did he say?—A. He said, "Well, I didn't figure you would."

Q. Now, do you remember an FBI agent by the name of Lill coming to see you about this case?—A. I do.

Q. And where did he contact you?—A. Over at Dorsey Trailers.

Q. Were you at work?—A. Yes, sir.

Q. Were you at work at the time he talked with you?—A. No, sir; it was right after 4 o'clock.

Q. Did you get off at 4?—[P. 1160] A. Yes, sir.

Q. Did he contact you inside or outside?—A. Outside.

Q. And will you tell us what sort of conversation you had with Lill?—A. Yes, sir; he called me out and told me that he wanted to talk with me and told me his identity.

Then we walked out to his car and set down in his car. He asked me about this union fight and I lied to him all the way through about it. He asked me was it a pot of money made up and give to me and I told him no; asked me about was I promised a job over there for whipping that man, I told him no. In other words, I didn't tell him nothing.

[P. 1160] Q. And when you got through talking with Mr. Lill, what did Mr. Lill say to you, if anything?—A. He said if I ever decided to tell the truth about it, he'd like to hear it.

Q. Said what?—A. He said if I ever decided to tell the truth about it, he'd like to hear it. He could tell I was lying by that statement, I guess; that's what I taken it for.

Q. After you got through talking with the FBI agent, Mr. Lill, what did you do?—[P. 1161] A. I went on to town.

Q. Did you tell anybody that you talked to the FBI.—A. Yes, sir.

Q. Who?—A. Mr. Harper.

Q. Mr. Fred Harper, the local chief of police?—A. Yes, sir.

Q. Where did you see him?—A. Down at the city hall.

Q. Did you go down there?—A. Yes, sir.

Q. What was your conversation?—A. I asked him was Mr. Mullins joking—no, first I asked him was—had the FBI man saw him and he said he hadn't, and he said he'd been looking for him all day but he was out of town, he didn't get in touch with him. Then I asked him was Mr. Mullins joking about charging us $104.50 for that fine and he said, "No, that's what got wrote up on the books." I says, "Well, you'd better change it or do something. I told him we paid $9.50."

Q. Told who you paid $9.50?—A. The FBI man.

Q. What did Mr. Harper say?—A. He said, "Well, he can change it."

[P. 1162] Q. Well, do you know whether or not Mr.—Chief of—local Chief of Police Fred Harper changed the entry on the record books of the city of Elba and changed that fine to read from $104.50?—A. No, sir; I never looked at the records.

Q. But he told you he was going to?—A. Yes, sir.

Q. Did local Chief of Police Fred Harper have anything else to say about the FBI agent?—A. No, sir; not right then he didn't. We stood there—I forgot what we were talking about. Anyhow, it wasn't nothing particular. Directly he said that I didn't have to worry about what I told this FBI man; says he was our friend, said that he'd rather he had been sent to the job than anyone of the rest of them.

Witness: David Burk (106 Smith Avenue, Elba, Ala.).

(Burk under direct examination by Adair:)

[P. 1219] Q. How old are you, Mr. Burk?—A. Thirty-one.

Q. Are you employed at present?—A. Yes, sir.

Q. Where do you work?—A. Schoolhouse in Elba.

Q. What kind of work?—A. Carpenter.

Q. Have you ever worked at Dorsey Trailers?—A. No, sir.

Q. Do you remember attacking a union representative in Elba?—A. Yes, sir.

Q. When did that occur, if you remember?—A. December the 17, I believe is right.

Q. Did you participate in that attack?—A. Yes.

Q. Who talked to you about that previously?—A. Bill Dewberry.

Q. What did he say to you?—A. Well, we was crossing Whitewater Bridge; he asked me did I want to make $50 quick, and so I asked him how. He says, "Whip a man," so I asked him who it was. He told me and I says, "We might get in trouble," so we went on and that was all that was said about it.

Q. Did he reply to you when you asked him——[P. 1220]—A. He says, "No, you won't get in no trouble."

Q. What else did he say, if anything?—A. Later on, after I saw him and Joe, I asked him how did he know that I wouldn't get in trouble and he said, "Well, the law have done tole me that we wouldn't."

Q. Did you wait out there till Mr. Hardin came down?—A. That's right.

Q. Do you remember when it was that he came down?—A. Well, it was a little after 12 o'clock.

Q. Did you attack him then?—A. No, sir.

Q. What happened then?—A. He went over to the Gulf filling station. We walked on over there and [p. 1221] he went in the restroom, so we were standing back of some cars, like, parked in the driveway, up to it. When he came out, I called him.

Q. You called him?—A. Yes, sir.

Q. What did you say to him?—A. I called him by his name.

Q. Did he come over?—A. Yes, sir.

Q. What did he say?—A. Joe spoke up then; he mentioned he was causing a lot of trouble around, causing little kids and women to miss Christmas money.

Q. Did he say anything else to him?—A. Well, he told Joe—no, Joe didn't.

Q. Yeah?—A. He told Joe he was representing the union and he wouldn't leave.

Q. Did Joe ask him to leave?—A. Told him he'd better get out of town.

Q. What took place then?—A. Joe hit him.

Q. And after Joe hit him, what happened?—A. Well, they hit two or three licks; then, when Joe missed him, that's [p. 1222] when I got him.

Q. Did you hit him then?—A. That's right.

Q. Did you hit him more than one lick?—A. Sure.

Q. Did you knock him down?—A. Well, I couldn't say whether I did or not, on a case like that.

Q. Was he knocked down?—A. Sure.

Q. Was he knocked down more than once?—A. Twice, I believe it was.

Q. What was his condition?—A. Well, at last he was sitting up down on the street, and then Bill he got ahold of us, said, "Don't hit him any more."

Q. What did you do then?—A. We turned him aloose.

Q. How much money did he give you?—A. $20.

[P. 1226] Q. And you never appeared in court?—A. No.

Q. You didn't pay any fine?—A. No fine.

Q. Did you have a conversation with Police Chief Harper any time after that or before that and after the fight?—[P. 1227] A. The second day after, after the fight?

Q. The second day after the fight. What——A. I met him at the Gulf place and he said to me, says "You see that car sitting right yonder?" I says, "Yeah." He said, "It would be very easy to walk by and throw a cigarette in it and it'll never cost you nothing." So I just looked at him and walked on, didn't say anything.

[P. 1230] Q. And prior to the fight you had no conversation with Fred Harper?—A. No, sir; I didn't have no conversation, no more than about the car burning.

Q. The car that you said was Ben Logan's that you don't know the model or don't know the wheels of the car, the color of the wheels?—A. That's right.

Q. Or the license number?—A. That's right.

Q. Now, how much did you get—was that prior to the fight or after the fight that you had the conversation about burning this car?—A. After the fight.

Q. Did you know Mr. Harden before?—A. Sure, know him when I saw him.

Q. Did you ever have any conversation with him?—A. Never have.

Q. Had nothing against him, no grudge against him?—A. Nothing against him.

Q. And for $20 you beat him up?—A. For $20 I beat him up; yes sir. That's right.

CASE HISTORIES, ETC., RELATIVE TO VARIOUS MATTERS BEFORE NATIONAL LABOR RELATIONS BOARD, AFFECTING UAW LOCALS AND THEIR EMPLOYERS

LOCAL 773, DORSEY TRAILERS, INC., ELBA, ALA.

The union was certified as the exclusive bargaining agent in this company on May 16, 1945, and signed a contract September 17, 1945. In the early fall of 1946 the contract was renewed with provision for union shop and check-off.

Shortly after renewal of the contract the company transferred certain employees to new job classifications, but refused to pay the wage rates provided for such classifications under the contract. The grievance procedure was employed without satisfactory adjustment. The company refused to arbitrate the grievances.

A strike ensued on November 19, 1946, but 1 week later the company rejected the offer of the union for the unconditional return of the strikers and shut down the plant until January 6, 1947. During this lock-out the employees affected drew their unemployment compensation.

On December 17, 1946, a membership meeting was convened by the president of the local, who called the meeting for the purpose of having a vote to determine whether the men in the plant still desired to be represented by the union. Shortly before the meeting convened, at 2 p. m., three men accosted on the street and beat up severely with the jaws of a heavy pocket knife the international representative of the union, Jim Harden. These three men, W. L. Dewberry, Joe Collins, and David Burk, had been procured by Fred Harper, police chief of Elba, and Kimmie Dorsey, assistant superintendent of the company, for the sum of $50 to beat up Harden and to tell him to get out of town.

Later in the same afternoon, the financial secretary of the union, Ben Logan, was told by the same three men that he would be shot unless he left town before sundown. The financial secretary, the union attorney, and the assistant regional director of the international union reported this threat to the sheriff in Elba, who made no move to make any arrest, but, on the contrary, stated to the financial secretary: "It has been reported to me that you are carrying a gun around here."

The three who had been procured by the Elba police and the company for this assault later testified in the Labor Board hearings concerning their employment for this purpose, and one of them testified also that he had been asked, but refused, to place a gun in Jim Harden's car, and that they had been offered money by the chief of police to run over Jim Harden with their automobile "even though they had to run up on the sidewalk to get him" and to burn the car of Ben Logan, financial secretary of the union.

Appeals by the union to the attorney general, the State bureau of investigation, the governor's office, and the FBI produced no action. One of the three thugs appeared in local court, pleaded guilty for himself and one other, and was told that a fine of $104.50 against each of them "had been paid."

Excerpts from the testimony of the three men named above are attached hereto as an exhibit.

Upon the reopening of the plant on January 6, 1947, Jim Nevels, Ben Logan, and Leavy Boutwell, all officers of the local union, were not recalled to work. They have not been rehired, although they have applied for reinstatement.

Complaint was issued by the NLRB April 25, 1947, against Dorsey Trailers, Inc., alleging unfair labor practices. Hearing was held in June 1947 at Elba, Ala. The trial examiner's report finds the company guilty of unfair labor practice in the assault upon Jim Harden and in discriminating against Jim Nevels, Ben Logan, and Leavy Boutwell. The case was sent to the National Board in Washington in September 1947, but was not assigned for Board consideration until sometime subsequent to April 30, 1948, and prior to May 14, 1948.

In a letter dated May 14, 1948, Paul M. Herzog, Chairman, advised the union, "I can advise you that we have commenced analyzing the transcript of the hearing and the exceptions to the intermediate report in this matter."

Chairman Herzog also stated: "We are hopeful that formal action may be taken in the near future." This was on May 14, 1948. Six months later, on November 22, 1948, 2 years to the day from the employer's first refusal to bargain with the union, the Board issued its decision and order.

The Board found that this respondent locked out its employees illegally for 4 days in May 1946; that it illegally refused to reinstate three union officers on January 6, 1947, because of their leadership in the strike; that the employer illegally refused to bargain with the union on December 31, 1946, and at all times thereafter; and that it illegally participated in the assault on Jim Harden.

The Board ordered the respondent company to cease and desist from discouraging membership in the union, from refusing to bargain with the union, and to reinstate the three union officers with back pay to January 6, 1947, and to reimburse the employees locked out in May 1946.

As of February 10, 1949, the company still refused to comply with the act or the Board's orders. On that date the case was sent into Washington for enforcement by the office of the general counsel.

As of March 11, drafting of the brief by the general counsel was reported to be still 2 or 3 weeks from completion, and that court action against the company would not begin sooner than 3 weeks from date. It was held unlikely that the case would be heard before the fall term of court.

It therefore appears probable that the case of Dorsey Trailers, Inc., will be in court or awaiting its turn on the third anniversary of the refusal to bargain and of the slugging of Jim Harden by the company's hired thugs.

During all this time, and up to the present, the company refuses to bargain with the union, refuses even to accept mail from the union, continues to lay off employees without regard to seniority and in violation of the contract, and refuses to process gievances. While seniority employees remain laid off, new employees are hired.

LOCAL 669, ALLEN B. DUMONT, LABORATORIES, INC., PASSAIC, N. J.

This plant has not been organized. Just prior to the decision of the NLRB issued April 15, 1948, ordering an election with IAM and UAW-CIO on the ballot, the company, on April 12. 1948, issued to all hourly paid employees a memorandum stating that wages would be increased approximately 10 percent to all hourly paid workers, effective May 3, 1948.

Thereafter the company engaged vigorously in a campaign against both unions, attacking especially the UAW-CIO and the officers of local 669, and urging a vote for "no union."

In one of its pieces of campaign literature it threatened the individual's chances of promotion in event of a union victory in the election, as follows:

"A merit-rating policy that allows new employees to advance quickly within their job classifications. They are not retarded by union-imposed seniority clauses. Promotions are made from the ranks to better jobs. A majority of your supervisors were once production employees. This is a new industry, and your chances of promotion are good—if you have what it takes and if your freedom and the company's freedom to cooperate day by day are not restricted by the artificial rules and red tape that would be imposed by unionization."

In another hand-out the company made the general threat that hard times will ensue if the plant is organized:

"It is our honest belief that the restrictions that would be imposed by a union contract would not only directly affect you in connection with the matters which we have discussed but would also directly affect the company, and indirectly you as a part of DuMont, by hampering efficient production and our ability to maintain and continue to improve the standards of employment that have made DuMont a good place in which to work."

The result of the election on May 7 was: UAW-CIO, 285; IAM, 248; no union, 345.

A run-off election being ordered for May 21, 1948, the company continued its attack upon UAW-CIO and acclaimed the virtues of its personnel policies.

In this "free speech" literature of the company, employees were given to understand that victories for the union would adversely affect the economic position of the company and its opportunity to provide employment. The following paragraph is quoted from its letter of May 18, 1948, to production and maintenance employees:

"Both employees and management are mutually dependent upon each other, and whatever affects one of us adversely, usually affects the other. It is my belief that no advantage would be gained by either of us if the UAW-CIO gained a foothold in DuMont plants, and it is my hope that you will vote against them."

In its four-page tabloid "DuMont Telefacts," volume 1, No. 1, issued May 20, 1948, on the eve of the election, it devoted most of one page to defamation of local 669 and its officers anl sought to impress employees with the peril of unionism through stories under the following headlines:

"Cooperation—Not union strife."

"What a worker loses when a strike is called."

"Lost wages in recent UAW strikes."

"Wright workers vote to strike."

"UAW employees to be assessed for Chrysler strike."

"We've come a long way together."

The following article taken from page 4 of this publication carries the threat that the company's prosperity depends upon its employees "cooperating" with it by not voting for the union:

"We are merely at the threshold of an industry which can become one of the largest in the country. And you company has every intention of going forward with the industry, of getting its share of the receiver and transmitting business, of keeping in the van as a manufacturers of quality equipment.

"Definite steps have been taken for immediate expansion, and word has just been received that our bid for the huge Wright Aeronautical Co. plant in East Paterson has been accepted by the War Assets Administration. If agreement on terms con be reached with the United States Government, we can proceed quickly to greatly expand our production and make it more efficient.

"This vital step will be taken regardless of the outcome of tomorrow's election, but we would enter into this program with greater confidence if we were sure that we had complete cooperation and trust from the majority of our coworkers. We hope cincerely that tomorrow you will demonstrate your confidence in us. We are an independent company and in the television industry we are bucking financial giants of the radio industry. It will take continued foresight, ingenuity, and cooperation for us to maintain our position of leadership against such competition. We need your help, and believe that you will give it."

The result of the run-off election on May 21 was : UAW-CIO, 418; no union, 432; challenged ballots, 48.

The NLRB denied the UAW-CIO's appeal, contesting the run-off election.

Today, thanks to the Taft-Hartley guaranty of "free speech" to employers for the intimidation of employees, the DuMont workers are without union representation, protection, and contract.

LOCAL 61, AUTOPULSE CORP., LUDINGTON, MICH.

After being under contract with local 174 in Detroit since 1940, the company moved all of its operations to Ludington where it got into full production in June 1947. Labor relations at Detroit had been fairly good.

District 50, United Mine Workers, made the first attempt to organize the Ludington plant. The organization meeting on November 26, 1947, was attended by a company supervisor, William Nyman, who signed his name and address to the paper circulated. Following a hunting trip on November 29 with A. J. Eldred, president of Autopulse, Nyman stated in a bar that any employees who took an interest in the union would be fired.

At the request of employees, UAW-CIO held an organization meeting December 4, 1947. On December 6, 28 workers were discharged by the company, 27 of whom had attended the November 26 meeting called by district 50.

UAW-CIO immediately filed a complaint case with NLRB, which is still pending. The NLRB field examiner who investigated the case, Joseph Kulkis, stated to UAW representatives that it was his understanding that complaint cases had priority under the Taft-Hartley Act and that it would take anywhere from 1 to 3 years before this complaint would be settled.

The company attempted to stop payment of unemployment compensation to the workers discharged on December 6, but in every case the unemployment compensation department of the union was able to prove to a referee that these workers were not discharged for misconduct. They received their benefits.

As the union continued its organizational drive, the company began sending out letters to the workers.

On December 22, 1947, the union petitioned for a representation election. A hearing was held January 20, 1948, at which the only issue raised by the company was an exclusion of draftsmen. The union offered to waive inclusion of the draftsmen in the bargaining unit, and the hearing officer asked the parties to agree to a consent election. K. B. Matthews, attorney for the company, told the hearing officer that he was going to take every step within the law to prevent an election. An election was finally ordered March 2, 1948.

After the election had been ordered, the company unleashed a vicious campaign to discredit the union, including a series of letters mailed directly to each worker's home and speeches by the plant superintendent on company time and property. For 10 days prior to the election these meetings were held and almost every day, lasting from 10 to 30 minutes, and workers were compelled to shut off all machinery, stop all operations, and listen.

The points most frequently made in these speeches were:

(1) If you vote "no," paid vacations will not be hard to get.

(2) If you vote "no," you will have steady work, because when we don't have orders we will build banks of parts.

(3) If you vote "yes," we will lay off a large number of workers almost immediately.

(4) If you vote "yes," you will have to do what union "big shots" tell you to do. If you vote "no," you can come into the office at any time and talk over your problems with me.

(5) If you vote "yes," your ability to do the job and to get along with your foreman will count for nothing, because the company will be forced to let you off in accordance with seniority.

The company sent letters about twice a week over a period of 2 months prior to the election addressed personally to each employee at his home and signed by A. J. Eldred, manager of the corporation.

These letters sought to persuade the employees that they would be mulcted by the union and that the union officers would not worry about the workers' problems but would seek only to promote their own interests.

In addition to attacks upon the union, the letters contained the specific threat that if the employees voted for the union, the chances of coninued employment will be reduced. The same scarcely veiled threat was contained in the following paragraph near the end of the 2-page letter sent to employees by Eldred on March 19, 1948:

"So, the way things stand, you have a good job. The pay is better than in other Ludington shops, the work is steady. If you are planning on a home, or have other reasons for wishing a steady income, why vote a mistake you may later regret."

The bitter antiunion attitude of this corporation, which had had fairly good labor relations with the union from 1940 to April 1947 clearly shows the effect of the Taft-Hartley Act in breaking down labor relations.

The discharge of workers for participation in organization meetings and the threats of economic loss made by the operating head of the company and the plant superintendent to the workers prior to the representation election mark a return in the direction of the industrial warfare which preceded the passage of the Wagner Act.

Despite this campaign of attempted intimidation, UAW-CIO Local 61 won the election and, after a costly strike, negotiated a contract now in effect.

But to date, 14 months after the 28 employees were fired following attendance at a union meeting by 27 of them, the NLRB has not even set a hearing on the unfair labor practice charge.

Contrast this inaction with the short-order service rendered to employers by the Taft-Hartley NLRB general counsel and the Board itself.

By its failure to act in this and other instances of mass firings for union activity, the Taft-Hartley NLRB and the general counsel condone this method of smashing organizing efforts, particularly in the smaller plants.

FORD MOTOR CO.

Under date of August 21, 1947, the International Union, UAW-CIO, and the Ford Motor Co. entered into a contract which continues until July 15, 1949, except that it could be reopened with respect to economic demands on July 15, 1948.

Article II of this agreement provided for union shop in all Ford plants except where prohibited by State law. This article runs to July 15, 1948, and "if and to the extent permitted by law" continued thereafter until July 15, 1949.

In short, a contract entered into in 1947 between the company and the union provided for a union shop until July 15, 1949, provided the union complied with the union-shop authorization provisions of the Taft-Hartley Act

Despite this agreement, the company took advantage of the Taft-Hartley Act (1) to discourage union membership and (2) to defeat the efforts of the union to comply with the election provisions of the act.

It notified employees in States with anti-union-shop laws of their opportunity under the laws of the State and the Taft-Hartley Act to withdraw from the union and to discontinue check-off of union dues from their pay. A copy of the letter sent by the plant manager of the company's Norfolk, Va., assembly plant to all of its UAW-CIO employees on October 6, 1947, is attached.

A letter was sent by John S. Bugas, director of industrial relations for the Ford Motor Co. to all hourly paid employees on or about February 15, 1948. Interpreting the 1947 contract between the company and the union, it plainly conveyed the impression that the union-shop provision expired July 15, 1948. Although the contract provides that "if and to the extent permitted by law" the union-shop agreement shall be continued after July 15, 1948, "until the expiration of the remainder of this agreement," the letter to employees stated that the union shop ended July 15, 1948, "unless certain legal requirements are met."

In negotiations with the union during May and June 1948 on the holding of the union-shop elections, the company made clear its intent to use this requirement of the Taft-Hartley Act as a lever to obtain concessions from the union on other contract features. It told the union, in effect, that it would consider allowing the union-shop election to be held on company property if the union would make a good agreement with the company on article V, section 6, of the contract which relates to union liability for unauthorized strikes. In a telegram to the director of the national Ford department of the union, John S. Bugas of the Ford Motor Co. referred to the necessity of extending time for the union-shop elections beyond July 15 and expressed willingness to grant such extension of time "conditioned on the continuing cooperative attitude of both parties" and the offer is stated to be "revocable at any time up to the date of vote."

The company applied conditions to the holding of the union-shop elections on company property which made it impossible to hold such elections on company property. In conference with Frank H. Bowen, director of region 7, NLRB, on May 25, 1948, John S. Bugas of the Ford Motor Co. stated that elections would be permitted on company property (1) only in the event that the union's petition for election was made on a local unit basis, instead of on an international union basis as provided in the contract, and (2) only on the additional condition that Ford Motor Co. would designate the places on the company property where the polling booths would be set up.

As was well known to Bugas, neither of these restrictions upon conduct of its elections would be accepted by the NLRB, and they were rejected by the NLRB director.

In a telegram to Kenneth Bannon, director of the union's national Ford department, May 26, 1948, Mr. Bugas stated that the elections would be held on company property only under the conditions previously outlined in conversation between Bugas and Bannon. These conditions set the same restrictions upon the elections as the company had sought to impose upon NLRB.

The telegram of May 26 and the union's reply are attached as exhibits.

It was well known at the Ford Motor Co. that the holding of union-shop elections off the company property would necessarily result in excluding a large number of eligible employees from the opportunity of voting, and that those who did not vote would in effect be voting against the union shop. The Taft-Hartley Act set the trap—the Ford Motor Co. tried to use it—but in vain.

The results of the Ford workers' elections on the question of continuing a union shop turned out to be dramatic and significant proof that American workers value the unions they have built.

Under all the handicaps, hardships, and expenses that the Taft-Hartley Act and the Ford Motor Co. could throw up as road blocks, the Ford workers smashed through to roll up the most impresive vote of confidence in the principle of unionism and in the UAW-CIO that has been given during the 18 months of life under Taft-Hartley. The statement issued July 10, 1948, by Ken Bannon, director of the UAW-CIO, national Ford department commenting on the results of the NLRB elections to determine whether or not the Ford workers wished to continue the union shop in the plants of the Ford Co. throughout the United States, gives both the arithmetic of the vote and the spirit that led many Ford workers to travel as much as 200 miles in order to cast their ballots:

"The magnificent victory of the Ford workers in the union-shop election completed Friday is a victory for the whole labor movement and a lethal blow to the hopes of all reactionaries who think that American unionism can be destroyed through repressive, undemocratic legislation.

"Here is a Nation-wide poll—the largest ever conducted outside plant premises—88,943 workers of all races, creeds, and colors and from 25 States in various geographical areas have declared in unmistakable terms that they stand solidly behind their union and will maintain their union-shop agreement. (Ford workers in seven States were not permitted to vote because of State laws forbidding the union shop.)

"Their votes are a slap in the face of the authors, sponsors, and supporters of the vicious Taft-Hartley Act.

"They have served notice on the Ford Motor Co. that they give complete support to the demands now in negotiations between the union and the company and are ready to back up those demands with action if the company forces them to do so.

"They have taught the Ford Motor Co. the lesson that its refusal to cooperate with the Government by permitting the elections to be held on plant property will not prevent the Ford workers from turning out in overwhelming numbers to protect their union-shop agreement and their bargaining power.

"And finally, and perhaps most important, they exposed the lie of the antidemocratic spokesmen that American workers would reject unionism and union-shop agreements if given the opportunity to do so in a free election.

"Out of 91,081 workers who voted, 88,943 workers voted to maintain the union shop, the company challenged 924 and 1,214 voted against. The union won a 98-percent majority. Even under the unfair, undemocratic, Taft-Hartley provision which stipulates that votes not cast are votes against the union shop, the Ford workers came through with a ringing 90-percent majority. The total number eligible to vote was 98,989. (If this Taft-Hartley provision was applied to congressional elections, most of the seats in Congress now occupied by Taft-Hartley Congressmen would be vacant, because very few, if any, were elected by a majority of the eligible voters in their district.)

"The Ford workers are to be congratulated on their democratic spirit and upon their determination to have a truly representative election despite the obstacles put in their way both by the act itself and by the company. They have performed an invaluable service to the cause of American unionism and democracy."

FORD MOTOR CO.,
NORFOLK, VA., ASSEMBLY PLANT,
October 6, 1947.

To All Employees Coming Under the UAW-CIO Contract:

By virtue of the laws of this State, the Taft-Hartley Act, and the new agreement between the company and the UAW-CIO, the union-shop provisions of that agreement do not apply to you.

You are free to continue, or not continue, your membership in the union, as you may see fit. The company may not discharge you because you do not belong to the union.

In either event, however, the other terms of the agreement cover your employment by the company, and the UAW-CIO will continue to be your exclusive bargaining agent.

The company will check off and turn over to the union the membership dues of employees who authorize it to do so in writing. In the event that you sign such an authorization but subsequently resign from the union, and if you notify the company of your resignation, the check-off from your pay will be discontinued, since no further dues will be payable to the union by you.

The only purpose of this notice is to inform you of the facts. The decision is yours. The company makes no recommendation as to what course of action you should choose.

G. L. LEMOINE, *Plant Manager.*

[Telegram]

MAY 26, 1948.

KEN BANNON,
Director, National Ford Department, UAW-CIO:

We have repeatedly outlined in conversation principal conditions under which the company would extend privilege of conducting union-shop elections on company property. Because of details involved in preparation the vote would not be conducted until after July 15 or after end of our negotiations should they extend beyond July 15. In this connection we would extend time under which vote could be held under our contract within limitation allowed by law. Because our granting this privilege is conditioned on the continuing cooperative attitude of both parties, it is revocable at any time up to the date of vote. Through acceptance or rejection of these conditions the decision is entirely in your hands.

JOHN S. BUGAS.

MAY 27, 1948.

Mr. JOHN S. BUGAS,
Vice President, and Director of Industrial Relations,
Ford Motor Co., Dearborn, Mich.

DEAR MR. BUGAS: This is in answer to your telegram of May 26 on the matter of the union-shop election on company property.

You state in your telegram that if the union accepts the conditions laid down by the company, the union-shop elections may then be held on company property.

The conditions that you insist on are:

1. Certification of union-shop elections on an individual-plant basis rather than on a 1-unit basis.

2. The company's right to designate where the polling places would be located.
3. The NLRB to furnish all polling booths and any other equipment needed.
4. Election to be held on employees' own time.

On point No. 1, it is our answer now as it has been from the moment you mentioned these conditions; we shall not amend the petition; the petition is filed in conformity with the agreement between the company and union.

On points Nos. 2 and 3 we have told you that these are matters for the NLRB to determine. Our position remains the same.

On point No. 4 we agree, if nothing more satisfactory can be arranged.

I want it definitely understood at this time that the union would appreciate the company's cooperation on this issue. We have repeatedly heard you use the word cooperation, but in very few instances have we seen it put into practice by the company. You can surely surmise the feeling of the union on this matter and the actual effects it will have on our relationship by your denying our request.

I have repeatedly gone into this matter with you and explained the union's position. The decision is not up to the union. We do not run the Ford Motor Co., nor do we own it. The decision is entirely in the hands of the company.

Our deduction, from the contents of your telegram, is a no decision.

Very truly yours,

KEN BANNON,
Director, National Ford Department, International Union, UAW-CIO.

LOCAL 539, CAMPBELL, WYANT & CANNON FOUNDRY CO., MUSKEGON, MICH.

This company has been under contract with local 539 since 1941. Maintenance of membership was provided in the first contract, dated August 3, 1941. The check-off provision was incorporated in the contract dated March 18, 1946.

In negotiations for contract renewal begun on April 27, 1948, the company repeatedly stated that there is no object in talking about union security and check-off, that in its opinion the parties are "far apart on this," and that anyway, no union-shop election had yet been held.

The union's membership covers all eligible employees except approximately 125 out of 3,200. It petitioned for a union-security election, but negotiations with the company continued to be stalled because the company would give no indication that the results of the election would influence in any way its thinking in regard to union-shop clauses.

The change in the company attitude, which the union is convinced was caused by the passage of the Taft-Hartley Act, forced a strike which lasted for 79 days.

At the end of the strike, the company granted the union security which had been in effect in the previous agreement, but which the Taft-Hartley Act had encouraged the company to deny.

The Taft-Hartley Act in this case was largely responsible for a long and bitter strike which directly affected 3,000 workers at the company's Muskegon plant and which idled thousands of other workers in plants that were dependent on the products of the Campbell-Wyatt-Cannon Foundry.

Another instance in which the Taft-Hartley Act made industrial relations worse instead of better and caused a strike that was costly in lost wages, lost production, and lost profits.

LOCAL 637, SEALED POWER CORP., MUSKEGON, MICH.

Prior to Taft-Hartley, the company and the union had been operating under a contract containing union-shop and check-off provisions. In negotiations for renewal of the contract, the company refused to consider these provisions until a union-shop authorization had been held.

The election was held with the result that 883, or 87 percent, of the eligible employees favored union shop. (This was 93 percent of the valid votes cast.) However, the company continued to object to union-shop and check-off provisions, a positon which the union attributed to the Taft-Hartley Act.

After much delay, the union was finally able to win the renewal of the union-shop and check-off provisions.

LOCAL 190, PACKARD MOTOR CAR CO.

Since 1937 the contract with this company has given the UAW-CIO exclusive bargaining rights with the company for all the units covered. The contract also provided that grievances will be referred to the supervisor by the chief steward.

Last spring the union entered negotiations to renew the contract covering technical unit employees and a contract covering office workers. In substitution for the clauses which recognize the union as the exclusive bargaining representative and which provide for reference of grievances to the supervisor by the chief steward, the company proposed:

(1). A recognition clause in which the word "exclusive" is eliminated; and

(2). A grievance clause which provides *(a)* that the employee shall first take up a grievance with his supervisor and *(b)* that the employee may take up his grievance with the chief steward only after "obtaining permission from his supervisor."

This attempt by the company, for the first time, to cut down the bargaining rights of the union and to eliminate shop stewards from the handling of grievances was recognized by the union as an attempt to undermine collective bargaining under encouragement of the Taft-Hartley Act.

Encouraged by the Taft-Hartley Act, the company prolonged negotiations of these contracts for many months, although the technical unit and office employees covered represent less than 5 percent of the corporation's total employees. The company finally agreed to renew the contracts, without winning the changes it proposed, until June 1949, when its contract with the hourly rated employees would expire. At that time, the company intimated, it would make a determined fight to win these changes.

In the meantime, management is doing its best to hamper and delay the settlement of grievances.

The union cites an example of what the company's proposals with respect to bargaining rights and grievance procedure would mean. In October 1947 an employee, Fuller Woods, was approached directly by the company at the time of reinstatement after a sick leave and he entered into an agreement which canceled out 1 year of his 20 years seniority. Through negotiation under the existing representation and grievance clauses, the union restored the full seniority rights of this employee. This it could not have done if the changes in the contract now proposed by the company had then been in effect.

LOCAL 242, FRANK FOUNDRIES CORP., MUNCIE, IND.

Local 242, UAW–CIO, had been the certified bargaining agent for the employees of the Frank Foundries Corp.'s Muncie, Ind., plant since 1943, the year the plant began operations.

A collective-bargaining agreement, signed June 10, 1947, was in effect until June 10, 1948.

On or about April 9, 1948, the union gave the employer a 60-day notice of desire to modify certain provisions of the agreement and requested a meeting to begin negotiations on the proposed modifications. During the first 30 days of the 60-day notice period, the employer refused to meet with the union.

On May 7, 1948, the employer gave notice to the union terminating the agreement as of June 10, 1948, stating:

"Since our contract was entered into June 10, 1947, some of its provisions have been materially affected by new laws and other conditions over which the parties to said contract have no control, and it is the considered opinion of the undersigned that the contract should be terminated as of June 10, 1948, and it is our desire to terminate the contract as of that date."

The employer also stated his "intention and desire" to negotiate a new contract to become effective as of June 10, 1948, and requested a meeting with the union's negotiating committee at 3:30 p. m. June 1, 1948.

On May 27 employees in the core room, department K–6, were told by their foreman that they were to knock off work and go home at 9 a. m. that day, according to sworn affidavits presented by Seymour Goldstein, NLRB field examiner, in subsequent NLRB proceedings.

About 8:30 a. m., two union stewards, Herbert Hibbard and John Hendrick, were discharged. They requested John Higgins, chairman of the union's negotiating committee, and the full committee to take up the matter of their discharges with management.

Meantime, according to evidence contained in affidavits made by employees, the order to core room employees to cease work at 9 a. m. was canceled.

At 10 a. m., the negotiating committee met with J. Milton Johnson, general manager, and his assistant, George Gates. The meeting lasted 10 or 15 minutes. During that time, according to affidavits, the plant employees were still at work.

Johnson refused to act on the grievance until 3:30 p. m. that day. The committee returned to work. At 10:40 a. m., the committee returned to Johnson's office to reopen discussion of the grievance. Five minutes later, Guy Plymale, an employee, entered the office and told the committee that another employee, Robert Kirkland, had been hurt and was lying outside the office door waiting for an ambulance. This broke up the meeting. Kirkland, according to his own affidavit, was in intense pain from a hernia caused or aggravated by work. Approximately 25 employees from Kirkland's department were standing around their injured fellow worker. The rest of the plant employees were still at work, according to Higgins' affidavit.

After Kirkland had been put in an ambulance, the committee returned to Johnson's office. Johnson said, according to Higgins' affidavit, "You fellows either get back to work within 5 minutes or I'll have the bottom dropped." Johnson continued to talk until about 11:03 a. m., when he told the firemen, according to Higgins' affidavit, "Go out and drop the bottom."

The committee returned to work. Before noon, a printed notice was posted on the bulletin boards telling employees that the plant was down. This, the union contends, amounted to a lock-out.

Higgins has sworn that at "about 8 a. m. on May 27, 1948, Mr. Johnson told me in the cleaning room, department K–4, 'I am going to send the core room bunch home at 9 a. m. for lack of materials.' "

This proved, the union contended, that the plant management intended to shut down the plant on May 27.

After shutting the foundry down, the employer charged the union with a strike.

On June 1 the union's negotiating committee met with the company, at which time the company refused to negotiate a new contract until the plant was again in operation.

In July 1948 the union filed an unfair labor practice charge against the employer, charging him with refusal to bargain. The charge was supported by affidavits, a set of which is available to the committee. The charge was dismissed October 29, 1948, by Jack G. Evans, NLRB director for the ninth region, Cincinnati, Ohio, for lack of "sufficient evidence of violations to warrant further proceedings at this time."

Subsequently, the union is informed, the NLRB general counsel refused to issue a complaint because of a conclusion that the employees went on strike during the 60-day notice period and lost their employment status under section 8 (b) of the Taft-Hartley Act.

Meantime, however, on July 1–2, 1948, a State unemployment insurance hearing was held in Muncie to decide whether or not the employees of the Frank Foundries Corp. were entitled to unemployment-insurance benefits.

The referee held that there was no strike and that the employees were entitled to benefits.

The employer appealed the referee's ruling to the Review Board of the Indiana State Unemployment Insurance Division, and a hearing on the appeal was held October 14, 1948.

On February 9, 1949, the appeal board made a decision affirming the referee's decision and declaring the claimants eligible for unemployment-insurance benefits.

Here is a case in which a State agency has found that no strike was called or existed, while the NLRB and the NLRB General Counsel, operating under the Taft-Hartley Act, have for 10 months refused to recognize a lockout following discriminatory discharge of union stewards and a subsequent flat refusal by an employer to bargain with the union.

The text of the majority decision of the review board, signed by two of the three members, follows.

State of Indiana, Employment Security Division. Decision of review board. In the matter of: Claimant, Irvin Anderson et al.; employer, Frank Foundries Corporation, Muncie, Indiana. Case No. 48–LDR–2 (48–LD–36). Employer's Acct. No. 18634; date of appeal, August 10, 1948; date of hearing, October 14, 1948; decision mailed February 11, 1948

STATUTORY PROVISIONS INVOLVED

Section 1504 of the Indiana Employment Security Act, reads as follows:

"SEC. 1504. An individual shall be ineligible for waiting period or benefit rights: For any week with respect to which the Board finds that his total or partial or part total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed: *Provided*, That this section shall not apply if it is shown to the satisfaction of the Board that he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work: and he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; and he has not voluntarily stopped working, other than at the direction of his employer, in sympathy with employees in some other establishment or factory in which a labor dispute is in progress: *Provided*, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises."

CASE HISTORY—SOURCE OF APPEAL

This is an appeal to the Review Board from the decision of the Referee in Case 48–LD–36 in which the Referee held claimants, if otherwise eligible, were entitled to their waiting period and benefit rights after May 27, 1948. The case came regularly on to the Review Board and was heard October 14, 1948. The employer was represented by counsel and witnesses. The claimants were represented by counsel and witnesses.

STATEMENT OF FACT

The record of the hearing before the Referee reveals that the employer operates an iron foundry employing approximately 150 people. A collective bargaining agreement had been entered into between the employer and Local Union 242-U. A. W.-C. I. O., as agent for the employees. Our local office serving that area was notified on June 3, 1948, that a stoppage of work had occurred and that notice had been served upon the employer that the men would not return to work until two recently discharged employees were reinstated by the employer: that the stoppage had begun at 11 a. m. on May 27, 1948. The employer furnished lists of those whose unemployment was alleged to be due to the stoppage. The claimants contended that a fictitious labor dispute was created by the employer and that the stoppage was actually due to the fact that there was a shortage of materials. In this connection it was established that for some months preceding the stoppage the employer's plant had only curtailed employment, frequent lay-offs and had been operating only three and four days per week. The plant had operated only eleven days in April, 1948, and ten days in the following month of May. A written grievance had been filed on May 18, 1948, according to requirements of the bargaining agreement, by two grinders in protest to revised pay standards for their work. On the morning of May 27, 1948, the employer discharged these two men and a second grievance was filed by them because of their discharge. One of the discharged men was a Trustee of the Union Local 242, the bargaining agent, and the other was Chief Steward. It was established that at about eight o'clock on the same morning the employees in the core room had been told by their foreman to clean up and go home. Later the order was rescinded and all but two of the core room employees remained and worked until the employer ceased operations.

During the forenoon of May 27, two different meetings were held in the plant offices between the General Manager, the foreman and representatives of the bargaining agent. At these meetings a discussion was held concerning the two discharged employees. The first meeting was requested by the Chairman of the bargaining committee to discuss the grievance filed some days previously by the two workers who were discharged that day. The second meeting was held about eleven a. m. and in that meeting the General Manager told the workers he would order the bottom of the cupola dropped in five minutes unless they returned to work within that time. It was shown that such action meant a shut-down of operations. Evidence was offered by the claimants that the cupola had been in full operation to that time and that it could be stopped for as long as two or two and one-half hours without the bottom being dropped and without damage by reason thereof. The employer's representative testified that during the last meeting in the office the men had all stopped work and were gathered near the door from the plant to the office. The claimants testified that an employee had been badly hurt and was lying near the door and workers had gathered to learn about his injury.

There was considerable evidence as to the shortage of materials and the employer's representatives admitted there was a supply of pig iron on hand sufficient for only one day's operations. Shortages of sand and coke had also occurred. The employer offered evidence that it had other plants which were located at Davenport, Iowa, and Moline, Illinois; that a number of cars of iron had, since May 27, 1948, been diverted from the Muncie plant and were being stock piled at the Moline plant. The metallurgist for the employer testified that there was adequate space at the Muncie plant for storage of from 500 to 700 tons of iron; that the Muncie plant used only about 25 tons per day.

The employer's plant has been closed since May 27. There is a high fence entirely enclosing the employer's plant with three gates which have been kept locked since that date. The foremen are still working and it was testified that the gates are opened and re-locked after each foreman who enters or leaves. Evidence of the Union's International Representative was that the bargaining agreement was shortly to expire and a 60-day notice had been given the employer by the bargaining agent requesting negotiations toward a new contract but the employer had not taken any steps toward negotiating a new contract.

There was evidence that the union, following the closing of the plant on May 27, had requested in writing that the employer open the plant and that of different employees that they had gone early in the morning to meet their respective foreman and ask when they could return to work.

FINDINGS AND CONCLUSIONS

Upon a consideration of the evidence heard by the referee and further evidence heard by the Review Board, the Board finds that a labor dispute existed at the employer's plant concerning the execution of a new bargaining agreement, pay standards for certain employees, and the reemployment of two discharged emplayees. This controversy existed on May 27, 1948. For some months prior thereto the employer had operated only part time, not exceeding 4 days per week. In the month of April they had operated only 11 days, and in May only 10 days. There had been talk of another protracted lay-off. All these lay-offs and shut-downs had been caused by material shortages, and the employer representatives admitted the supply of pig iron on hand was sufficient for but 1 day's operation.

It has been frequently held in this and other States that even though a labor dispute exists, employees are not disqualified from receiving benefits unless their unemployment is due to a stoppage of work existing because of such labor dispute. If there was no employment available from the employer, then the unemployment of the employees was not due to a stoppage of work existing because of such labor dispute. In the instant case this Board believes that the unemployment of the claimants, on and after May 27, 1948, as well as the unemployment they had sustained prior to that date, was due to the fact that no employment was actually available. This position is supported by the fact that on the morning of May 27 an order had issued, later rescinded, that the core room should close down and it was an integral part in continued operation of the employer's plant.

DECISION

The decision of the Referee is affirmed. Claimants, if otherwise eligible, are entitled to their waiting period and benefit rights.

THE REVIEW BOARD,
(s) ALLEN A. NORTH, *Chairman.*
(s) WM. G. JOHNSON, *Member.*

Dated this 9th day of February 1949.

AFFIDAVIT OF JOHN HIGGINS

STATE OF INDIANA,
County of Delaware, ss.:

I, John Higgins, being duly sworn, depose and say:

I reside at 515 Kirby Avenue, Muncie, Ind. I have been an employee of Frank Foundries Corp. since January 1943.

The following are the events occurring at the plant of the company at Muncie, Ind., on the day of May 27, 1948:

At approximately 7 a. m. on that day, I reported to work along with approximately 125 other employees.

It is my understanding, although not from my own personal knowledge, that employees in the core room, department K–6, were told by their foreman that they were to knock off and go home at 9 a. m.

At approximately 8:45 a. m. Albert Hibbard and Joe Hendrick, both stewards of the union, came to me and told me they had been fired. They told me that their attempts to go according to the grievance machinery had failed and they told me they wanted me, as chairman of the negotiating committee, along with the full committee, to take the discharges up with management.

Meanwhile, it is my understanding, although not from my own personal knowledge, that the order to go home, given to core room employes, was canceled.

I got the negotiating committee together, consisting of Emery Jones, Elam Fields, Ross Rhodes, Ben Hammond, Porter Person, Curley Dinwideil and myself. At approximately 10 a. m. to 10:15 a. m., the committee held a meeting with J. Milton Johnson, general manager, in his office. His assistant plant manager, George Gates, was present. That meeting lasted approximately 10 or 15 minutes. To my knowledge, the employees of the plant were all still at work. The committee presented the grievance covering the two discharges to Johnson. Johnson refused to act on the grievance until 3:30 p. m. the same day. Then the committee went back to work.

Because the two discharged men were not satisfied, I got the committee together again and we went back to Johnson's office about 10:40 a. m. Gates and most of the firemen were present. At about 10:50 a. m., Guy Plymale walked in the office and told all of us that Robert Kirkland had been hurt and was laying outside the office door. We all walked out including Johnson, breaking up the meeting. It took us about 5 minutes to get Kirkland in an ambulance, Johnson helping all the while. There were approximately 25 employees from Kirkland's department standing around us. The rest of the plant employees were still at work.

After we got Kirkland in the ambulance, the committee went back to Johnson's office. Johnson, Gates and the foreman returned right after us, about 10:55 a. m. Before we said anything at all, he said, "You fellows either go back to work within 5 minutes, or I'll have the bottom dropped." We just sat there not saying anything while he continued talking. About 11:03 a. m., Johnson told the firemen, "Go out and drop the bottom."

The committee then went back to their work. From about 11:15 a. m. on to about noon, a printed notice appeared on the bulletin boards, telling employees that the plant was down.

In additon to the above statements, I wish to add the following:

About 8 a. m. on May 27, 1948, Mr. Johnson told me in the cleaning room, department K–4, "I'm going to send the core room bunch home at 9 a. m. for the lack of materials."

The reason that the committee sat silent from 10:55 a. m. for 5 minutes was that Johnson did not give us a chance to talk as he was doing all the talking.

"This affidavit consists of 4 pages and has been read by me. The statements herein are true to the best of my knowledge and information.

JOHN HIGGINS.

Subscribed and sworn to before me this 31st day of August 1948, at Muncie, Ind.

[SEAL] SEYMOUR GOLDSTEIN, *Field Examiner.*

AFFIDAVIT OF ELAM FIELDS

STATE OF INDIANA,
County of Delaware, ss.:

I, Elam Fields, being duly sworn, depose and say:

I reside at 813 East First Street, Muncie, Ind., and have been an employee of Frank Foundries since January 1943.

I have read the above affidavit of John Higgins and the statements therein are the truth to the best of my knowledge.

ELAM FIELDS.

Subscribed and sworn to before me this 31st day of August 1948 at Muncie, Ind.

[SEAL] SEYMOUR GOLDSTEIN.

AFFIDAVIT OF PORTER PEARSON

STATE OF INDIANA,
County of Delaware, ss.:

I, Porter Pearson, being duly sworn, depose and say:

I reside at 1926 North Milton Street, Muncie, Ind., and am employed by Frank Foundries since January 1943.

I have read the above affidavit by John Higgins, and find his statements to be the truth to the best of my knowledge.

In addition to the above, I wish to state that the union sent the company a letter on June 3, 1948, offering to return to work and requesting the date on which the plant would resume production.

PORTER PEARSON.

Subscribed and sworn to before me this 3st day of August, 1948, at Muncie, Indiana.

[SEAL] SEYMOUR GOLDSTEIN.

AFFIDAVIT OF EMERY JONES

STATE OF INDIANA,
County of Delaware, ss.:

I, Emery Jones, being duly sworn, depose and say:

I reside at 1134 East Main St., Muncie, Ind., and have been an employee of Frank Foundies since January 1943.

I have read the above affidavit of John Higgins, and find his statements to be the truth to the best of my knowledge.

In addition to the above, I wish to add that about 8 a. m. on May 27, 1948, my foreman, Frank Rode told me that we would knock off at 9 a. m.

EMERY JONES.

Subscribed and sworn to before me this 31st day of August 1948, at Muncie, Ind.

[SEAL] SEYMOUR GOLDSTEIN.

AFFIDAVIT OF ROSS RHODES

STATE OF INDIANA,
County of Delaware, ss.:

I, Ross Rhodes, being duly sworn, depose and say:

I reside at 711½ South Horsley Street, Muncie, Ind., and have been an employee of Frank Foundries since May 1943.

I have read the above affidavit of John Higgins and the statements in it are the truth to the best of my knowledge.

ROSS RHODES.

Subscribed and sworn to before me this 31st day of August 1948, at Muncie, Ind.

[SEAL] SEYMOUR GOLDSTEIN.

AFFIDAVIT OF BEN HAMMOND

STATE OF INDIANA,
County of Delaware, ss.:

I, Ben Hammond, being duly sworn, depose and say:

I reside at 2307 North Blaine Street, Muncie, Ind., and have been employed by Frank Foundries since January 1943.

I have read the above affidavit of John Higgins, and find the statements in it to be the truth to the best of my knowledge.

BEN HAMMOND.

Subscribed and sworn to before me this 31st day of August 1948, at Muncie, Ind.

[SEAL] SEYMOUR GOLDSTEIN.

MODINE MANUFACTURING CO.,
Racine, Wis., March 18, 1949.

Hon. JOHN LESINSKI,
Chairman, Committee on Education and Labor,
House Office Building, Washington 25, D. C.

MY DEAR CONGRESSMAN: The Labor-Management Act of 1947 in many ways has benefited labor-management relationships as is demonstrated by our own experience with three unions in three separate plants, in three different States.

During the period 1937 until passage of the act, we were constantly beset by serious labor disputes with our unions, many of which were premised on fancied wrongs. Few, if any, were realistic and practical situations. At our local plant, these disputes culminated in a serious strike which lasted almost 5 months during the year 1946.

Many employers in this area have had similar experience. Our community was strike-ridden year after year until the subject act became law. The cost to employees and employers alike was apalling.

Following upon passage of the revised Labor-Management Act, the general labor situation improved greatly. There have been almost no serious disputes and no strikes in the area since the act became effective. As for our own labor-management situation, our relationships have been, generally speaking, mutually satisfactory. The membership of the unions has not been reduced and their effective bargaining strength is even greater than prior to the revised act.

We fear, and with good reason, as you should know, that any change in the act will set off a new series of belligerent and overt actions on the part of the unions. These will be prompted by certain small segments of organized labor groups. Therefore, we urge you to continue the protection which the Labor-Management Act of 1947 has given to the rank-and-file worker, the individual union member. the employer, and the public. If you mutilate the present law, you will have to stand on the record as an accessory both before and after the fact.

Yours very truly,

MODINE MANUFACTURING CO.,
R. GRANT,
Vice President of Manufacturing.

NATIONAL LABOR RELATIONS BOARD.
WASHINGTON 25, D. C., *March 18, 1949.*

Hon. AUGUSTINE B. KELLEY,
Chairman, Subcommittee of the Committee on Education and Labor,
House of Representatives, Washington, D. C.:

MY DEAR CONGRESSMAN KELLEY: In accordance with your request, we transmit herewith the statement of the National Labor Relations Board with respect to H. R. 2032. The Board understands that you desire to include the statement, together with this letter, in the formal record of the proceedings before the House committee, in lieu of oral testimony. We appreciate this opportunity to submit our comments.

Because the bills are identical, this statement parallels almost exactly the one submitted to the Senate Committee on Labor and Public Walfare, when I testified in behalf of this Board on S. 249. It constitutes the formal statement of the full Board of five members on the pending legislation.

For a further expresison of my personal views, which I understand you also desire, I refer you to the record of the Senate committee hearings on February 2, 1949 (pp. 117–202). That record contains some of my indivdual comments upon and criticisms of the present Labor-Management Relations Act, as given in response to questions by members of that committee.

Very sincerely yours,

PAUL M. HERZOG, *Chairman.*

STATEMENT OF THE NATIONAL LABOR RELATIONS BOARD ON H. R. 2032

When testifying before this committee on March 11, 1947, concerning certain bills which evolved later into the Labor-Management Relations Act of 1947, Chairman Paul M. Herzog opened by saying:

"The National Labor Relations Board, an agency of the United States, is concerned with the public interest and with that interest alone. We testify today as trustees of Congress for the administration of the National Labor Relations Act.

"The deed of trust is the act as passed in 1935. As it was our province, as trustees, to fix the terms of the deed of trust that gave us being, it is not our responsibility to decide whether those terms should be altered at the present time. That is a matter for the Congress to determine." [1]

Although the deed of trust has indeed been sharply altered since that time, the members of the Board are still trustees. We are still administrators performing quasi-judicial functions, and not formulators of policy. At the request of the subcommittee, we submit this statement in lieu of oral testimony, in order to express our views upon those sections of the 1949 bill which are appropriate subjects for comment by this Board. Reference, of course, is to sections 103 through 108 of H. R. 2032 (the Lesinski bill).

On the basis of experience, the Board endorses those provisions of the present bill which would continue it as a five-member tribunal with authority to panelize. Chairman Herzog, Mr. Houston, and Mr. Reynolds, who have served on the Board both when it had only three members and while it has had the present five, are convinced that decisions can be rendered more rapidly and more efficiently by the enlarged Board.

Today, approximately 85 percent of the Board's decisions are issued by panels of three members. Although the full Board has to pass on the remaining 15 percent of the cases because broad questions of policy are involved, this arrangement still relieves each individual Board member of the burden of passing upon about one case out of every three. When there were only three Board members, every member had to participate in every decision. The important thing, of course, is not the relief to us as individuals, but the fact that it makes it possible for us to issue decisions at a much faster rate.

During the second half of calendar year 1948, the five-member Board issued 950 decisions in contested cases. Of these, 100 involved unfair labor practices.

The most productive 6-month period under the predecessor three-man Board was in 1944, when 770 decisions issued in contested cases. The increase in production is over 23 percent. Because time is of the essence in labor-relations matters, anything that so clearly tends to expedite decisions is highly advantageous.

The Board questions the propriety of its commenting upon the content of any particular savings clause contained in proposed legislation, because enactment of such a clause as section 105 of H. R. 2032, would have a direct effect upon many individual cases now before us for decision in our quasi-judicial capacity. We do, however, urge the Congress to enact some language which will provide an explicit mandate to the Board to take, or not to take, specific action on pending cases which arose under the 1947 act but which might have to be treated differently under whatever legislation is passed in 1949.

When the Labor-Management Relations Act was substituted for the National Labor Relations Act in 1947, the Board found itself with almost uncontrolled discretion to dismiss, to modify, or to continue to process without change the many cases that had arisen under the original act and were still pending, at various stages on the Board's assembly line, on August 22, 1947. As the new statute provided no explicit guidance on the subject, we were forced to turn to the general savings statute,[2] and to court precedent which had little direct pertinence. In some situations we dismissed pending proceedings; in some we continued to apply the provisions of the Wagner Act; in others we applied the terms of the new statute; in still others we reopened Board proceedings or recalled cases from the courts. Although we believe that substantial justice was done, solution of the problem on a case-to-case basis was unsatisfactory, time-consuming, and productive of much litigation. We trust that Congress will take steps in 1949 to avoid recurrence of these difficulties. If these steps result in a curtailment of the Board's members' discretion to feel their way as they did before, you will hear no complaint from us.

We turn next to the provisions of the bill concerning jurisdictional disputes and secondary boycotts (section 106). We assume that these provisions, including the added policy findings of section 105 (a), are intended to implement the President's views, as expressed in his State of the Union messages, and to go no further. We believe that they accomplish this purpose.

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[1] Hearings before the Committee on Education and Labor, House of Representatives (80th Cong., 1st sess.), on bills to amend and repeal the National Labor Relations Act, and for other purposes, vol. 5, pp. 3086 and 3158.

[2] 16 Stat. 432 (1871).

SECONDARY BOYCOTTS

The basic approach employed in the boycott provisions is the one set forth in the President's 1947 and 1949 Messages on the State of the Union: that secondary boycotts should be judged, not on the basis of the form in which they appear, but rather on the basis of the objectives they seek to achieve. The President's approach evidently is that in the complexity of modern industrial life unions frequently find it necessary to extend the scope of industrial conflict beyond the area of the single disputing employer in order to preserve their existence or to achieve legitimate economic gains.[3] It postulates that legislation should therefore not condemn all secondary action by unions, but rather that it should outlaw such conduct only when the objective sought to be achieved is "unjustifiable."

The proposed bill first defines a secondary boycott. Then, in a later section, it declares such activity to be an unfair labor practice if engaged in for certain limited and specified objectives. The present act contains no explicit definition of secondary boycotts, but describes the conduct deemed unlawful in section 8 (b) (4). The present section 8 (b) (4) (A), because it outlaws all secondary boycotts without regard to objectives, clearly reaches some objectives which have sometimes been considered to be of sound economic character. These are not characterized by the President as unjustifiable.

Definition of secondary boycott.—The proposed bill defines a secondary boycott as: "A concerted refusal in the course of employment by employees of one employer to produce, manufacture, transport, distribute, or otherwise work on articles, materials, goods, or commodities because they have been or are to be manufactured, produced, or distributed by another employer."

This definition would cover virtually all the means by which a secondary boycott has customaraily been implemented. Although the word "strike" does not appear in the definition, it would cover the common form of secondary boycott in which employees strike to compel their employer to cease dealing with another employer. In such cases, the employees have gone a step beyond the refusal to handle a particular product, and have refused to work at all. But so long as it appears from the evidence that the strike grew out of a refusal by employees in the course of their employment to handle particular articles because those articles have been or are to be manufactured by another employer, the strike would still constitute a secondary boycott within the terms of this definition. The struck employer, normally an innocent and neutral victim, receives protection in such a situation if the objective is unjustifiable.

The unfair labor practice.—Section 8 (b) of the proposed bill is drafted to reach both secondary boycotts and primary strikes, when resorted to in furtherance of two basic objectives which the President believes that experience has demonstrated to be unjustifiable: (1) where the object is to compel an employer to violate his statutory duty to bargain with a majority representative of his employees; and (2) where the object is to further a jurisdictional dispute. The latter disputes are treated in detail below.

Common to the bill's handling of both unjustifiable objectives is the fact that the proposed provision is directed not only against secondary boycotts but also against primary strikes. If this were not done, an illogical result would follow. This is so because a secondary boycott is in essence the use of pressure by one employers' employees to support a strike by another employer's employees against the latter. The secondary boycott therefore has the same ultimate objective as the strike which it supports. To outlaw the one and permit the other would make illegality turn only on the fact that a secondary employer was involved, rather than upon the fact that the ultimate objective of the action was unjustifiable. Presumably, because this would run directly counter to the basic approach of this bill on secondary boycotts, which makes the objective the touchstone, the bill handles the situation on a broader base.

The proposed provision reaches strikes and secondary boycotts to compel an employer to violate his statutory duty to bargain, in three alternative situations: (1) Where the incumbent union sought to be unseated by the strike or boycott has been certified by the NLRB as the majority representative;[4] (2) where the employer has been ordered by the Board to bargain with that union; and (3) where that union, although uncertified, has a valid and subsisting contract with the employer and the time for a new election is not approaching. All three are based upon the public interest in the stability of established bargaining relations, which may require protection against being upset by a raider's use of economic force. A majority representative, whether its status is achieved by certification, an order to bargain directed against the employer, or voluntary recognition followed by a contract, should be free from rival union attack through strikes or boycotts. The employer, too, is entitled to a period of undisturbed collective bargaining with a labor organization with which he is dealing in accordance with law.

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[3] See the dissenting opinion of Justice Brandeis in *Duplex Co.* v. *Deering* (254 U. S. 443, 480).

[4] It will be recalled that the Board affirmatively suggested inclusion of such a provision by amending the original Wagner Act, when we testified before this committee in March 1947. (See pp. 3090 and 3162 of the House hearings of that year, as well as the earlier declaration of analagous Board policy in the Thompson Products decision (70 N. L. R. B. 13; 72 N. L. R. B. 886). It is similar to sec. 8 (b) (4) (C) of the L. M. R. A.

While stability of bargaining relations is the principal argument for setting forth all three situations to which section 8 (b) (1) of the proposed bill would apply, a separate reason exists in the first two situations which is not applicable to the third (where there is only a contract). Effective administration of the act and respect for a governmental agency's processes require that protection be afforded to certifications and orders of the Board determining the status of a bargaining representative.

It will be noted, also, that neither the proposed definition of "secondary boycott" nor the language as to the proposed unfair labor practices makes any specific reference to picketing. The subject nevertheless appears to be covered by the proposed language of section 8 (b), because it extends to the situation in which a union causes or attempts to cause a strike or secondary boycott. The Board would in any particular cases have to determine from the evidence before it whether the picketing was designed to, or did in fact, bring on a strike or secondary boycott.

JURISDICTIONAL DISPUTES

On jurisdictional disputes, the President, in his 1947 state of the Union message, urged that machinery be provided for their final and peaceful settlement. He declared that strikes and boycotts in furtherance of such disputes should be outlawed. This bill is intended to achieve both objectives.

General scheme.—Various provisions of the bill interlock to form the following scheme for handling jurisdictional disputes:

Whenever there is a strike or threatened strike or secondary boycott affecting commerce, and it is caused by a jurisdictional dispute over work tasks (as defined in the proposed section 2 (12)), any party affected—union or employer—may apply to the Board, under the proposed section 9 (d), to have the dispute resolved.[5] The Board thereupon proceeds, if appropriate, to determine the dispute or to have it determined by an arbitrator appointed by the Board for the purpose. The Board (or its arbitrator), after hearing, issues an award specifying which of the unions in the controversy is entitled to the work. Once the award is issued, and the parties comply with it upon issuance, the dispute is ended, and the strike or secondary boycott is averted or terminated. It seems likely that in most instances the employer will want to comply with the award at this stage, assuming that he is a neutral anxious to have the dispute settled by someone in authority so that he may proceed with operations.

The award, like a certification of representatives, is not itself a final order. If the unsuccessful union or the employer refuses to honor the award, the Board may proceed against either in an unfair labor practice case (against the employer, under the proposed section 8 (a) (6); and against the union, under the proposed section 8 (b) (2)).

In such a proceeding, the prior section 9 (d) award would be treated as determinative of the work task assignment issue in the complaint cases, precisely as a certification of representatives is determinative of the representation and unit issues in a conventional later refusal to bargain case The second proceeding would therefore be a rapid one. If rendered by an arbitrator, the award would have the same effect, unless the Board found it to be clearly unreasonable.

Once the Board issues its order in a complaint case enforcing the award, and the offending employer or labor organization complies with the Board order, the dispute is ended at this stage. Otherwise, either the Board or the party against whom the order is directed may seek enforcement or review in the circuit court under section 10 (e) or (f). Under 10 (e), a temporary injunction can be secured pending enforcement.

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[5] These references to numbered sections of the proposed bill are inserted for the committee's convenience.

Some characteristics of the specific provisions which unite to form the general plan outlawing jurisdictional strikes and boycotts should be noted:

The arbitration proceeding—Proposed section 9 (d).—The most important, if not novel, single feature of the integrated scheme is probably the procedure for settling jurisdictional disputes. That procedure offers the following advantages to employers, unions, the public and the Government:

(1) The proceeding can be instituted at a stage when the strike or boycott is merely threatened, but has not yet materialized. (See the proposed section 9 (d).) Strife may thus be prevented at an early and critical period. (2) Any party interested in the dispute may resort to the Board for settlement. This opens up an avenue of peaceful solution not only for the aggrieved labor organization but for the employer, who may well be the innocent victim of an interunion feud. (3) The parties are afforded a reasonable time to resolve the dispute themselves, even after the proceeding has been instituted. At this point, voluntary settlement, rather than Government-imposed determination, would probably be the choice of many disputants. The Board would, of course, welcome such solution, just as it welcomes consent agreements in its other proceedings. (4) The mere availability of the procedure may often be sufficient to achieve industrial peace in this field without the intervention of Government.

Three other aspects of the settlement procedure are of particular interest to the Board, in that each would tend to lighten the Board's burden in this new and difficult field of governmental operation:

First, the Board would have discretion to determine whether or not the dispute should be arbitrated. This would seem to be particularly valuable if it should develop, at any stage of the proceeding, that the dispute is truly a representation controversy. Upon such discovery, the Board would discontinue the arbitration proceeding and treat the case as if it had been instituted by a petition for certification under section 9 (c)—that is, determine a bargaining unit and proceed to an election if appropriate. Second, unlike the LMRA, this section provides standards to guide the Board or the arbitrator in making a determination. While the same criteria that serve as the starting point in arbitration proceedings by parent federations are made available as standards, other specific guides may also be followed if necessary. Third, the Board may designate arbitrators skilled in the field of jurisdictional disputes, rather than handle these matters directly itself.

The definition of a jurisdictional dispute—Proposed section 2 (12).—Another distinguishing feature of the bill is the definition of the term "jurisdictional dispute." [6]

By limiting the subject-matter of the dispute to "the assignment or prospective assignment of a particular work task," the definition describes the kind of interunion disputes that are thought susceptible of arbitration. Representation controversies are considered to be more appropriately solved by an election and are, therefore, excluded from the definition. Industrial-union disputes and craft-severance conflicts would, for example, fall outside the scope of this definiton, as being representation controversies.

The definition also limits the nature of the dispute, by defining it as a dispute between two or more labor organizations. Conflicts between a union and an unorganized group of employees, or between an employer and a union over the employer's assignment of work to unorganized employees are not covered. In this respect, the definition is narrower than that embodied in section 8 (b) (4) (D) of the LMRA. On the other hand, it is broader than the LMRA definition in the following respect: The disputant groups need not be employees of the same or of any employer. A union may be found to have engaged in a jurisdictional dispute, as here defined, on behalf of its unemployed members—which is not infrequently the case in jurisdictional disputes.

The sanctions—Proposed section 8 (a) (6) and 8 (b) (2).—Unlike the LMRA, or the 1947 Morse bill (S. 858), the proposed section 8 (a) (6) makes jurisdictional awards enforceable against employers. Its presence is designed to serve as a deterrent against the occasional nonneutral employer, who might otherwise take sides in the jurisdictional dispute and assign the work to one of the warring unions despite the fact that its rival had received the award.

The union that engages in a strike or boycott to overturn an award is also guilty of an unfair labor practice, under the proposed 8 (b) (2). This section parallels the proposed section 8 (b) (1), which makes it an unfair labor practice for a union to strike or engage in a secondary boycott for recognition, in the face of a certification, refusal to bargain order, or contract that requires the employer to recognize another union.

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[6] There is no specific definition of a "jurisdictional dispute" as such in the LMRA of 1947. The conduct constituting an unlawful dispute of that character is set forth in the existing sec. 8 (b) (4) (D).

The section (sec. 107) that refers to restrictive State laws is evidently designed to reestablish and augment Federal authority in the field of union-security agreements. While it is not the Board's function to comment upon the merits of this proposal, we assume that the committee desires us to indicate its significance.

Under section 14 (b) of the Labor-Management Relations Act, as construed by a majority of the Board in the Giant Food case,[7] State laws prohibiting the execution or enforcement of such contracts must govern the action of the NLRB in such States. During the earlier period, when the closed-shop proviso to section 8 (3) of the original Wagner Act was in effect, the Courts never had a final opportunity to determine whether a State statute restricting union-security agreements could be applied by the State to an employer engaged in interstate commerce. The 1935 legislative history had left the issue in some doubt.

A few weeks ago the United States Supreme Court upheld the constitutionality of such State laws as a proper exercise of the State's own police power. The decision rejected contentions made under the first and fourteenth amendments to the Constitution, without reference to the commerce clause or any existing Federal legislation.[8] The impact upon such State statutes of Federal legislation based on the commerce clause of the Constitution will revive important legal issues, in the event that the substantive provisions of Federal law are again changed. The proposed section of the bill, by including the words "or in any State law," seeks to eliminate the uncertainty that prevailed between 1935 and 1947. Any State law on this subject—whatever its terms—inconsistent with the Federal statute would of course no longer determine the action of the NLRB, as it does under section 14 (b) of the present act. It would, we believe, also cease to be enforceable by the State itself, except where purely local enterprises are involved. Federal law is also expressly made paramount over any State law prohibiting the check-off.

Section 108 makes it an unfair labor practice for either an employer or a labor organization to terminate or modify an existing bargaining agreement except upon 30 days advance notice to the Conciliation Service. This would be enforceable through the remedial powers of the Board like any other unfair labor practice, with similar and nondiscriminatory sanctions available against both unions and employers. This provision should afford the Conciliation Service adequate time to assist the parties to maintain continuous bargaining relationships, before, rather than after, a prior agreement has run its course.

WASHINGTON, D. C., *March 21, 1949.*

Hon. AUGUSTINE B. KELLEY,
Chairman, Subcommittee on H. R. 2032,
House Committee on Education and Labor, Washington, D. C.

DEAR CONGRESSMAN KELLEY: I am writing you this letter on behalf of the Washington, (D. C.) chapter of the Associated Master Barbers & Beauticians of America. We wish to draw the attention of your committee to certain problems which the proposed bill H. R. 2032, would create in our industry, and we request that this letter be included in the official reports of the hearings now being held before your subcommittee.

I am the owner of a barber shop at 320 Kennedy Street, N. W., Washington, D. C., and I am also president of chapter 396 of the Associated Master Barbers. Our chapter is composed of 62 proprietors of barber shops and all of us with very few exceptions work in our own barber shop where we employ other barbers who belong to a barbers' union affiliated with the American Federation of Labor, known officially as the Journeymen Barbers, Hairdressers & Cosmetologists International Union of America.

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[7] 77 N. L. R. B. 791. The Board there declined to conduct a union-shop election under Federal auspices in Virginia, a State which prohibits such agreements. In the Northland Greyhound case, however, the Board did conduct an election in Wisconsin, a State which merely regulates union-security contracts. 80 N. L. R. B. No. 60.

[8] *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Company et al.* (23 LRPM 2199 (1949)).

There has been a good deal of testimony before your committee to show that repeal of the Taft-Hartley Act would not be beneficial to small businessmen. In our case, this is emphatically so. Without the protection which the act gives proprietors of small shops against the use of excessive power of unions which are organized on a national scale, we would be forced to submit to the most arbitrary kind of union practices.

This is particularly true of the barbering industry, which is essentially made up of small-businessmen. In the District of Columbia, for example, the average member of our organization employs about three barbers, who traditionally are members of the union. Some employers have as few as two employees. The largest employs nine.

We are actually faced with a policy adopted by an international union in clear violation of the literal language of section 8 (b) (4) (A) which would compel all employing barbers and all self-employed barbers to join the Barbers Union, become liable for dues and special assessments, and yet be denied any of the voting privileges of that union. This is a situation which confronts not merely those of us who operate barber shops in the District of Columbia but all members of the Associated Master Barbers throughout the United States.

For many years the barbers' union has had a practice of issuing union-shop cards to employers who employ members of the union and who agree to abide by such union rules respecting working conditions as may be prescribed either presently or in the future by the barbers' union.

For a number of years the barbers' union has had a rule under which it has permitted union locals to require proprietors who worked in their own shops and who also employed members of the barbers' union to obtain membership in the barbers' union and to pay dues but to receive only a restricted membership entitling them to no participation in union affairs or the fixing of union policies. However, until recently a great many of the locals have either ignored instructions from the union or have made no effort to push the application of this policy.

At the 1948 convention of the union which was held in Indianapolis in the fall of 1948, an amendment to the constitution of the International Barbers' Union was adopted which provided as follows:

"*Article VIII, section 3.*—An employer shall be construed to be any person or persons who either owns or operates a barber or beauty shop and employs steadily one or more full-time barbers or beauty operators, provided, however, employers who are working with the tools of the trade must become employing members of the local union and International Union of Barbers or Beauticians.

"*Article XVII, section 3.*—Any member becoming an employer must continue as a proprietor member of the local union so long as he works at the trade as a barber or beautician. Said member shall be entitled to all the privileges of the benefit fund of the international union as prescribed for active beneficiary members upon the payment of not less than $2 per month dues, and tax to the international to be the same as an active beneficiary member. A member who quits the barber or beauty trade to engage in some other kind of work, that is, does not work any time at all at the barber or beauty trade, may be issued a retiring card upon request. A proprietor, shop owner, or employer working at the trade and who has never been a member of this organization and who desires to operate a union shop must make application for membership. A proprietor member working with the tools of the trade shall be entitled to a voice and a vote in meetings of any local union, but shall be ineligible to vote on matters pertaining to wages, hours of labor, etc. And shall also be ineligible to any office in the local or international union or to act as delegate or alternate to conventions."

By these provisions the international union has removed any discretion from the hands of locals and has made clear its purpose to require every shop owner who works with the tools of his trade and who employs any members of the barbers' union to become a member, to pay dues of not less than $2 a month, plus any additional taxes which the international may determine to impose upon him.

The purpose which the union seeks to accomplish by these amendments is made crystal clear by the short explanatory statement made by the president of the International Barbers' Union at the convention on September 15. Mr. Birthright said:

"Now, that is fair that we take these men [meaning shop owners and employers] in and give them a voice, a vote on matters, but when it comes down to setting the price, the wage, the local union should agree on that themselves and then take it to these fellows and say, 'Here it is'."

In judging the effect of this provision, the committee should bear in mind that in the vast majority of barber shops the proprietor must also work at the barbering trade in order to make a living.

These amendments to the International Barbers' Union constitution are not mere idle paper threats. They are being put into effect throughout the country.

The representatives of the barbers' union have tried to put them into effect in the District of Columbia.

For example, last October 14 a special meeting of the barbers' union was held at which all proprietors of barber shops employing union men were invited to attend. At this meeting officials of both the local and international barbers' union reported on the amendments adopted at the Indianapolis convention of the International Barbers' Union and announced to the employer barbers in attendance that "you boss barbers will have to join the union and bear your share of the expenses." Employers were further advised that if they did not join the union, their union-shop cards would be taken away, in which event the barbers' union would call barbers' union employees out on strike and would picket the shop of any employer who did not join the union. Examples of the union's power to put recalcitrant employers out of business were cited.

Faced with the situation, our chapter filed charges with the regional office of the National Labor Relations Board in Baltimore asking for a complaint to issue and for any further relief which seemed appropriate to cause the barbers' union to desist from encouraging our employees to strike if the proprietors refused to join the union. As a result of these charges, both the international and the local backed down. An uneasy truce exists at the moment which will be shattered if the Lesinski bill, H. R. 2032, is adopted in lieu of the Taft-Hartley Act, for the international union has still retained this amendment to its constitution and the local has served notice it will renew its efforts to enforce this provision if the Taft-Hartley Act is repealed or amended in any respect material to our case.

We believe it will be plain to every member of this committee that the national policy of encouraging collective bargaining between employers and employees would be completely defeated if an organization purporting to be a union may force employers to join the union and to accept any wages, hours, and other working conditions which by its own fiat it may promulgate.

It is obvious that whenever any employing barber capitulates to these union requirements, his collective bargaining days are over and the national policy of encouraging the settlement of employer and employee relationships by collective bargaining will be utterly ineffective.

Nothing in H. R. 2032 or in the old Wagner Act which it revives will afford any protection to employers against these dictatorial practices or any protection to the public in support of the national policy favoring collective bargaining.

Although the barbers' union officials have assured members of the AMB that nothing in the present Taft-Hartley Act provides any protection against the imposition of these requirements, it is evident that they misunderstand the present law. Under this law, which certainly applied to all commercial establishments in the District of Columbia, it is plain that these requirements of the barbers' union violate section 8 (b) (4) (A) which makes it an unfair labor practice for a labor organization to engage in, or encourage the employees of any employer to engage in, a strike or concerted refusal to work, where an objective is to force or require an employer or self-employed person to join any labor or employer organization.

Furthermore, this conduct is also prohibited by section 8 (b) (3) of the present act, which makes it an unfair labor practice for a labor organization to refuse to bargain collectively with an employer. Clearly, the union requirement that employers become members of the union, having no voice in the determination of wages, hours, and working conditions, and bound by the determinations of the union on these questions, deprives them of every semblance of an opportunity to bargain collectively with their employees about these matters.

We think that employers and the public are entitled to some protection against these utterly indefensible practices by a union and that any legislation enacted by the Congress should retain those features of the present Taft-Hartley law which provide such protection.

We think the committee should also bear in mind that this situation is not merely a simple conflict between groups of employers and employees in their ordinary roles. The fact is that to the extent that the barbers' union is a true labor organization representing the interests of employees, as such, against employers, it is in fact being used for other purposes quite unrelated to the advancement of the interests of the employees. For many years the union's rules have permitted one-chair and partnership shop owners who employ no employees to be full members of the union, exercising full voting privileges. The result is in various locals the one-chair and partnership shop owners dominate and control the policies pursued by the barbers' union. In the interest of eliminating competition many of these one-chair shop owners have promoted and voted exorbitant wage scales and percentages, hourly schedules, and vacation allowances in an effort to drive out of business their competitors who employ any union employees in their shops. Clearly, our national laws should afford some protection against the misuse and perversion of a labor organization to such ends.

Sincerely yours,

PHILIP GELFO,
President, Associated Master Barbers and Beauticians of America, Chapter 396, Washington, D. C.

[Exhibit A to testimony of O. A. Knight, president, Oil Workers International Union]

A UNION-BUSTING PLAN—OIL-TRUST STYLE

A 1949 MODEL FORMULA FOR DESTRUCTION OR EMASCULATION OF LABOR UNIONS, AS APPLIED BY THE OIL TRUST AGAINST OIL WORKERS INTERNATIONAL UNION (CIO) IN CALIFORNIA

A Challenge to All Labor Unions

(This booklet has been prepared by OWIU-CIO for distribution to labor people everywhere that they may be prepared for future union-breaking efforts on the same pattern.)

THE CALIFORNIA PLAN

When the California oil workers struck September 4 for an increase to bring their wages up to the level paid union oil workers in the Deep South, they ran smack up against a brick wall.

Eight weeks later they know a lot more about the bricks in the wall they ran up against. The bricks spell "California plan"—which is just a modernized version with Taft-Hartley trimmings of the Mohawk Valley formula of the early 1930's.

The California plan was drawn up by the Big Six of the oil trust—spearheaded by Standard Oil of California, brain-trusted by Reese Taylor of Union Oil and supported by Shell, Texas, Richfield, and Tide Water Associated.

For the information of union men of CIO, the 14 big points of the California plan are outlined below. You'd better read them now—while you're not on strike, so you'll know what workingmen are up against in the Taft-Hartley era when they go out after a decent break in wages.

1. SOFTEN 'EM UP

Long before the strike, the Big Six were spending thousands of dollars on training programs for supervisory people. The "righteousness" of each company was sold, skillfully and delicately, to all employees. No rough stuff, please. The "friendly" approach. Iron hand in velvet glove. The "new look" in industrial relations. When the strike crisis came, some employees had been softened to the point that they believed too many of the companies' words.

2. THE SOLID FRONT

In preparation for the strike, the Big Six of the west coast oil trust formed a united front. There would be no "break-through" by one company, with the others following a pattern set by an initial settlement.

While refusing to negotiate wage issues jointly, the Big Six took the identical line in all wage negotiations. It was "United we stand, divided we negotiate." At each wage conference, whether in San Francisco Bay or Los Angeles or Bakersfield, the union committees ran into exactly the same answers, the same maneuvers from each of the Big Six.

3. COURTS SMASH PICKET LINES

On September 7, 4 days after the strike began, Shell Oil went into Judge Harold Jacoby's court in Martinez, on San Francisco Bay, and asked for an immediate injunction to break the oil workers' picket line at the Shell refinery. The union was not even notified or heard. Shell didn't bother to submit evidence or affidavits in its pleas for relief by the court. Fact was, it had none to submit.

Injunction granted. Pickets limited to four at a gate. Other members must remain at least 200 yards from the entrance. The four lonely pickets at a refinery employing 1,500 must be at least 20 feet apart from each other.

This was the pattern for all subsequent injunctions granted by a dozen different superior court judges in all parts of the State. These injunctions varied only in the number of pickets permitted; some judges deemed four too many, and allowed two or three.

On September 10, 1 week after the strike, Union Oil got a similar injunction from Judge Clarence M. Hanson in Los Angeles. There was no hearing. Neither OWIU nor its locals were notified of the company's action in seeking an injunction. The union read about these injunctions in the newspapers or found out about them when served on the picket lines.

Judge Hanson threw his heart into this injunction. He announced that for the slightest infraction of his injunction, he would deal out the maximum penalty—a $500 fine and 5 days in jail. No monkey business about jury trials, either. In California there are no juries in contempt cases and no appeals to a higher court.

After the Richfield injunction, granted by Judge Hanson a few days later, the international union, Long Beach Local 128, all of its officers and all international representatives were cited in contempt cases totaling 1,380 counts. Under Judge Hanson's threat, these cases would cost the union and its members $640,000 and 6,900 days in jail.

In all, 21 injunctions have been obtained by the Big Six, tying up picketing in every refinery, oil field, and pipe line in the State.

After 2 months of striking 310 union oil workers have been arrested for picketing activities and are under criminal charges that can result in jail sentences and onerous fines.

After 2 months there had been about 1,500 contempt citations. There are 60 such citations pending against International President O. A. Knight, International Vice President A. R. Kinstley, and International Secretary-Treasurer T. M. McCormick, each. McCormick has not even been in California in recent months.

While the injunctions follow the pattern, Richfield (a corporation controlled by Sinclair and Cities Service) has something different in the way of an injunction. This one, presented to Judge Hanson in Los Angeles Superior Court, asks that:

(1) No union members be permitted within 2 miles of a Richfield plant.

(2) No union member be permitted within 2 miles of any scab's residence.

(3) No union members be permitted within 2 miles of any company with which Richfield does business.

4. BUST THE UNION FINANCIALLY

The Oil Workers International Union is being sued for over $28,000,000 for daring to call a strike on the Big Six. This figure was as of October 30. This sum increases at the rate of $360,000 a day. But this is only the half of it. Many of the companies have sued for "indefinite" amounts, alleging that their losses are so gigantic that they are unable to estimate them. At the same time publicity is fed to the pliant papers that oil-industry operations are "about normal."

These damage claims are filed against OWIU, its locals, and its members—everybody in the union.

5. JOHN DOE RAZZLE-DAZZLE

These fantastic injunctions and damage suits take on a typical California razzle-dazzle. In addition to naming all union officers, they name thousands of "Does."

One suit named "Does 1 to 2,000, inclusive." The "Does" being unidentified union members. Such citations were printed en masse and passed out like handbills on picket lines by process servers. Cameramen stood by to take pictures of the pickets as the citations were thrust into their hands, thus establishing identity and proof of service.

Particularly bizarre in Hollywoodism was the naming of "Doe Associations 1 to 20," to include any unions which might be assisting the oil workers. Some of these injunctions named "Doe Associations A to X," but undoubtedly the high point in the fantastic was reached in the injunction which named "Doe Associations Green, Blue, Yellow, Red, etc."

6. BACK TO WORK

Typical of the highly publicized back-to-work movements is this at the Wilmington plant of the Texas Co.

All newspapers received publicity hand-outs saying that the Wilmington plant would reopen "next Monday." These hand-outs were duly reproduced with appropriate headlines on the front pages of the papers. Come Monday, the newspapers announced solemnly that the Wilmington plant had "opened." A few days later the same papers followed up with a company hand-out to the effect that production in the Wilmington plant is "75 percent of normal."

"Seventy-five percent" seemed to be a favorite figure, covering a multitude of cold stills and cat crackers staring at a handful of supervisory employees and trainees.

Some of the production the companies were able to secure came from the use of trainees who had not previously operated the plants. But they had had some training through joint union-company training programs. This is something for unions to think about in setting up future training programs.

Other production was secured by the work of supervisory employees. It is notable that for years the companies had been using every means to increase the number of supervisors and narrow the field of employees called nonsupervisory and covered by the union bargaining unit.

In advance of the strike the Big Six had built up huge reserves of low-grade gasoline. This they have been unloading on the public to the disgust of clattering motors and cursing motorists. Two months after the strike, despite "75 percent of normal" productions, there is no Ethyl gas available in California. All the while the Big Six is losing money on highly profitable byproducts of petroleum, because they are not being produced. Crude oil is run through stills for low-grade gasoline and then run back into the tanks against the day when the oil workers are back on the job.

7. "WE RESIGN"

Unable to produce high-test gasoline, the Big Six had no trouble in mass-producing "union resignation" forms for distribution among striking employees. These were circulated personally by foremen in door-to-door visits. These visits were invariably "friendly"—the foremen didn't have a thing against the union, the boys needed more money of course, but how about that pension? The company likes you, Jim, and doesn't want to see you out of the end of a limb.

Company stooges filtered into union halls and engaged in backyard talks with strikers, skillfully introducing defeatist rumors. Scabbing with the tongue was so widespread that the word "scabwag" was invented to cover the type of character.

With the papers blaring forth back-to-work propaganda, company personnel spread the old stand-by rumors that strikers would lose seniority, pensions, and other benefits. These terror stories had some effect among men with many years' service records.

And here's another company "contribution" to the conduct of union affairs. In an effort to pack group meetings with procompany stooges, the companies carried on advertising campaigns for union meetings.

For example, a group strongly suspected of stooge sentiments approached the chairman of the Shell group in Long Beach to suggest a group meeting. The chairman said that certainly he and the other officers were happy to meet with any and all members at any time. He set an early date for the meeting.

Soon every Shell employee in the group received a mimeographed post card advertising the meeting. These cards went to members and nonmembers alike. They were addressed from addressograph stencils. They were not addressed from the union's file of stencils. Who else would have such a set of stencils—except the company?

Incidentally, the plan didn't work. Although this crowd-packing trick was tried in the big Shell groups at Long Beach and Martinez, in both meetings the people present voted overwhelmingly to stick solidly behind the strike.

8. PUBLIC OPINION BOUGHT AND PAID FOR

Unions have men, corporations have dollars. The Big Six has assets running into the billions of dollars. So in one phase of the battle of Big Six against the Oil Workers International Union, the Oil Trust wins hands down. That is, in buying newspaper space. Full-page ads run in all the leading California papers and in the oil papers.

There are no bones made about the unity of the oil monopoly. All ads are signed jointly by all companies. The Big Six won't talk jointly with the union, insisting on separate negotiations, but they're mighty ready to talk to the public jointly.

The ads give company claims of oil production; carry threats against striking employees; attempt to inflame public opinion against "violence" of strikers (men fighting for their jobs).

In this business the Oil Workers International Union has no chance. A single Big Six blast in the papers grosses $50,000 to the newspaper owners, who are the buddies of the Big Six anyway. The union case is smothered before it can be heard, by the weight of billions of dollars pressing against simple human rights.

9. TEASE 'EM INTO A FIGHT

Hogging the newspaper headlines during much of the strike have been stories about alleged violence. What brought about the few incidents of violence which did occur?

Provocation and aggravation. Men slapped and mistreated showed red-blooded rebellion. When companies wanted back-to-work movements, did they try to quietly slip their scabs through the court-thinned picket lines, with a minimum of irritation to all parties concerned? No. They advertised the back-to-work movement well in advance. They flaunted their finky plans in the face of the strikers fighting for bread on their tables.

Back-to-work movements were staged en masse. Mobs of scabs were lined up to "crash" the two-, three-, and four-man picket lines. Literally hundreds of gun toting, billy wielding cops were dispatched to the gates to "protect" these scabs.

There was shoving from the cops. Pickets were run down by scab-driven cars. In one instance a woman picket was struck by a fink car and carried far into the Richfield plant, clinging to the bumper to avoid mutilation under the wheels. So there were some incidents. What do you expect?

At Richmond, scabs inside the Standard Oil refinery on at least one occasion rushed in a horde to the fence and heaved nuts, bolts, scraps of pipe and brickbats at the four pickets outside.

10. PRESS LORDS LOVE VIOLENCE

War, murder, sex, and violence are the real loves of America's press lords. Such stories may not build up the morale of a people, but they build circulation.

So naturally most of the California newspapers, reinforced by Oil Trust advertising, have been abjectly at the service of the corporations. And "violence" is their dish.

The picture of the $15,000,000,000 California Oil Trust being assaulted and bruised and manhandled by their employees is a hard one to draw. But not for the Los Angeles Times, which for 40 years has carried on a high-powered campaign to blast all unions—CIO, AFL, and what have you.

Perhaps it couldn't happen in most parts of the country. But in California, most newspapers have taken hand-outs from publicity agents of the Big Six accusing their employes of violence. Most newspapers elsewhere insist on getting such news from police blotters. But not in California.

And when the lone publicity representative of Oil Workers International Union protested this unabashed practice, the newspapers hemmed and hawed but did not retract. On the other hand, when OWIU's publicity department turned over authenticated instances of violence against the union's members, the newspapers either ignored the facts or played them down on page 31.

Most newspaper readers are bystanders on the industrial battle lines. While they read the flaring headlines on reported "violence," they don't have much chance to reflect that after all the men concerned have not been tried in court and found guilty, that the presumption of innocence, guaranteed under our Constitution, is with the strikers, and that, given a jury trial by their peers, most of the strikers will be found innocent of charges preferred during the heat of conflict.

11. BREAK THE UNION TREASURY

Money makes the mare go round. And the Oil Trust has the resources to whip the mare. The Big Six works it on advertising and they work it on lawyers.

The Big Six has scores of lawyers on its pay rolls for the sole purpose of harassing the union oil workers. The union has exactly one lawyer on its staff—all that it can afford.

Obviously the union's counsel can't be in half a dozen places at one time defending cases brought by Big Six. Obviously it's pretty unfair to the union to have to bring witnesses and union officials 300 miles to answer charges when they have no validity whatsoever. But it happens. Big Six files charges, for instance, in Santa Rosa, hundreds of miles from the Los Angeles oil basin, and the union is under the heavy burden of sending its officers and witnesses there for a protracted hearing.

Only the help of CIO in employing attorneys has enabled the Oil Workers International Union to meet this many-headed legal attack on a dozen fronts. Eight lawyers are working full time defending the union and its members.

Hundreds of strikers have been arrested. The bail bonds run over $100,000 on which there is not only a 4-percent commission to be paid immediately, but a minimum bail bond fee of $10, no matter how slight the charge.

If the oil workers union had to rely on its own resources, obviously hundreds of members would face court without protection of any kind. Only the help of CIO nationally has prevented this.

12. YOU CAN'T WIN UNDER TAFT-HARTLEY'S LABOR BOARD

It's heads you lose, tails I win, when a union goes to the National Labor Relations Board today.

Big Six asked a Federal injunction under Taft-Hartley to restrain union members from doing what they can't do anyway under State court injunctions. The Federal judge sitting in San Francisco inquired if OWIU had taken a firm stand against "violence." In evidence were submitted telegrams from President O. A. Knight to local unions urging strict compliance with injunctions. Ah ha, said the judge, that established the responsibility of OWIU for the acts of all its members.

Five of the Big Six have filed for Federal Taft-Hartley injunctions. Their virtue to the Big Six over State court injunctions is that the sky is the limit on fines. There is no maximum Federal fine, as John L. Lewis found out in the United Mine Workers case.

The San Francisco regional director of NLRB had the nerve to ask OWIU counsel to agree to a consent decree in all the injunction actions.

George E. Arthur was secretary of OWIU's West Side local in the sunburned oil fields of the San Joaquin Valley—the kind of devoted union man to whom the union is the breath of life. He was also an employee of Tide Water Associated—one of the Big Six.

When he and four fellow-workers living in company houses refused to scab, Tide Water Associated threw armed guards around their homes. They refused to let friends enter their houses. They turned back the men's ministers, and even the neighbor's children who just wanted to play with the strikers' kids.

The company cut off the water supply. OWIU filed unfair labor practice charges with the Labor Board. After three weeks of investigation, the Labor Board upheld the union's charges but refused to seek a Taft-Hartley injunction against Tide Water Associated.

By then it was too late for George Arthur. Brooding over what was happening in this Oil Trust corner of free America, Arthur went mad in the isolation of the concentration camp, murdered his wife, and nearly killed his two smaller children, and then blew out his brains.

The Big Six, with the assistance of NLRB had scored another victory over the union.

13. FIRE THE MOST MILITANT MEMBERS

Sticking point in repeated negotiations between the Big Six and the union has been the reinstatement of union members against whom charges have been filed under injunctions. The oil corporations insist that strikers charged with contempt are guilty and will not be rehired. They have named hundreds of union members—by pure coincidence they happen to be the officers, leaders, the cream of the crop—whom they will never, never reemploy.

In negotiations, each company has simply stated that "there are certain employees who we will not allow to resume employment."

"Which employees?" asked the union negotiators.

"Those guilty of violence," said the management spokesman.

"Who are they?" persisted the unionists.

"We don't care to say," replied management.

"How shall we determine guilt of violence?"

"We shall not rehire those who. in the company's opinion are guilty," was the adamant industry stand.

The "violence" bludgeon is of course one-way. Company supervisors and stooges whom the union holds guilty of violence are on the job nevertheless. In this, as in so many cases, it matters whose ox is gored.

Then there is the interesting angle that many employees who were loudest in their threats of what they would "do to the company" and who maneuvered picket line situations into violence, soon after quietly went back to work. "Violence" was no bar to their reemployment.

Also interesting is the fact that many former employees discharged for theft and similar infractions of company rules, and thrown out as "nonemployable," are now back on the job.

Simple truth is that the Big Six are determined to be the accusers, prosecutors, judges, and juries in blacklisting union men for alleged violence. The companies are determined to punish the unionists for having the gall to strike. They want to guillotine the union leaders, the backbone of the strike. "Violence" is merely a peg.

14. DIVIDE AND CONQUER

Oil is produced in isolated fields strung out over hundreds of square miles. It is piped in lines from distant points to the refinery areas in the Los Angeles and San Francisco Bay areas.

Under the concentrated pressure and terror of Big Six, some of the isolated union groups have gone back to work.

So now Big Six is refusing to negotiate for production and pipe-line groups represented in present agreements. They are demanding that the strong refinery groups sacrifice their brothers in the fields and on the pipe lines, as a condition of bargaining.

In some fields the Big Six have wheeled in Taft-Hartley decertification election proceedings.

The stage was well set for this maneuver. Taft-Hartley's NLRB had ruled that scabs had the right to vote. Scabs had been secured in large numbers in these instances. Particularly notable were the promises by companies of "superseniority" for scabs. "Come to work," said the foreman, "and you'll have seniority over all the men on strike." There was even seniority among scabs. A man with a year's service with the company going back to work on Monday had seniority over the 30-year man who went back on Tuesday.

With many people misled by such company propaganda—and the Labor Board giving scabs a better chance to vote than strikers—decertification proceedings had a running start over union organizers.

ON GUARD

Well, brothers, that's the picture of labor relations with the "new look" under Taft-Hartley and Dewey, as drawn on the west coast against a union with as fine and clean a record of achievement as any American union can point to. This is the picture of the hatchet job done on a union which has complied with all the hateful provisions of Taft-Hartley. This is what is happening to a union that gave all-out cooperation to our Government during the war against the Nazis and the Japanese, the union which was responsible for the proud war record that whatever else our boys lacked, they never lacked the oil and gas to force the war to the heart of the enemy.

It happened to the Oil Workers International Union. Unless the record is studied carefully and labor-hating employers' California plan of union-busting is met successfully, it will be the record of what can happen to your union.

Statement of Women's Guild of the Evangelical and Reformed Church, of Cleveland, Ohio

ECONOMIC JUSTICE—KEYSTONE OF DEMOCRACY

Dr. Mark Dawber of the Home Missions Council says: "We are beginning to realize the major trouble in the world is an unchristian economy." Dr. Elmer Arndt of Eden Seminary says: "It is either bread or freedom to many people, if you say it must be either communism or capitalism." The World Council of Churches' report says, "There is no Christian economic system, and the criticisms of communism and capitalism cannot be explained away." Have you noticed how education, housing, and health are tied up with "what is good for business?"

The lines between labor and big business are tightly drawn over the Taft-Hartley bill. The following information will assist us in evaluating coming legislation in economics. The Wagner Act of 1935 was a bill demanded by the people against abuses of big business. It resulted in—1. An increase in the membership of labor unions from three to fifteen millions. 2. Increased wages and better conditions of employment with vacations, sick leave, and dismissal pay allowed. 3. A willingness of labor to cooperate with Government in wartime. 4. Protective measures. These include (a) The closed shop which protected the standards of union labor as well as preventing men from being employed who would not join the union and share in the expenses of maintaining union standards. (The prejudice against the closed shop is against its abuses. It has its good points). (b) The right to have union rules respected by Government and big business, (c) Arbitration to settle differences, (d) Collective bargaining by their own representatives.

The Taft-Hartley bill was supposed to correct the abuses of big labor unions. It is resented by labor because it was passed hastily with hearings based on opinions and not on the facts. The bill does not distinguish between abuses and fundamental rights, and its vague wording has been taken advantage of by irresponsible employers. The result has been increased political activity by the unions, a fact which certainly influenced the November elections. It contributed to the failure to be elected again of many of the 120 Congressmen who voted for the Taft-Hartley law. The Minimum Wage Law needs to be revised. There are 22,400,000 workers in agriculture, forestry, fisheries, Government jobs, retail trade, and other services who are not even covered by this 40 cents an hour law, 21,300,000 receive the minimum. Comparing the 1938 national income when the 40 cents an hour law was passed and the 1948 income, we see why the minimum wage must be raised. In 1938 it was $68,000,000,000, but in 1948 it was $215,000,000,000. The farmer's income has increased five fold and the industrial workers' wage has doubled. To do justly, it is necessary, that the Federal Government pass a law to increase the wage of as many as possible to at least 75 cents an hour. Can we afford this as a nation? Note this: Wages in 1939 took 61 percent of the Nation's income—but in 1948 took only 59 percent or a decrease of 2 percent. Profits were 10 percent in 1939 and in 1948, 15.5 percent, or an increase of 5½ percent. Inflation has affected industry but no worse than it has wage earners. The President's Economic Council report of 1948 says, "Prices should be lowered or wages increased, profits should be shared with employees, and taxes should be lowered on the low incomes and made higher on upper incomes. It states in 1939, individuals paid 25 percent of the Federal income tax and corporations 23 percent but in 1948, individuals paid 50 percent and corporations only 21 percent."

Justice needs to become the center of our democracy. As long as 55 percent of wage earners are employed by 1¼ percent of corporations there must be laws to protect these workers. When prices are high some adjustment must be made to take care of the 47 percent of the people in the lower-income groups. Laws are needed to protect children. There is a fine pamphlet, The Force in Enforcement available from the Children's Division of the Department of Labor in Washington, D. C. This indicates how only public opinion and constant watchfulness on the part of people can prevent child exploitation. Most people will be surprised to find what happens in their own communities.

There is a final group of people who need the help of Christian people if they are to be treated justly in employment. That is the minority group, who because of race, religion, or birth are prevented from good employment. A fair employment practices commission is needed to guarantee that everyone in the United States who is trained shall have an equal chance, (1) to get a job for which he is qualified, (2) to keep the job, if he is competent, and, (3) to grow and advance on the job as he really merits.

The measuring stick for judging economic problems asks: What are the facts? Who is right? Why are there conflicts? What is Christian? Sir Josiah Strong, English economist, has checked the Scriptures and found 40 percent of Jesus' teachings relate to money and material possessions. Let us be thoughtful Christian citizens in our criticism of economic facts.

Democracy in Trade-Unions

A SURVEY, WITH A PROGRAM OF ACTION

[Condensed from a larger pamphlet of the same title]

(Issued by American Civil Liberties Union, 170 Fifth Avenue, New York, N. Y., November 1944)

For many years the American Civil Liberties Union, in the course of protecting civil rights, has been confronted with appeals from trade-union members to test in the courts suspensions or expulsions from unions for criticism of union officials or the denial of democratic rights. To these complainants the exercise of their rights as members of unions was even more important than their rights as citizens, for it involved their very livelihood.

The Union believes that the increasing responsibilities placed on trade-unions by governmental protection of their democratic rights demand that they in turn accept the responsibility for the democratic conduct of their own affairs.

This development of the public responsibilities of trade unions, together with continuing complaints of autocratic practices which members sought to bring to the courts with the aid of the union, prompted in 1941 the creation of a committee on trade-union democracy. The purpose of the committee was to study trade-union practices to to suggest remedies for undemocratic procedures which denied civil rights to trade-union members.

Such action as this study suggests is based first on the assumption that trade unions in their own interest will study their own processes, analyze their public relations, and institute changes to square with democratic practice.

American trade-unions are growing more democratic, but this growth is not uniform. There are unfortunate and glaring exceptions. In many unions democratic growth is by no means compatible with their strength and power. Democratic standards, while general, are not sufficiently strong to furnish the friends of trade-unions with assurances regarding the future. If trade-unions are to offset the attacks of their enemies, it becomes imperative that they should remove these abuses. The entire program of the enemies of labor would be weakened, and we believe defeated, if racketeering, autocratic leadership, excessive initiation fees, racial and other discriminations could be quickly eliminated. The vast majority of our citizens are prepared, we believe, to accept and support strong, responsible, honest unions, democratically organized and operated.

We present these recommendations in the belief that though many of them may arouse criticism and opposition, on the whole they constitute a contribution to exploration and action at one of the most urgent points in developing democracy in the United States.

ADMISSION TO UNIONS

More than 13,000,000 jobs in the United States—over a third of those subject to unionization—are covered by collective-bargaining agreements. For more than half of these union membership is a condition of employment; few jobs are open to the nonunionist or the worker unwilling or unable to join a union. The number of industries in which unionism is firmly established has increased so greatly in the past decade that union membership is already a vital prerequisite for obtaining or holding a job.

Generally speaking, union membership is readily available. Applicants for membership must normally be approved by an examining committee of the local union, and are then voted upon by the members at a regular membership meeting. In some unions, the decision of the business agent is final and, though in a few unions respected candidates may appeal to the national executive board, this privilege is rarely exercised.

Restrictions on membership.—There are two significant restrictions on union membership. There are unions which discriminate against applicants because of their race, religion, political affiliation, national origin, sex, or other personal characteristics; and there are unions called closed unions which restrict the number of their members either by outright exclusion of all or most applicants, or by admitting them on a limited membership basis.

Negroes.—Prior to the New Deal few Negro workers were members of trade-unions, but the past decade has witnessed a marked improvement in the Negro's position in the labor movement, and to some extent discrimination on account of race has been reduced in some sectors where it has long flourished. The CIO has made the fight against discrimination a major plank in its program but the policies and practices of some of its locals reflect still the prejudices of some of the rank-and-file members. The A. F. of L. is on record against discrimination, but many of its constituent autonomous unions—particularly the old-line craft organizations—practice it.

METHODS OF DISCRIMINATION

Methods of discrimination vary. Some unions exclude Negroes by constitutional provision or by ritual. Some unions have no rule barring Negroes from membership, but locals exclude them by tacit consent; others confine Negroes to Jim Crow "auxiliaries" where they pay dues but are denied a voice in union affairs and an opportunity for advancement in the trade. Under wartime pressure a few unions have admitted Negroes but the membership ban still remains in the unions' ritual and may be resurrected after the war.

Aliens.—The American labor movement, since the middle of the nineteenth century, has opposed the immigration of foreign-born workers and many of the A. F. of L. unions have barred aliens from membership. In a large measure this opposition has stemmed from the fear of an oversupply of workers on the labor market but also because of the possibility of the use of the immigrant as a strikebreaker. Some national unions require full citizenship or eligibility to full citizenship for membership; others accept first papers; and still others charge aliens higher initiation fees, often prohibitive.

Women.—A number of trade-unions have long excluded women from membership, but during the war many of these unions have removed this constitutional barrier. While in 1924 only about 250,000 women were union members, the number rose to around 3,500,000 in 1942. While this was largely due to the need for women in the war industries, actually the break-down of union opposition to women members antedated the war, when in the early period of the New Deal, the organization of the mass production industries revealed that women could be organized successfully on a large scale. However, more than 25 unions still exclude women, these chiefly in the railroad industry and in the skilled crafts where women are rarely employed.

Political beliefs.—In addition to Negroes, women, and aliens, tarde-unions occasionally exclude applicants on other grounds. Religious discrimination exists in some unions, but is usually the result of individual prejudice and only rarely is trade-union policy. A few unions keep workers out for their political affiliation or for belonging to allegedly nonunion organizations, but these restrictions are seldom put into effect. Few unions tolerate dual unionism or accept members who belong to rival labor organizations.

The civil liberties problem.—Admittance to union membership is a civil liberties problem where earning a living depends on union membership, and where union organization is, to a large extent, under Government protection and encouragement. Under these circumstances, union policies and practices restricting membership are a deprivation of civil liberties except as they are designed to preserve the basic structure and existence of the union. Rejection of applicants on grounds of race, creed, color, sex, citizenship, religion, or political beliefs raises clear issues of civil liberties.

Fight against discrimination.—Trade-union discrimination against Negroes has been aggressively fought both within the labor movement and from the outside; many progressive labor leaders, notably A. Philip Randolph, president of the Sleeping Car Porters Union, have raised the issue both within their own unions and within the labor movement in general. The National Association for the Advancement of Colored People and the National Urban League and other interracial organizations have protested with increasing vigor, with the result that in recent years at least four national unions have removed discriminatory clauses from their constitutions. The war and the need for manpower has also further reduced discrimination. Another more important factor against discrimination has been the Committee on Fair Employment Practice originally formed as an independent agency by order of the President in June 1941. Subsequently it was placed under the War Manpower Commission, but after undergoing severe criticism for failing to act in the railroad industry, it was reorganized as an independent agency with a new personnel. The Committee's chief service has been in publicizing discriminatory practices. It has held hearings in many cities, revealing evidence on discrimination by employers and unions. The National War Labor Board has also exercised a powerful influence against discrimination, having established in several notable decisions, the doctrine of equal pay for equal work regardless of sex or race.

Five States have passed laws designed to eliminate union discrimination because of race, creed, or color. The Pennsylvania and Wisconsin Labor Relations Acts invalidate closed-shop contracts where unions practice discrimination, but both statutes are difficult to enforce. Appeal to the courts on the whole has proven useless because the courts have held that union membership is a privilege not a right.

The closed union.—In addition to unions which discriminate against applicants on grounds of race, creed, color, sex, national origin, or political beliefs, there are unions which limit the number of full-fledged members or make it difficult for outsiders to join or gain full membership by means of high initiation fees, by the job permit system, or by outright, refusal to accept new members. These closed unions constitute a small sector of the labor movement, and their growth has been limited not only by the opposition of the national unions which prefer to gain strength through enlarged membership and more dues, but by the need of controlling the job market. Closed unions cannot survive unless they fully control a job market; without such control, union employers can be destroyed by the competition of unorganized plants. To control the job market in a single plant or in a locality a union requires the closed shop, to insure that all employees are union members, and in addition requires control of hiring.

Closed unions exist for many reasons. Sometimes membership rolls are closed when there are more men than jobs due to economic depression, technological change, or a declining demand for an industry's product. The closed union also exists in industries where the demand for labor fluctuates violently from day to day, as among longshoremen, and in seasonal industries, such as the garment trades. There are also unions which restrict their size in order to increase membership benefits to each card holder, and frequently we find the closed union where racketeers or local labor bosses desire to exploit a monopoly labor situation to their own financial and social benefit.

How unions are closed.—The simplest and most common method of restricting membership is to close the union rolls and refuse cards to new applicants. In skilled crafts admittance to the union is regulated by strict aptitude tests and into the trade by entrance regulations. Often membership is restricted, by the constitution or by tacit agreement, to sons or relatives of the members. Applicants are also kept out by excessive initiation fees (though this is not necessarily proof that a union is closed), and by the issuance of permit or privilege cards to nonmembers at a weekly fee of a small amount, thus enabling the union to assure as much steady work as possible to its regular members.

The civil liberties issues.—Where the reason for the closed union is to enrich the union treasury, to maintain minority control, to benefit a few at the expense of the many, to promote racketeering or to deprive already employed workers of their pobs, a clear civil liberties issue is involved. Where the closed union is operating on a closed shop basis (few can function otherwise) a civil liberties problem is posed in the denial of the worker of the right to work. However, it must be recognized that, under peace-time conditions, unions may actually jeopardize their existence and the livelihood of their members by admitting all jobless applicants regardless of the conditions of the job market.

Court decisions.—So far the courts have played a negligible role in the closed-union question. As in other cases of discrimination, the courts have ruled that until a worker is admitted to union membership, no right exists which the court can protect and enforce, and further that membership in a union is not a right but a privilege.

UNION MEMBERSHIP

Problems involving civil rights become very acute at those points where the trade-union seeks to discipline individual members, officers, minority groups, or local affiliates. Disciplinary actions vary all the way from a mere threat to impose a fine to permanent expulsion; they may apply to a single worker or to a large local group. Some people hold that unions are private and not public bodies and should be free to impose whatever penalties seem fit on members violating its rules and regulations. Others take the position that unions are not private or social organizations and the civil rights to which American citizens are entitled by law such as free speech, and the right to fair trial lose all meaning unless extended to the workers rights within his union.

How far can unions go in protecting the civil rights of members in disciplinary cases without impairing the essential strength of the organization? Clearly a union must retain sufficient disciplinary powers to prevent minority groups within a union from undermining the union's effectiveness. A distinction must be drawn between the civil rights of individual members and their personal interests. Members should not be penalized or expelled for activities involving their basic democratic rights, i. e. the right to criticize union officials; the right to inform fellow members of their opposition; the right to organize groups within the union to oppose the administration; and the right to voice public protests outside the union wherever channels for protesting within the union are closed.

But members should be disciplined and, if necesary, expelled for action detrimental to the union, such as, refusal to pay dues; receiving pay as an agent of an employer or of some rival labor group; violating working or wage rules of the union contract with the employer; violating duly authorized orders normally given in connection with strikes or other union activities.

The courts on union discipline.—In expulsion cases the courts have applied three general tests to determine the legality or illegality of trade-union proceedings; whether the trial conformed to union rules; whether it was conducted fairly, impartially, and in good faith; whether the rules and regulations of the union meet the requirements of natural justice, which includes notice in writing of the charges in advance of the trial; fair hearing and the right to appeal to a higher tribunal within the union; separation between the trial and the prosecuting body of the union; and absence of hostility against the accused on the part of trial board members.

The courts have ruled in favor of union members expelled for defamatory statements in a letter criticizing local union officials; criticism of officials in the press; violation of a union law "forbidding members to carry on union business outside of meeting or executive board rooms"; participation in an unauthorized strike; failure to pay insurance policy premium and continuing work during a strike. They have ruled against union members expelled for accepting less than the union wage; failure to pay a per capita tax; failure to pay back dues; participating in or giving aid to a rival union; acting in the interests of the employer or contrary to the interests of the union.

Disciplinary measures.—Union constitutions generally provide that charges against members shall be heard first by the local executive board or a special trial committee. Their findings are then passed upon by the local membership. If appealed, the case goes to the executive board of the district organization, from there to the general executive board and finally to the national convention. In a few instances, the referendum is an alternative court of last appeal. In several unions there is no appeal from the executive board; its decision is final.

Analogous to actions against individual members are actions involving the suspension, reorganization, or expulsion of local unions. In some unions, authority to take such action is vested in the national president; in other the power is in the hands of the general executive board. In some instances both may act.

Considerable evidence exists to demonstrate that some union officials abuse their disciplinary powers, and experience indicates that the offended member has very slight chance of redress by resorting to the courts. As is well-known, the courts hesitate to take action unless property interests are involved and unless all remedies within the union have been exhausted. Besides, legal action is far too expensive in time and money for the average union worker.

UNION ZONES OF AUTHORITY

The internal government of unions is organized on three levels: national, district, and local. Control over broad questions of policy such as constitutional changes, organizing campaigns and strikes is usually vested in the national organization. The local administration usually controls dues collection, initial dealings over grievances and participation in city politics. Least in importance are district organizations. Their role in framing contracts and handling strikes is overshadowed by the national or local bodies. Locals influence national and district policies chiefly through the delegates they elect to conventions. On the other hand, the national administartion usually has important controls over the activities of locals.

Within national, district, and local bodies authority is divided between the executive and the electorate. The former includes all elected officials and their appointees; the latter, the union members and their delegates.

Civil liberties issues.—Problems of democratic control arise in all three spheres of administration. In each the basic question is whether the members or their representatives have a genuine opportunity to participate in framing policy, and whether they actually utilize available instruments of control.

For example, granted the right to full, detailed reports on finance and important actions of the executive officers and board, there is always the possibility that members may not carefully read these reports. Granted the freedom to express rival views at meetings, on convention floors and in union publications, there is always the possibility that the members may not take advantage of the right of criticism. Granted an opportunity to approve or disapprove policy-making decisions and elect officers by secret ballot with the right of recall or impeachment and the freedom to alter the union constitution by initiative or referendum, there is always the possibility that the members will not weigh the merits of a proposed policy, or exercise the right to vote. There is also the possibility that leaders will play off one group against another, or use mass propaganda techniques to further personal interests.

Limits to individual freedom.—The civil rights of union members are conditioned by certain necessary limitations upon individual acton. While the right to criticize and the right to appeal are basic, no minority group can be allowed to block officials in their regular administrative duties or in carrying out duly authorized policies. Even in formulating general policies, considerable latitude must be granted to national executive officers if the union is to function properly. In most union activities, such as strikes, boycotts, and wage negotiations, there are obvious advaages to centralized control. All that can be reasonably required is that the members have the genuine opportunity to pass on general policies before these are adopted, that they be kept fully informed of their officers' activities and that they be free to approve or disapprove of their conduct.

National authority.—The supreme authority in most unions is the national convention. The national convention has the sole power to pass laws and determine policy regulating the union's general conduct. The national officers and executive board are required to present reports on their work to the convention and their decisions are subject to the convention's approval. Between conventions, all executive and judicial powers are vested in the national executive board. In the interim, between meetings of the national executive board, the union's affairs are usually directed by the national president.

Basic union law is essentially democratic but there are many opportunities for dictatorial control, due chiefly to the wide powers vested in national presidents and executive boards, and the manner in which national conventions are organized and conducted. In most unions, the president appoints all committees at national conventions. The credentials committee is of crucial importance for no delegate can be seated without its approval. In this way it may exercise tremendous control over the make-up of the convention and the outcome of the battle for control.

The national convention.—An important means of checking arbitrary action by national officers is afforded at conventions. Here national officers must win from the members' representatives endorsement for past policies and approval of proposed actions. Here, too, opposition groups have the opportunity to criticize the official family and to press for important changes in policy.

The most serious limitation to the effectiveness of conventions is their size. In fact most conventions are so large that active participation by the average delegate in floor discussions is almost impossible, and serious criticism of the administration is rare at the conventions of most long-established unions.

How often conventions meet.—The civil rights of union members are violated when conventions are not called for long periods of time. But only a handful of unions have been guilty on this score. Most unions, in fact, have taken positive action to make sure conventions will be called at regular intervals.

If some urgent question arises between conventions, special meetings may be called in most unions. This is done either by the executive board, or by referendum vote initiated by local unions, and in a few cases solely by vote of the membership.

HOW UNION POLICIES ARE MADE

Basic to the problem of trade-union democracy is the method by which decisions on policy are reached—whether members have a genuine opportunity to take part in the formulation of major decisions; whether opposition groups have a real opportunity to present their case; whether officers are strictly accountable for their work in carrying out policy decisions and are required to submit full reports to the membership; and whether the chief executive officers are tested by open and honest elections at regular intervals.

Generally, qualifications for holding union office are union membership from 6 months to 5 years, an employment record in the trade, and American citizenship or declaration of intention.

Few unions have qualifications for office which are definitely discriminatory. Out of 38 constitutions examined, only one contained a discriminatory clause. In the auto workers' union no candidate for office may belong to any organization declared illegal in the United States through constitutional procedure.

Where elections are held at conventions, delegates are usually free to nominate from the floor. Where elections are held by referendum vote, nominations are usually mailed into the national office, and a certain number of supporting members are required for each nominee.

The right to nominate rival candidates thus exists in unions, but delegates and members do not always avail themselves of this right. In most national unions, administration candidates are usually unopposed.

Reports to members.—Another test of trade-union democracy is the report of officers to the membership. Unions fulfill one of their most important obligations to their members when they require full and complete accounting of funds, detailed reports of the activities of organizers, business agents, regional, district, and national officers. This basic obligation is violated where reporting is incomplete, misleading or sporadic. In most unions the president, secretary-treasurer, and other principal officers submit regular reports to the national convention and between conventions to the executive board. Action on reports by national officers is usually perfunctory. Furthermore, many unions take no steps to insure that officers' reports shall be accurate, detailed, and comprehensible.

RECOMMENDATIONS

The general principles affecting the civil rights of parties to the industrial conflict form the background on which the rights of trade-union members are cast. The democratic principles which apply to these rights are part of the entire structure of the relationship between the employer and workers, and between both of these and the public—principles which are now fairly clearly established by law and court decisions.

The American Civil Liberties Union has formulated these democratic principles in industrial conflict as covering the right of workers to strike, unqualified and unrestricted in any way; to organize and select representatives for collective bargaining free from coercion by employers and protected by State and Federal law; the right to picket peacefully at any time and at any place for any purpose, subject only to control of traffic, order and fraudulent signs; the right of qualified workers to union membership without discrimination and without limitation through excessive fees and dues and by means of work permits; freedom of unions from prosecution under antitrust laws for ordinary union activities, from compulsory incorporation and compulsory arbitration, from restrictions to contribute to campaign funds authorized by the membership.

Also democratic principles in industrial conflict should cover the right of nonunion workers, as distinguished from strikebreakers, to access to plants on strike; the right of employers to freedom of speech concerning unions where the utterances do not constitute coercion against their employees.

The democratic principles briefly outlined above represent on the whole the dominant tendencies in public policy laid down by the courts, the Federal Government and the principal industrial States. They are continually under attack, and legislation to qualify them is constantly before Congress or the State legislatures. However, the protections which have been afforded to labor unions are sufficiently established to justify a demand upon unions to conform in their internal affairs to these democratic principles.

A Bill of Rights for union members.—As a guide to that process, the American Civil Liberties Union presents the following as a basic bill of rights for trade-union members, couched in terms of the rights of industrial workers. We believe that every possible pressure should be exerted from within and without the labor movement to induce trade-unions to measure up to such standards.

(1) Membership in a trade-union appropriate to his trade or calling and to his place of residence should not be denied (*a*) by discrimination based upon race, creed, color, sex, national origin, or political affiliation, nor (*b*) by the imposition of restrictve or excessive initation fees, nor (*c*) by any limitations on membership other than incompetence in his trade or calling, bad moral character or a record of antiunion activity.

(2) Democratic participation of a member in the conduct of the union to which he belongs. This requires democratic organization of the union, inclusive of local, district, State, national and internatonal units. Among the principles to be safeguarded in democratic organization of trade-unions are (*a*) provisions for regular meetings or conventions held at reasonable intervals, (*b*) fair elections, (*c*) free discussion within the union of all union problems, and (*d*) control of dues, assessments, and financial matters by the membership, together with clear and authentic periodic reports to members on union finances.

(3) Protection within his union against arbitrary proceedings of a disciplinary character, to be guaranteed by constitutional provisions for fair hearings before persons other than those bringing charges, and with appeal to a separate and independent body.

(4) Fair and equal treatment with respect to job placement in all cases where the union exercises control over employment.

Legislation.—Legislative control affecting the inner affairs of unions is objectionable because it weakens the autonomy and independence of unions, and if accomplished by State enactments, puts an intolerable burden on national unions by requiring conformity of 48 separate and different standards. In our view, the only legal measures at present justified by the denial of democratic rights are:

(*a*) Punishing the exclusion from membership of any qualified persons on account of race, religion, sex, national origin, or political affiliation.

(*b*) Provision for hearing by an administrative agency on suspensions or expulsions, with review by an appellate court.

(*c*) Similar review of the application of democratic rights under union constitutions.

These proposals do not impose State regulation of any sort on a union's internal affairs. They afford relief from unfair discrimination for those desiring to gain admission; they protect the rights of union members under their own constitutions, affording a more orderly and expert review than is now provided by the uncertain resort to the courts.

Laws already adopted by five States (New York, Pennsylvania, Nebraska, Wisconsin, and Kansas) provide in principle that unions may not exclude applicants from membership on the ground of race or religion. In Pennsylvania the law was extended in 1943 to cover political affiliation. The New York law—a criminal statute, unlike the others—is an excellent statement of the principle, though it does not cover discrimination based on sex, national origin or political affiliation.

We recommend the enactment of legislation by the States (and in the Federal jurisdiction, by Congress) to provide: That when members have exhausted the machinery set up within the union for contesting suspensions and expulsions, and for adjusting such complaints, they should have the right to a hearing by a commission set up as a permanent division of the State labor department, or selected for specific hearings from a panel, with adequate representation of labor on such a commission. Appeal from the decision of the commission should be to an appellate court.

The advantage of a quasi-judicial commission acting as an intermediary agency between the union member and his union officials before resort is taken to the courts has been made clear in past experience in labor relations. This experience demonstrates that such commissions soon become expert in relation to the problems involved and make speedier and fairer dispositions of such controversies than do the regular courts.

The means of achievement.—It is clear that no reforms in union constitutions, rules and regulations will in themselves achieve trade union democracy and insure against undemocratic practices. No rules or regulations will stop packing meetings with the followers of a group determined to achieve power; they will not stop strong-arm methods of gangsterism; they will not prevent a minority from achieving control by outsitting the majority at interminable meetings, nor prevent a determined minority from getting together in a caucus and voting en bloc after dividing its opponents. In unions, as in other associations, constant vigilance by a sufficient number of members is required to insure democratic practice, with a constant struggle against every encroachment upon it.

Court action.—Appeal to the courts is justified on the part of union members who complain that their rights under the union constitution have been violated. While courts are on the whole reluctant to intervene in the affairs of voluntary associations, they have been the chief governmental agency in correcting such glaring abuses as failure to hold elections, to conduct fair elections, to account for the use of union funds, to accord members fair trials on charges resulting in suspension or expulsion, and to overcome the arbitrary suspension of locals by international officials. Resort to the courts in such matters requires no further legislation.

Relief in the courts for members unfairly tried on charges is both difficult and uncertain. A more definite system is desirable so that union members will not have to risk the considerable expense, the uncertainty of the court's taking jurisdiction, the unfavorable criticism that often attaches to court action by union members, and the more doubtful recovery of wages for time lost, if reinstated. Recognition of the public interest in protecting union members against unfair expulsion should be achieved by providing an appeal to a special agency of the State or of the Federal Government for members of unions engaged in interstate activity.

CONCLUSION

It may seem that the counsels for action contained in these recommendations appear contradictory. We urge certain action by the rank and file for increased power over their leadership. We urge the leadership to encourage rank and file democracy. We urge review of the denial of democratic rights by court action and by legislation.

But we see no essential contradiction in encouraging all these democratic advances at every point. It requires a highly complicated structure to insure democratic practices. We are clear that public intervention to that end should be held to the minimum guaranties of no reasonable discrimination in admission and relief for trade union members denied rights under their own constitutions or accepted democratic practice.

It will be maintained by many trade unionists that their internal affairs are of no concern to "outsiders." That argument has been destroyed long since by the union's acceptance of public protection in organizing and bargaining collectively and in the public regulation of industrial conflict.

We present these recommendations in the belief that on the whole they constitute a contribution to exploration and action at one of the most urgent points in developing industrial democracy in the United States.

STATEMENT BY GEORGE BALDANZI, EXECUTIVE VICE PRESIDENT, TEXTILE WORKERS UNION OF AMERICA, CIO

My name is George Baldanzi; I am the executive vice president of the Textile Workers Union, CIO, in whose behalf I am appearing here today. The Textile Workers Union of America is the major labor organization in the textile industry. The industry, which employs about 1,100,000 workers, 450,000 of whom are covered by TWUA agreements, is divided into various branches, and the plants vary in size anywhere from 25 to 10,000 workers each. The industry is concentrated in New England, in the mid-Atlantic States, and throughout the South in small towns or mill villages where the mill dominates the lives of all who work in it and live within its shadow. If it is a mill village, the textile mill employer owns the house the worker and his family live in; the school his children go to; the store at which his wife shops. In addition to this direct ownership, the mill owner usually dominates the local church, press, and radio.

It is in such a setting that the full impact of the Taft-Hartley Act must be considered, for it is here that its effect has been most pernicious.

Even before enactment of Taft-Hartley, a noticeable change occurred in the climate of labor-management relations. In the wake of the fury that had been whipped up against unions, antilabor employers and other antilabor elements were emboldened to encourage open attacks against unions, and even to engage in such activities themselves.

While the Taft-Hartley Act was still in the discussion stage, we said that its real objective, regardless of what its sponsors said, was the weakening, even the destruction, of the American labor movement. We said that if the Taft-Hartley bill became law, new organization would be seriously affected, and established labor-management relations would be thrown into confusion.

Since June 1947 opportunities for the organization of unorganized textile plants have decreased noticeably. In the 18 months that preceded the act, the Textile Workers Union of America participated in 337 elections for 127,419 workers. Of these, we won 172 elections for 63,034 workers and lost 165 elections in plants employing 64,385 workers. But since June 1947 we have participated in only 205 elections covering 65,444 workers. Of these, we have won 122 elections covering 24,046 workers, and we have lost elections in 83 textile plants employing 41,398 workers.

An atmosphere of open and active hostility, accompanied by intimidation, coercion, and violence, strongly reminiscent of the pre-Wagner Act era, has reestablished itself. The following situation is typical of our experience generally throughout the South.

At the Frank Ix plant in Charlottesville, Va., the union organizer was constantly followed by the personnel manager, the plant superintendent, and groups of foremen, when he visited workers' homes. The company even tried to rent a room overlooking his residence, in order to keep watch on him 24 hours a day. Workers found talking to the union organizer were harassed in the plant; one worker was beaten for wearing a union button; another worker was followed to the rest room to prevent him from talking about the union. The company sent stool pigeons to union meetings and boasted openly of its gestapo's efficiency. Foremen casually informed prounion workers that one of the watchmen was a "dead shot with the revolver." The company's bulletin board brazenly carried antiracial and antireligious propaganda. Workers who had won company awards for efficiency were accused of doing bad work when suspected of union sympathy; lay-offs and outright discharges often followed. Veterans were told they weren't loyal if they joined the CIO.

An elderly worker who had been called to task told a foreman: "I had three sons who went over to Germany to fight for my right to think as I please. One of my boys died over there." The foreman replied: "It would have been better if they had all died there than to have come back and joined the CIO."

For the first time in the 10-year history of our organization, we have lost elections in mills where a majority of the workers involved had previously signed up with the union.

A majority of the workers at the Cleveland Mill & Power Co., in Lawndale, N. C., had signed TWUA cards, but the union suffered a stunning defeat in a labor board election. Union representatives were unable to obtain a meeting hall and had to hold all meetings in a nearby baseball park. Despite this difficulty, these meetings, which were held weekly, were well attended, interest in the union was high, and good committees functioned in the plant.

Up until 3 days before the election, the situation looked good for the union. Then each worker received a letter from the company aimed at stirring up racial prejudice against the union's representatives, and urged every worker to vote against the union. The company told merchants in the town that if the union came in the mill would probably shut down. Thus armed, these merchants exerted effective pressure on the workers. This they could legally do under the change introduced by the Taft-Hartley Act, because, although they were clearly acting in the interest of the employer, they were not his agents, and were therefore immune. The union's representative was advised to leave town by an antiunion delegation. In this atmosphere of coercion and intimidation, the union lost the election.

Similarly, at the Dacotah Cotton Mills, in Lexington, N. C., the union had signed up a majority of the workers— in this case, 65 percent. From November 16, 1948, the day the union petitioned for an election, until January 20, 1949, when the election was held, the company, through its supervisory employees, carried on a systematic campaign of intimidation of union members. Two days before the election the owner of the plant sent each worker a letter similar in content and tone to the letter sent to the workers at the Cleveland Mill & Power Co. The day before the election the owner shut down the mill and harangued the workers for an hour on company time. In this atmosphere of pressure and intimidation, the union lost the election 210 to 62.

The Taft-Hartley Act has stimulated open, violent resistance to peaceful, legal union activities. In many mills, both North and South, where elections had been won, many employers greeted passage of the act by redoubling their fight against the union.

Let me present a few illustrative examples, the first of them involving a union other than our own.

On April 18, 1947, the International Woodworkers of American won an election at the Greene Bros. Lumber Co. in Elizabethtown, N. C., by a vote of 171 to 87. Between that date and July 16 a total of 11 conferences were held between the union and the company. In all that time, the company's notoriously antiunion attorney refused to grant a single concession and did nothing but go through the motions of meeting with the union representatives. Finally, their patience exhausted, the workers voted to strike, and established a picket line at the plant on July 17.

The company thereupon brought in strikebreakers from neighboring towns in company-owned trucks. Once, when the strikers stopped one of these trucks and its driver refused to go through the line, the sheriff drove it on to the mill. Numerous attempts were made by company officials and antiunion merchants to run pickets down with their cars. The sheriff accompanied the plant superintendent to workers' homes to frighten them into returning to work. Pickets were arrested in wholesale lots, charged with "suspicion" and held incommunicado in jail for 72 hours. There were 115 such arrests during the strike. The company circulated a decertification petition among the strikebreakers in the plant, and only the company's sudden capitulation on December 9, 1948 prevented the decertification election.

In our own union, the Gurney Manufacturing Co., in Prattville, Ala., refused to negotiate after the Textile Workers Union of America had won an election by a 90-percent margin. The company's unyielding refusal to bargain precipitated a bitter strike. The company imported strikebreakers from Mississippi. Mass eviction proceedings were started against strikers occupying company-owned homes, and armed thugs were hired to force the workers back into the plant. The home of a group of strikebreakers was dynamited in an attempt to frame the union.

After 6 months, the strike was ended and the strikers returned to work without a settlement. A contract was negotiated only after the labor board finally ordered the company to reinstate all strikers, to restore their homes to strikers who had been evicted, and to bargain with the union. But it took 18 months, and a bitter strike, to conclude an agreement.

Another effect of the Taft-Hartley Act has been the dissipation of existing collective bargaining relationships and the destruction of the union. The act has created a climate in which recalcitrant employers have been able to precipitate strikes. To create such situations, employers have adopted a number of phony bargaining techniques, including firing of members of union negotiating committees, stalling negotiations until workers lose heart, making impossible counterproposals or no proposals whatsoever, and appointing management negotiators who have no power to agree to terms. The attitude of these mills was cogently summed up by the United States Fifth Circuit Court of Appeals, in its decision against the Athens (Ga.) Manufacturing Co., in which the court said: "We are of the opinion that the evidence well supports the board's findings that the respondent was giving the union a run-around while purporting to meet with the union for the purpose of collective bargaining."

Once a strike is precipitated, it follows a clear and dangerous pattern which has become almost universal in the South: A restraining order, based on stereotyped affidavit forms, is secured from the local court. These restraining orders either limit picketing to a very few persons or they restrict the area of picketing so greatly that the picketing itself becomes ineffectual.

In nearly every case, complaints filed by the employer allege violation of the Taft-Hartley Act. Contempt proceedings are quickly begun. Local police arrest strikers on every imaginable charge, from inciting to riot for calling a scab a scab, to conspiracy to commit murder.

Charges of vagrancy, disorderly conduct, breach of the peace, violation of loitering ordinances, are recklessly applied. Old ordinances designed to curb the Ku Klux Klan are perverted to indict strikers and their leaders on charges of conspiracy.

In those cases where striking workers live in a mill village, the employer institutes eviction proceedings to oust the strikers and their families from their homes.

Violence against the strikers is encouraged and abetted by the employer. Denunciations against the union and its representatives are thundered from local pulpits by company-inspired ministers. So-called citizens' committees are formed and vitriolic antiunion statements and advertisements appear in the local press. Newspapers and periodicals which viciously attack the union and its representatives make their appearance. Strikers and members of their families are threatened and assaulted.

The list of unions thus destroyed is tragically long:

A collective-bargaining relationship that had existed at the Gaffney Mills, in Gaffney, S. C., since 1938 was destroyed when management refused to bargain and precipitated a strike that lasted 30 months.

A union that had been in existence for more than 10 years was destroyed when workers at the Dallas Manufacturing Co. in Huntsville, Ala., went back to work after a bitter strike that lasted 8½ months.

A long-established collective bargaining relationship at the Amazon Cotton Mills, in Thomasville, N. C., was destroyed when management refused to bargain and precipitated a strike that ended in failure after 30 months.

In Rome, Ga., one textile employer, the Anchor Rome Duck Co., determined to destroy the union, refused to bargain on any issues or to settle any grievances. When negotiations for a new contract began, the company insisted that the union abandon top seniority, the voluntary check-off, and assume full laibility for strikes and other violations of the contract. During the course of these negotiations, plant officials started to secure pistol-carrying permits for themselves and "loyal" employees. Management's attitude precipitated a bitter strike which began in March of last year. Strikers were arrested on a variety of charges. Proceedings were begun to evict striking workers from company-owned houses. One unarmed striker was shot by a company overseer; another worker was shot by a scab as he sat in his home; a third worker, a woman, was stabbed.

After 9 months the workers went back to work.

Long before the strike began, the union had filed charges of refusal to bargain. Six months after the end of the strike, but 2 years after the union's original charges had been filed with the Labor Board, the company was ordered to reinstate the workers with back pay and to bargain with the union. But by then the strikers had been replaced by scabs, the union had been destroyed.

We went through a similar ordeal at another plant in the South: The Textile Workers Union of America had been the certified collective-bargaining agency for workers at the Hadley-Peoples Manufacturing Co. in Siler City, N. C., since 1945. In January 1948, the company informed the union that it wished to terminate its contract and the union thereupon asked for a meeting to discuss a new contract. The company refused to meet earlier than the middle of February, when a brief meeting was held at which the union presented its contract proposals. The company presented no proposals of its own and the company president declared the company wished to study the union's proposals before negotiating.

A number of other conferences were held, at one of which the union offered to extend the current agreement. This was rejected, in strong language, by the company president, who turned down flat the union's proposal, for inclusion in the new agreement, of a minimum wage guaranty for pieceworkers. The union then said it would be willing to submit the issue to its members; this was done and the union's position was unanimously approved.

Following this meeting of the workers, the union's representative tried to meet with the company president, but he was unavailable, and unyielding. At a later meeting, which had been arranged by the Conciliation Service, the union indicated its belief that a compromise could be worked out and again offered to extend the current agreement until a new one had been concluded. This was again rejected by spokesmen for the company, and they threatened that no contract would ever be signed if the workers struck.

In the face of the company's refusal to bargain; the company's threat to discharge members of the negotiating committee, and its statement that it would not sign an agreement, the workers had no choice but to strike.

Picketing was peaceful, but the day after the strike started the company president called on the Governor and insisted that the State highway patrol protect his plant and workers. The Governor replied that he would not do this unless asked to do so by the sheriff. Thereupon, at the president's insistence, the sheriff visited the strike scene, but he found no trouble of any kind. At a later meeting between the sheriff and the president of the Hadley Peoples Manufacturing Co., at the home of the mayor, it was agreed that one deputy sheriff and one policeman would be stationed at the plant gates; this arrangement continued throughout the strike.

A few days later, Mitchell Bell, a well-known antiunion agent, an incorporator of the Citizens' Association, which published antiunion propaganda, and an ex-prizefighter with a record of various convictions for bootlegging liquor, visited Hoyt Phillips, the president of the local union and a member of the union negotiating committee. Bell asked Phillips, in behalf of the president of Hadley Peoples, to go back to work as an individual, and informed Phillips that the president of the company had promised to "take care" of Phillips.

From the beginning of the strike, all strikers received by mail, each week, copies of the Greensboro, N. C., weekly paper, The Beacon, and its successor, The Sun. Both featured articles, advertisements, and editorials attacking the union as corrupt and communistic and its officers and representatives in the same manner. None of the workers subscribed to these papers. None received them before the strike and wanted them. All papers were addressed as names and addresses appeared on company pay-roll records, even duplicating wrong addresses or misspelling of names as on the pay-roll records. No charge or bill was ever presented for the papers, nor was any explanation offered. The only possible source of the mailing list was the Hadley Peoples Manufacturing Co.

After the strike was several months old, an attempt was made to end it, but the attempt failed: the company persisted in its refusal to sign a contract.

When the strike was 3 months old, the union tried to arrange a conference with the company in order to settle the strike and negotiate a contract. To this, the company replied that it was its opinion that the Textile Workers Union of America no longer represented a majority of the workers and that the company had under consideration the filing of a petition for an election among its employees.

In view of this stubbornly hostile attitude, the workers, faced with certain defeat, voted to end the strike and return to work.

When the strikers applied at the plant for reinstatement, each of them was interviewed by the plant superintendent, who took their names and addresses and information concerning the type of work with which each was familiar. He informed each worker that the company would let him know when to report for work as openings occurred or as a new shift was set up. In some cases workers were refused reinstatement. In others those who went back to work were fired shortly thereafter.

In one case, the mother of two strikers, herself an active union member, had been ill when the strike began in March, and therefore not on her job with the company. When the strike ended she applied for work. The company refused to restore her employment, and she applied for unemployment compensation. The company opposed her claim and the plant superintendent testified she was unable to work. She obtained a doctor's certificate to the effect that she was able to work and to perform the work for which she had applied. The plant superintendent, who has opposed her claim for unemployment compensation, then informed her that there was no job for her.

Workers were evicted from their company-owned homes, forced to quit their jobs and move elsewhere.

The company constantly coerced its employees. When several men who had worked as machine fixers before the strike went back to work, the company demoted them to lower-paying and less desirable jobs.

This picture offers a sharp contrast to an earlier strike at this same plant. This strike also lasted 3 months, but it ended in complete victory for the workers.

Before and during the life of the Eightieth Congress, unions were viewed with hostility and disfavor, and labor was made the scapegoat for many of our ills. But the November elections brought about a salutary change in the attitude toward unions, in the climate of labor-management relations. Let me give you just one example of this:

The Textile Workers Union of America has been the collective bargaining agency for the workers of the Celanese Corp. of America for many years. In August of last year the union negotiated a wage increase, amounting to about 15 cents an hour, for employees of the major rayon yarn producers in the United States. These included American Viscose Corp., Industrial Rayon Corp., and the Celanese Corp. of America. This action established a pattern for increases to be applied elsewhere.

Some time before this, the union had been negotiating with the Celanese Corp. at its plant in Rome, Ga. Local management in Rome refused to make any counterproposals to the union's offer and indicated that it would wait for the establishment of the pattern by the parent plant in Cumberland, Md. However, when application of the pattern was discussed with the Celanese management in Rome, the company reneged on its agreement to accept the pattern, offered a much lower increase, and, in effect, told the union it could "take it or leave it."

A strike vote was then taken among the workers in Rome, although the union offered to suspend strike action if the company would agree to arbitration of the dispute. The company refused to arbitrate, and the strike began on August 14, 1948.

During the strike the company repeatedly refused mediation, either in Rome, or in Washington, where both parties had been invited to meet with Mr. Cyrus S. Ching, director of the Federal Conciliation Service. The union had wired Mr. Ching its immediate acceptance of his invitation. This was the first time a company had ever refused a requested meeting with Director Ching. The company insisted that the matter be settled at the local level, although it refused to meet for such purpose in Rome.

The day Mr. Ching had asked the Celanese Corp. to meet with him and the president of our union in Washington, the company obtained an injunction from the State court.

Some days before, the company had published full-page advertisements and mailed notices to its workers announcing that the plant would reopen on October 26, 1948. Three days later, the company again refused a union offer to meet in order to settle the strike. It proceeded, however, to obtain a total of almost 300 citations for contempt of court. The company took full-page advertisements in the papers announcing "the plant is now operating," and "you are free to enter the plant without threat of interference," but only about 140 workers went back, and the plant did not operate.

Following a court hearing, agreement was reached on the interpretation of picketing activities, particularly with respect to clear and free access in front of the employers' main entrance gates. The union pickets observed this joint interpretation to the letter, but Celanese continued with the contempt citations.

Daily hearings were held on these contempt citations and two union officers were sentenced to 20 days in jail and fines of $200 each. Several days later, 11 local union officers and members were sentenced to varying jail terms and fines.

During the strike the 10-year-old son of one of the strikers was shot by a scab, who mistook the child for his father.

The plant still remained idle, and the company's advertisements about the "plant's reopening" were replaced with warnings that employees who failed to return to work—on the company's terms—would lose their life- and health-insurance policies.

Suddenly, on December 8, 1948, the company capitulated and agreed to meet with the union representatives in Rome. At that meeting, the Celanese Corp. granted its workers in Rome the same increase it had granted its workers in Cumberland.

Sponsors of the Taft-Hartley Act have repeatedly claimed that their intention was merely to correct so-called inequities or imbalances they believed had developed in labor-management relations under the Wagner Act. Actually, however, the act has weighted the scales so heavily against labor that the unions cannot function with anything near the effectiveness or the efficiency they ought to have.

If it is the intention of your committee, and of the present Congress, to destroy the labor movement, then all you need do is to leave the Taft-Hartley Act on the statute books in substantially its present form.

But if you believe that the labor movement is an integral part of a free America, then the Taft-Hartley Act must be repealed in its entirety, and the Wagner Act must be restored.

STATEMENT BY JOHN TISA, OF THE FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, CIO

This international union is submitting this statement particularly because this committee heard testimony the other day from one Hank Strobel, who appeared before you in the guise of a working farmer to argue in support of the Taft-Hartley Act. We think this committee should know something of the unsavory and vicious antilabor history of this individual who posed before you as a plain dirt farmer concerned with the havoc which so-called labor bosses have caused to California agriculture. This history is convincing proof that Taft-Hartley has opened the doors wide once more for those, who like Hank Strobel, are determined to weaken and destroy the labor movement.

In addition, we wish to place before this committee the facts concerning the relationship between this union and a typical large corporation, the R. J. Reynolds Tobacco Co., which will show how Taft-Hartley has made it possible for such corporations to destroy collective-bargaining relationships which the union has struggled for years to create.

Turning back to Mr. Strobel, the impression he sought to leave with you is that he is and has been just a farmer trying to make a hard and honest living in the face of the depredations of labor bosses. Unfortunately for Mr. Strobel, his labor-baiting, labor-hating history is enshrined in the records of other congressional committees.

The Associated Farmers of California has been notorious since its exposure by the LaFollette Civil Liberties Committee some years ago as an organization which has existed for the purpose of fighting unions by the use of violence, intimidation, thuggery, espionage, and all of the other methods traditionally used by antiunion employers' associations. This same Mr. Strobel has been intimately connected with the Associated Farmers and related employer organizations in California from the beginning. In fact, Mr. Strobel was started on his career as a "farmer" by specializing in breaking unions and smashing strikes.

These facts and others will be found in a report of the Committee on Education and Labor pursuant to Senate Resolution 266 (74th Cong.), parts IV and VIII: "Employers' associations and collective bargaining in California." As far as Mr. Strobel's original connections with these employer organizations are concerned, this report says:

"As already described in this report, Henry L. Strobel entered the employ of the Grower-Shipper Vegetable Association on June 1, 1936, at $300 per month. This arrangement continued through October 1937, when the Citizens Association of the Salinas Valley agreed to pay one-half of his salary. Ostensibly Mr. Strobel was in charge of a statistical bureau, but, as this report has shown, his activities were chiefly in the field of labor relations for the two employers' associations. In the summer and fall of 1939, the citizens' association, pressed by financial difficulties, wished to be relieved of its share of Mr. Strobel's salary. In addition, it felt that his activities had taken on a State-wide character and should be underwritten by other groups. Mr. Strobel remained on the pay roll of the two associations through December 31, 1939, but effective January 1, 1940, Mr. Strobel's antiunion activities, which have been expanded to cover the State, are now supported by an annual fund of $10,000 financed by organizations and individuals in other parts of California as well as by the two Salinas associations" (pt. VIII, p. 1365).

In 1936, about 3,500 workers who pack lettuce in the Salinas Valley of California for shipment to market organized themselves into an American Federation of Labor union and struck against the shippers. The LaFollette committee report details the manner in which this strike was provoked and then smashed by the employers by the use of every strike-breaking device in the modern arsenal, from the organization of fake citizens associations to the use of open violence, terrorism, and tear gas.

And who was it that managed this campaign for the employers? Farmer Hank Strobel:

"The county unit (Monterey County) of the associated farmers was revived at this time with the aid of the Grower-Shipper Vegetable Association, whose employee, Mr. Strobel, organized and led it, becoming its first president. These new organizations aroused the shippers, the growers, and the business community by antiunion propaganda" (pt. IV, p. 480).

And here are some—by no means all—references which will sufficiently show Strobel's true policies and activities:

"Mr. Strobel, the first president of the association, stated in his account of the formation of the Grower-Shipper Vegetable Association in 1930 that one of the first official acts of the new association was to reduce wages of field help * * *" (pt. IV, p. 472).

"The association's arsenal for combating trade-unionism during strike crises contained all the usual weapons such as labor spies, guards, strikebreakers, and propaganda" (pt. IV, p. 477).

"Since the Grower-Shipper Vegetable Association has felt that the only way to control the labor supply is through the open shop, the recruiting of labor for this district has been subordinate to and correlated with the general problem of maintaining the open shop. Individuals, groups, and new nationalities have been imported into the district (Imperial Valley) to break strikes and in the hope that they might resist the magnetic power of the union movement in Salinas" (pt. IV, p. 480).

"The labor policy of the Grower-Shipper Vegetable Association was essentially simple. Its primary purpose was to maintain in the hands of employers in the lettuce industry a maximum control of labor costs free from the interference of effective employee organization and collective bargaining" (pt. IV, p. 488).

Mr. Strobel became so successful at his specialty of breaking unions that "the 1936 Salinas strike provided a pattern for much of the associated farmers activities in succeeding years" (pt. VIII, p. 1330). A few more quotes will serve to show the kind of "law and order" which Farmer Strobel helped extend throughout all the farming regions of California:

"At the shippers' meeting on August 27, the board of directors of the Grower-Shipper Vegetable Association was authorized to appoint a committee to make all plans for the conduct of the strike. The plan as finally adopted envisaged taking over all packing operations by the association for the duration of the strike and concentrating these operations in one place in Salinas and one place in Watsonville. The Salinas Valley Ice Co.'s plant and sheds were used in Salinas and the Marinovitch and Travers & Sakata sheds in Watsonville. The plan called for barricading these centers with high fences and employing professional guards to protect the property. Imported strikebreakers worked, lived, and ate within the barricaded area" (pt. VIII, p. 1351).

"In one sense, the shippers' decision to pool their packing and shipping operations during the strike proved expensive as the association had to pay out $231,309.13 in overhead expenses. To mention a few of the items, equipment and construction alone totaled $61,117.30, the transportation of employees $4,447.55, and the bill for professional guards hired by the association came to $48,935.37" (pt. VIII, p. 1353).

"In preparation for the 'Battle of Salinas,' a supply of industrial munitions was laid in, professional guards were hired and deputized, and detectives were installed" (pt. VIII, p. 1358).

"The San Francisco Examiner reported that on September 15, 1936: 'Fighting today saw scores of pickets partly overcome by tear and nauseating gas; 2 men injured seriously enough to require hospital treatment and 16 of the rioters were in jail.' The following excerpts describing the 'Battle of Salinas' are taken from the decision of the National Labor Relations Board: 'Without any warning to the crowd, when its nearest members were still about 75 feet away, the officers suddenly opened fire with their gas riot guns. The gas drove the crowd back in the direction of Main Street. Somewhat later in the morning a convoy of trucks * * * had to stop for a traffic light. A large crowd, many of whom had been driven in this direction by the gassing at the lower end of Gabilan Street, had already gathered around. When the convoy stopped, some of the bystanders ran out, cut the ropes holding the field crates on the trucks, and pulled two or three dozen off. * * * This seems to have been the signal for the commencement of another series of gas attacks. All along Gabilan Street from the enclosures to the corner of Main Street, a distance of about five blocks, gas bombing went on, particularly as convoys came through. Groups of as few as two or three were attacked with no apparent justification. At one time people were pursued into a block off Gabilan Street from both ends, and there subjected to gas bombing from two directions. * * * The gassing continued into the early afternoon and was resumed later" (pt. VIII, p. 1359).

"The California Magazine of Pacific Business reported that the 'doughty Hank Strobel' drove the first load of 'hot lettuce' through the picket lines" (pt. VIII, p. 1361).

Aside from the La Follette committee, the National Labor Relations Board also issued a decision and order with respect to the 1936 Salinas strike in which it found Mr. Strobel's association had engaged in a variety of unfair labor practices (15 N. L. R. B. 322). Among other things, the Board found that before the strike Strobel had hired a private detective agency "to find out what they could" about the union's programs, policies, and activities (15 N. L. R. B. 354), and that Strobel had not told the truth on the witness stand:

"Early in June Strobel was hired by the Grower-Shipper Association to promote better relations between the shippers and the farmers. It seems more than a coincidence that almost at once thereafter he became president of the Associated Farmers of Monterey County, a local organization which had been moribund for about 2 years but which, under his leadership, proceeded to revive. while, at the hearing, Strobel steadfastly denied receiving any instructions or suggestions from the Grower-Shipper Association to embark on this course, the inability of the usually precise Brooks to specify what Strobel was told to do, the fact that Strobel received no pay from the Associated Farmers but spent considerable time working for them while receiving his regular monthly salary from the Grower-Shipper organization, and the admittedly complete harmony between the objective of the two bodies belie his denial" (p. 339).

And because of the gruesome picture of naked violence it presents, we believe that despite its length this committee will be interested in the following quotation from the Board decision which completely exposes Strobel's defense of Taft-Hartley because it protects "the individual worker" from the 'labor bosses:"

"Early in the morning of the 16th, groups of persons appeared on Gabilan Street heading for the enclosure. At the time of the occurrence to be described, one witness estimated that they numbered about 50 individuals in the blocks close to the enclosure. No trucks had yet appeared, and there was no violence or offer of violence by the crowd. The police were on hand near the entrance, and with them a motion-picture camera crew and their apparatus, evidently waiting for some action shots. Without any warning to the crowd, when its nearest members were still about 75 feet away, the officers suddenly opened fire with their gas riot guns. The gas drove the crowd back in the direction of Main Street.

"Somewhat later in the morning a convoy of trucks, driving in from the north of town, instead of following the usual truck route, drove down Main Street to Gabilan Street. At this corner, which is the center of the town, the convoy had to stop for a traffic light. A large crowd, many of whom had been driven in this direction by the gassing at the lower end of Gabilan Street, had already gathered around. When the convoy stopped, some of the bystanders ran out, cut the ropes holding the field crates on the trucks, and pulled two or three dozen off. The trucks got away, leaving large piles of lettuce and crates in the street.

"This seems to have been the signal for the commencement of another series of gas attacks. All along Gabilan Street from the enclosures to the corner of Main Street, a distance of about five blocks, gas bombing went on, particularly as convoys came through. Groups of as few as two or three were attacked, with no apparent justification. At one time people were pursued into a block off Gabilan Street from both ends, and there subjected to gas bombing from two directions. This block contained the Labor Temple, headquarters for the Central Labor Union. When the crowd retired into the building, bombs were thrown inside.

"The gassing continued into the early afternoon and was resumed later. An active and presumably enthusiastic participant in these occurrences was George F. ('Jimmie') Cake, Pacific coast representative of Federal Laboratories, Inc., supplier of most of the gas equipment. Cake had foresightedly secured a deputy's badge and proceeded to 'consume' some of the goods which he had sold to the city and county.

"The impression of these events obtained from the record is one of inexcusable police brutality, in many instances bordering upon sadism" (15 N. L. R. B. 350).

Mr. Strobel introduced himself to this committee by saying. "My name is Hank Strobel. I am a farmer from Monterey County," and then he went on to tell you what a good thing Taft-Hartley is for the farmer and "the individual worker." In view of the record, wouldn't it have been more accurate for him to have said: "My name is Hank Strobel. Although I pretend to be a farmer, I am really a specialist in breaking unions. I believe in low wages and long hours for 'the individual worker' and that is why I am against unions. If 'the individual worker' joins a union, I hire spies to find out what is going on and arrange matters so that a strike may be precipitated prematurely so that I can break the strike and smash the union. I know all the rules for accomplishing these objectives. including the use of tear gas and other forms of violence against 'the individual worker.' I hated the Wagner Act in its original form because it protected labor's right to organize, interfered with my activities, and even led to a decision in which it was stated that I had not told the truth on the witness stand. I am in favor of Taft-Hartley because it makes it much easier for me to achieve my objective of destroying labor unions."

So much for Mr. Strobel's history. In his testimony before you, Mr. Strobel also made several references to this international union. He discussed what he called a jurisdictional dispute in the California canneries in 1946 and claimed that the canneries and farmers suffered losses of essentials crops. The committee should know that what Mr. Strobel refers to as a jurisdictional dispute was in fact an attempt on the part of workers in the California canneries to select the union they wanted to represent them. This attempt was defeated by acts of collusion between agents of the Government and the same type of employer groups represented directly by Strobel.

Whenever a perishable food commodity is involved in a strike situation, employer propaganda seeks to find a responsive audience by the use of propaganda campaigns claiming that essential food is being lost, spoiled, etc. In 1947, a Special Subcommittee To Investigate Labor Practices in the Food Industry (a subcommittee of the House Committee on Education and Labor) heard numerous cannery employers on the west coast testify concerning incidents in the California canneries in 1945 and 1946. In these hearings, members of this subcommittee questioned these witnesses very closely to establish whether any food was lost. In questioning J. Paul St. Sure, attorney for the California Processors and Growers—the association of employers involved in the 1945–46 cannery situation—Congressman Wint Smith, chairman of the subcommittee, stated: "Now I was rather attentive to the statement that during this 1945–46 period there was no loss to the grower by reason of this jurisdictional dispute." (Hearings before a Special Subcommittee of the Committee on Education and Labor, House of Representatives, San Francisco, vol. 1, p. 230.) St. Sure had previously stated, " * * * we were able, despite the very complex labor situation in which we found ourselves, to operate without serious loss even during the later part of the war period when food processing was so essential" (p. 229).

Mr. St. Sure, in answer to Congressman Smith's comment on the fact that no losses were suffered, then delivered himself of an analysis of the manner in which an employer's association can operate to prevent loss to any single employer. His remarks are not only a complete answer to Strobel's charges but are also highly pertinent to the committee's consideration of the secondary-boycott provisions of the Taft-Hartley law. Mr. St. Sure demonstrates in the quotation which follows the formula by which an organized group of employers can defeat a strike against any one of them. He said:

"Yes; that was primarily the result of what we believe was an experiment which demonstrates the validity of and the desirability of joint employer operation in situations of this kind. It is the only way that we know that we can equalize, first, economic bargaining positions, and, secondly, that we can avoid losses within an industry short of a complete industry shutdown. In 1937 and 1941 we had economic strikes in the industry, and we had some experience at that time endeavoring to prevent grower loss and packer loss by diverting from the field the product which had been purchased from the farmer to some other cannery which could handle it. It was believed that it would be difficult, let us say, for the California Packing Corp. to pack for the Libby-McNeil Co., and for Libby-McNeil to pack for some farmer co-op, but we found it could be done; and the procedures which were developed during those earlier years were actually brought to almost perfection in 1945. An industry committee was established, with responsibility for diversion of product, and, in the event there was a shutdown of a plant in any area, all other plants in the group, up to the maximum plant capacity they might have, accepted the produce and packed it for the account of the struck packer, without profit; in order, first, to protect the grower from loss; second, to protect the operator from loss of his product and his market, and likewise for the purpose of effectively providing a method of combating the union pressures which were being applied by keeping the industry going" (p. 230).

The secondary-boycott provisions of the Taft-Hartley law force workers to fit in neatly with exactly the type of employer arrangement St. Sure describes. In the case of the situation he discusses, lack of economic strength on the part of the workers kept them from completely shutting down the operations of the California Processors and Growers and refusing to handle "hot" goods shifted from plant to plant. Had the Taft-Hartley law been in effect at the time of this dispute, it would have been illegal for the workers to take such action even if they had had the economic strength to do so. Yet why should one employer who makes such mutual arrangements with another to break strikes be given legal protection against peaceful measures which the union might take against him?

In the light of the extremely lucid exposition of the manner in which the canning industry prevented the loss of crops during the dispute, the committee can evaluate the general value of Strobel's testimony that the California canners were "tied up for 30 to 60 days in jurisdictional disputes" and that the entire spinach crop was lost. As we have shown, this is not the first time that Strobel has not been exactly accurate even under oath.

Following a general attack on all of those who had organized agricultural labor or workers engaged in processing farm products, A. F. of L., CIO, or otherwise, Strobel accuses FTA of striking against the asparagus growers in 1948.

The accusation is quite true. FTA is proud of the fact that some 5,000 asparagus field workers became effectively organized for the first time in 1948. The Associated Farmers have little reason to point with pride to the fact that the asparagus growers refused completely and finally to grant recognition to the union, which they readily admitted represented their employees. Since agricultural workers have never been covered by any Federal or State law which protects their right to bargain, the only recourse they had was to strike. This strike for recognition—not for a "100-percent closed-shop contract," as claimed by Strobel—was entirely similar to the struggles which labor was forced to conduct against antiunion employers in the 1930's when refusal to recognize unions was one of the common causes of strikes. This refusal is still the basic program and reason for existence of the Associated Farmers. What Strobel has done in his testimony, therefore, is to show you that his basic program is still the same as it was in Salinas in 1936, violent antiunionism.

In referring to the strike of the asparagus workers and to other strikes of agricultural workers in his testimony, Hank Strobel has performed a service. He has brought before Congress once again the fact that agricultural workers are pariahs as far as Federal laws are concerned. There will continue to be agricultural strikes and they will increase now that the labor shortages of the war pariod are over, until the time when legal protection of the right to organize is extended to these workers.

We turn now to our relations with the R. J. Reynolds Tobacco Co. of Winston-Salem, N. C., to present to you one of the clearest examples of big business use of the Taft-Hartley law to end collective-bargaining relations with a union.

The Reynolds Co. is, as you know, one of the kings of the Tobacco Trust. It is the largest tobaccor firm located in one city in the country. Its plants sprawl over scores of acres of Winstom-Salem, which it dominates economically, politically, and socially. At peak employment, more than 12,000 workers are on the Reynolds pay roll. Obviously the wages and working conditions of these workers set the tone for business conditions in Winston-Salem and a huge area around it.

Before 1944, the workers at Reynolds had made sporadic attempts to organize over a period of years. In 1944, they succeeded in winning recognition through the orderly use of the National Labor Relations Board, which was then operating under the Wagner Act. The Taft-Hartley Act was still in the future, and though the company used all of the standard devices for stalling recognition of the union, it signed a contract with FTA Local 22 after the workers had voted for the union by a better than 2 to 1 majority.

The first contract brought a number of gains to the workers. Seniority was recognized for the first time. Grievance-adjustment machinery was set up. An arbitration system was established. A wage case was taken to the National War Labor Board and a substantial improvement in minimum wages was won, the rate being set at 55 cents an hour.

These gains were made without strike or stoppage. The second contract was negotiated in 1945, with the main improvement bringing time and one half pay for work over 8 hours in 1 day and 40 in 1 week. The third contract, negotiated without strike or stoppage and also without intervention of any Government agency, brought $3,000,000 in wage gains to the workers and the community. A minimum wage of 65 cents was set for all workers, including those in the leaf houses and other seasonal tobacco trades. These rates, incidentally, were the highest ever secured for this kind of work in the Tobacco Belt.

All of these gains were reflected in gains to the city of Winston-Salem. Retail business improved. The workers bought more food, clothing, and other necessities. Unlike Reynolds, the workers' wages are spent on immediate needs, and spent with the merchants of the home community.

Reynolds' profits, in fact, did not suffer from its collective-bargaining relations with FTA Local 22. By 1946, Reynolds net profits after taxes were close to $28,000,000 which was 42 percent above 1945. Price increases on cigarettes were due to add at least another $45,000,000 in the next year without the necessity of producing any more cigarettes. Dividends stood at 20 percent, while top executive salaries ranged up to $200,000 a year.

In April 1947, the union served the regular notice for renewal of the contract. A wage increase of 24 cents was asked, plus other gains. The Reynolds Co. flatly refused to make any concessions, even though the wages it paid averaged 21.9 cents an hour below the national level in the cigarette industry.

All appeals to the company for genuine collective bargaining failed, and the workers were forced to go on strike. After 38 days of strike—the first in the history of FTA relations with Reynolds—an agreement was signed bringing the workers roughly 12 cents an hour in wage increases.

By this time, the shadow of the Taft-Hartley law was lengthening over collective bargaining in the United States. The Reynolds Co. was quick to take advantaage of the new situation. Provisions of the contract were steadily ignored. Workers weer arbitrarily laid off. Seniority was ignored. Grievance adjustment machinery, carefully built up over the years, was shunted aside.

In 1948, the company, one of the richest and most profitable companies in the world, announced bluntly that there would be no more contract between it and FTA Local 22. Union recognition, won by a 2 to 1 election and certified by the United States Government was withdrawn. Twelve thousand workers—and the community in which they live—were left without the protection and the security that a union contract brings.

Relationships between the workers and the company have steadily deteriorated since the passage of the Taft-Hartley law. Lay-offs and arbitrary firings without regard to seniority have become the rule. Speed-up of the workers has increased without check. At present, Reynolds workers are employed only 4 days a week, although the company boasts that its cigaret production is still at the top of the list.

Typical of the Reynolds Co. attitude of its workers since passage of the Taft-Hartley law was the treatment of Mrs. Carrie Speaks, a vice president of FTA Local 22, who was suddenly fired in February 1948, for allegedly passing four defective packages of cigarettes. The value of a package of Camels before taxes is about 4 cents. Mrs. Speaks had 15 years of seniority in Reynolds.

Mrs. Speaks was fortunate, the arbitrator held that she had been wrongfully discharged, saying: "For a person who has some 15 years of service with the company, and service which on the whole seems to have been satisfactory, it would seem reasonable that so extreme a penalty as discharge would be imposed only after the fullest deliberation and only after the exhaustion of all other measures."

Another Reynolds worker, this time with 28 years' service, was not so fortunate. He was summarily discharged for allegedly stealing a package of Camels. This worker had joined FTA Local 22 in 1943. The theft was not proved, but lacking the protection of a union contract, he remains without a job.

These two instances are typical of the intimidation and insecurity that are the rule in the absence of orderly contractual labor-management relations. The tearing up of the union contract by Reynolds Tobacco was made possible by the Taft-Hartley law. The effect on the individual worker is tragic. Twenty-eight years of service in one plant of one industry does not fit him for other work, and in a one-industry community this can mean permanent unemployment with its bad social consequences.

The effect on the community in which such events take place is, of course, far more widespread. Due to the Taft-Hartley law, and the way in which it is applied by a ruthless corporation, whole communities can and do revert to the status of company towns, where the corporation rules the city and its people with an iron dictatorship.

The lack of stable, contractual labor-management relations produces very bad effects in any community. We have selected the case of the R. J. Reynolds Tobacco Co. of Winston-Salem, N. C., not only as an example of damage done to the interests of the workers involved but also to the community as a whole.

In place of orderly contract relations, we find confusion and chaos. The union, which has helped both workers and community to a better status, is now shut out by a company which acts within the framework of the Taft-Hartley law to lower the wages and worsen the conditions of the workers and the community where its profits are made.

We submit that the repeal of the Taft-Hartley law and the restoration of the Wagner Act must be carried through at once as the first step toward restoring the rights of American workers to the men and women of Winston-Salem, N. C. Taft-Hartley is an invitation to antiunionism which individuals like Strobel and large corporations like Reynolds have shown they know how to use.

STATEMENT OF JOSEPH CURRAN, PRESIDENT OF NATIONAL MARITIME UNION OF AMERICA, CIO, AND CHAIRMAN OF CIO MARITIME COMMISSION

I am making this statement for the consideration of the committee in my official capacities as president of the National Maritime Union of America, CIO, and as chairman of the CIO Maritime Committee, composed of the National Maritime Union of America, Industrial Union of Marine and Shipbuilding Workers, National Marine Engineers Beneficial Association, International Fishermen and Allied Workers of America, American Communications Association, and American Radio Association.

I urge the desirability of removing whatever present restriction is deemed to exist on prevailing employment practices in the maritime industry, and the necessity for eliminating any doubts as to its legality by repealing the Taft-Hartley Act and restoring the Wagner Act. I also submit our experience that in the so-called national emergency in the maritime industry last year, which called forth the application of the injunction provision of the Taft-Hartley Act and imposed an 80-day waiting period, no constructive purpose was achieved. Instead, additional problems were generated, delaying and hampering agreement.

As the head of a union which has been victimized by the application of the national emergency injunction provision of the Taft-Hartley Act, I feel particularly qualified to testify that the Taft-Hartley Act contributed neither to industrial peace nor to effective collective bargaining. On the contrary, it introduced confusion, conflict, and chaos.

The threat to the existence of the hiring hall practice in the maritime industry, as interpreted by the National Labor Relations Board under the Taft-Hartley Act, is an illuminating example of the unrealistic approach of the act to the problems of labor and management in the maritime industry. Here is a practice which had been developed in the last decade to overcome the historical evils attendant upon the hiring of seamen. Yet the hiring hall, which took the place of "crimp joints" and other even less savory institutions, is, in the view of the National Labor Relations Board, prohibited under the Taft-Hartley Act. This created a situation desired neither by the ship operators nor the unions, yet, by the act of the Eightieth Congress, the maritime industry was threatened with being thrown back to the inhuman conditions which deprived seamen of dignity and security and relegated them to paying "blood money" for jobs while groveling for a chance to work.

The desirability of continuing the present hiring hall practices was attested to by representatives of the shipowners at the hearings before the President's Fact-Finding Board appointed under the Taft-Hartley Act in connection with the dispute between the maritime union and the shipping interests last year. At that time it was conceded that even though the merits of continuing these practices were acknowledged, the ship operators were then unwilling to continue them by reason of an opinion of their counsel that the employment practice clause of the contracts was in violation of the Taft-Hartley Act. Except for the last-minute agreement on August 18, 1948, to continue the present employment practices, subject to a decision of the United States Supreme Court on its legality, the Nation would have faced a maritime strike on this principal issue after September 2. A national emergency would, therefore, have been created by operation of the Taft-Hartley Act. This, mind you, because the Taft-Hartley Act was seeking to prohibit a practice that both parties desired to continue. This strike would surely have taken place last fall at the end of the 80-day injunction period unless the hiring hall was preserved. Such a strike would have been the principal contribution of the Taft-Hartley Act to industrial peace in the maritime industry.

What is this hiring hall, for which the maritime unions were prepared to strike? In the report of the House Ways and Means Committee to Congress in 1946, on the subject of providing equal treatment of seamen and nonseamen under the employment insurance laws of the various States, it was stated: "Under the contracts in effect between the maritime labor unions and the maritime employers, the hiring hall is the normal agency through which the employer recruits seamen and, in some cases, licensed personnel." It further described the hiring hall as "the established employment procedure" of the industry.

In an industry where stability of employment does not exist, where personnel turn-over is a constant factor, some participation in the hiring process by a union is indispensable if organization is to exist at all. No comparison can be drawn between the union-security problem of a union representing factory workers, for example, and a maritime union's need for a hiring hall. The first is essentially a device to protect the status of the organization and thereby to enable it more effectively to promote the welfare of its members.

The hiring hall, on the other hand, exists primarily to protect seamen against discrimination—not only for union activity, but for race, creed, color as well. It is also the only tested means of protecting seamen against employment practices which in the past were notorious. It was the means of putting an end to hiring seamen through crimps, boarding houses, saloons, of forcing them to pay for their jobs, either with money or by catering to shipping masters. It put an end to the shape-up, and of the practice of shipping workaways.

It is a commonplace fact that every major maritime strike revolved about the hiring hall, and despite the fact that in the early days of modern organization in the industry, strike after strike was lost, seamen continued their struggle until the hiring hall became an accepted practice.

Expressing the wishes of their members, the maritime unions have fixed, as one of the conditions of employment, that seamen are to be obtained only from their union hall. Since job seeking is a need which recurs constantly in the industry, it assumes an unusual importance. Instead of submitting to the need of searching for jobs at company offices, at docks, at the thousand and one places where a seaman in the past found employment, now, through their union, they demand that they be hired through their organization.

Should they be compelled to obtain work in the manner dictated by the Taft-Hartley Act as applied by the National Labor Relations Board, seamen, in effect, would be compelled to surrender the right to bargain on the terms for which they will work and to withhold their services unless satisfied. When men are forced to work under conditions in which they have no voice, they are no longer free. If they cannot refuse to defend their dignity against job-begging, they have lost their ability to protect themselves. The heart of maritime labor organization is the hiring hall. It is the nexus between the union and the men on the ships. When that is destroyed, the men are dispersed; they lose effective force.

It is impossible to keep a seaman forever on board his ship. Eventually he must leave, for rest, for recreation, to see his family. Unless he is replaced by another seaman from the union, the door is wide open for the introduction of nonunion elements. The shipowner is let free to subvert all union influence.

In sum, therefore, to outlaw the hiring hall would have two results. The seaman would no longer be free to contract for the sale of his services. He might no longer, through his bargaining agent, make it a condition of working that he be hired in rotation from lists maintained by his union. He would have to offer his services for acceptance in whatever manner the employer elected.

The second result would be that he had lost the services of his union. Although the right of organization and to bargain collectively are basic rights, constitutionally protected, he might not even discuss the question of hiring. An area of bargaining essential to him would be forcibly removed from his reach. His union would be permitted to negotiate wages and hours, but not the manner in which he would receive employment. At the very outset of the employer-employee relationship, he would be cut off from the assistance of his organization.

To appreciate the unremitting intention of seamen to retain the hiring hall, we must consider the nature of a seaman's employment. When a seaman boards his ship, he is completely dependent on its owner or master. When the shoreside worker finishes his day's work, he is a free agent. But the seaman depends upon the employer for food and lodging as well as employment. He lives at his work without means of visiting home or partaking in the daily life of his family. He is subject to order and discipline not only at work but during leisure hours as well.

When a shore worker differs with his foreman, he is always free to quit on the spot. A seaman must continue obeying orders at the risk of being locked up or charged with mutiny.

The Maritime Labor Board report to the President and to the Congress on March 1, 1940, summarized these conditions as follows:

"Legally the seaman is restricted. Once he signs shipping articles he becomes a member of a group apart whose rights and duties are closely circumscribed by a special code of laws. Economically he is insecure; his right to industrial self-government is often unrecognized and his collective bargaining challenged, especially when in conflict with navigation laws. Politically he is virtually disfranchised owing to frequent absence at election time. Yet, no other group of industrial workers is asked, or is expected, to show the compliance, discipline, loyalty, courage, and the spirit of self-sacrifice, demanded of seamen by the employer and the public. Taking his cue from the traditional status of the seamen, the employer often regards him as irresponsible and treats him accordingly. Instead of encouraging responsible unionism by conferring responsibility, many employers assume the traditional disciplinary role in preference to recognizing that self-respecting equality is the essential condition of responsible contractual relationship. And the public, uninformed of the social and economic factors underlying sporadic outbursts of strikes, accepts the superficial explanation that they are simply due to subversive or irresponsible agitators."

Under these conditions the special need for the present kind of hiring practices for seamen through the union hiring hall can better be appreciated.

In the light of these considerations, it should be apparent that not only the protection of seamen but the existence of the unions as an instrument for the seaman's protection would have great difficulty surviving elimination of the union hiring hall.

Examine the way in which the union hiring halls operate. Under the rotating system, the unemployed seaman who has been longest without work is first to secure employment when a vacancy occurs. Employment is based upon priority of registration at the hall. Ship operators notify the hiring hall of the number of men needed in various ratings. The man at the head of the list for that particular line of work is sent to the representative of the company in question. He may not insist upon shipping on any particular vessel or for any particular company.

An applicant may twice turn down a job offered him without losing his place on the registration list, but if he declines the third job offered him, his name is dropped to the bottom of the registration list. If the union has not supplied a replacement within an hour before sailing time, the companies may obtain the needed personnel for other sources.

Such a system equalizes opportunities for placement in the same occupation and prevents favoritism and collusion. It does not postpone immediate reemployment of regular employees or those who are absent due to illness or injury or because they are on vacation or leave of absence. This does not interfere with continuous employment but merely provides replacement for those who quit or are unable to ship out again.

Employers can still reject any applicant not acceptable on legitimate grounds such as inefficiency, drunkenness, failure to appear on the job on time, unfitness for employment, continuously bad record and the like.

The hiring hall operates on a fair, honest, and equitable basis, prevents union discrimination or blacklisting and provides equal opportunities for job getting.

Yet, despite the merits of continuing the union hiring hall by contract with ship operators, the Taft-Hartley Act introduces a discordant note. Our first direct contact with the problem developed during the negotiations between the NMU and Cleveland Lake Tankers and Great Lakes Transport and the Texas Co. These contracts, which expired January 19, 1948, contained provision for the hiring hall practice. When the companies were confronted with the union request that this employment practice not be disturbed in succeeding contracts, we were met with the absolute rejection of this request on the basis of a legal interpretation that the Taft-Hartley Act prohibited continuance of the hiring hall.

Negotiations proceeded at a slow and fruitless pace because of this barrier. Finally the union authorized a strike in the Great Lakes in an effort to apply economic pressure. The companies filed unfair labor charges against the NMU as violating section 8 (b) (3) of the act. We were then exposed to the fastest action any union ever had from the National Labor Relations Board. Certainly, under the Wagner Act no union ever had an employer hailed into a hearing as precipitously as was the NMU on the basis of the charges filed by these employers. Despite our protests of insufficient time to prepare and our being tied up with the negotiations covering the Atlantic and Gulf coasts, the Board proceeded with the hearing on the complaint. At the same time negotiations between the maritime unions and the Atlantic and Gulf coast ship operators also bogged down on the issue of the hiring hall.

By June 15, 1948, the refusal of the employers to continue this employment practice became the principal issue for striking the industry. It was obvious that the employers were relying upon the Federal injunction under the Taft-Hartley Act and so avoided real collective bargaining as the deadline approached.

As anticipated by them, the Taft-Hartley Act was invoked and a Presidential Fact Finding Board was designated. At the hearing before the President's Board it again was evident that the employers were depending upon governmental intervention. The principal issue, again, was the continuance of the hiring hall employment practice. On June 14 a court order issued, initiated by the

Federal Government, restraining the parties from making any changes in the wages, pay, hours, terms, and conditions of employment other than by mutual consent. On June 23, 1948, on request of the court, the union and the companies agreed to preserve the status quo during the life of the injunction issued on that date. A similar injunction applied to the Great Lakes controversy.

Just prior to these events, and on June 11, 1948, the Atlantic and Gulf coast ship operators filed a charge with the NLRB that the NMU was engaged in unfair labor practices through its insistence upon renewal of the employment clause. Complaint was quickly issued by the Board and hearings were held. The trial examiner following the ruling in the Great Lakes case and reported against the union. However, no Board order has yet been issued in the Atlantic and Gulf coast case.

No real negotiations took place for the next month, with the ship operators resting on their oars. But, when it was apparent that the union would not abandon its position, the ship operators adopted a more realistic approach to the problem in an effort to avoid the strike which would inevitably have occurred at the end of the injunction period, September 2, 1948.

On August 18, 1948, agreement was reached preserving the hiring hall subject only to a final determination by the United States Supreme Court of its legality. Curiously enough, the very next day announcement was made that the NLRB had, on August 17, 1948, issued an order against the NMU in the Great Lakes case. The petition of the NLRB for enforcement of this order is still pending before the circuit court of appeals.

The conservative New York Herald-Tribune, on August 20, 1948, commented editorially on "The Hiring Halls" in part as follows:

"The Board has rejected the contention that the peculiar characteristics of the maritime industry require union control of employment. Their duty, as the decision points out, is to administer the law as written and not to pass upon the wisdom of its provisions. However, anyone familiar with the shocking conditions under which seamen were employed—including being drugged and shanghaied aboard ship—in the days before the unions were strong will agree that union hiring halls have brought urgently needed reforms, as well as some abuses.

"The decision against the National Maritime Union in the Great Lakes case poses squarely the question of need for revision of some of the terms of the Taft-Hartley Act. We have suggested before that a blanket prohibition against the closed shop, for example, may not be the best way to cure abuses that exist in some closed-shop situations; and experience indicates that there are other parts of the act which need reconsideration. Some provisions need tightening, such as that directed against feather-bedding, and others need to be relaxed or at least clarified."

It is significant that during the injunction period the kind of negotiations, which the employers had previously suspended, took place which would otherwise have been concluded by June 15, the expiration date of the contracts. It was evident that the injunction period was being used in the collective-bargaining process against the unions. Practically on the eve of the termination of the injunctive period, when the unions would have been as free to strike as they would otherwise have been on June 15, agreement was reached, the hiring hall was preserved and wage increases and other improvements resulted.

However, the lapse of time not only caused confusion and uncertainty, but created the additional problem of delayed application of wage and other benefits and of retroactivity. This is a common problem which occurs whenever collective bargaining goes beyond the termination date of a contract. It was aggravated in this case by the fact that several months had passed since the terminal point of the contracts.

Certainly, no one can argue that the Taft-Hartley Act in any aspect contributed to industrial peace upon the basis of this experience. Any speculation that the injunction prevented a June 15 strike is overcome by an examination of the situation on the west coast. There the longshoremen's strike took place at the conclusion of the injunction period of grace being, as it was aptly termed, a "heating up" rather than a "cooling off" time.

It is my earnest conviction and belief that if no injunction had been applied to the maritime unions on the Atlantic and Gulf coasts, the employers would have settled with us prior to June 15 and avoided the necessity for a period of uncertainty, uneasiness, national anxiety, and threatened disturbance.

Any successful effort by law to stop strikes through the use of injunctions makes second-class citizens of the workers who are so repressed. No conceivable justification exists for forcing men to work against their will in a democracy and depriving them of the right to strike. It is the price we pay for living in a democracy.

The practical approach to averting strikes depends upon the capacity of unions and management to reach agreement at the bargaining table and not upon the injunctions and prohibitions of the Taft-Hartley Act. The Wagner Act provided a climate in which collective bargaining could function effectively with a minimum of Government participation. The Taft-Hartley Act has contributed nothing to real industrial peace and its continuance on the statute books will provoke rather than quiet conflict between labor and managament.

STATEMENT OF JOHN GREEN, PRESIDENT, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, CIO, ON THE REPEAL OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947 AND ENACTMENT OF THE LABOR RELATIONS ACT OF 1949

Before discussing the effects of the Labor-Management Relations Act upon this union, it is necessary to bring this committee up to date on the history of the union, and its attempts to stabilize the industry which it represents.

Prior to the passage of the Taft-Hartley Act, we appeared before the United States Senate Committee on Labor and Public Welfare and, at that time, made a statement in opposition to the Taft-Hartley Act. Attached to that statement were two addenda, one of them being a story of shipbuilding stabilization, a history of tripartite bargaining between labor, industry, and Government.

This union has been outstanding because of its demand for some rational framework for collective bargaining in our industry. Our industry is primarily important in its relation to our national defense. We recognized the defense character of the industry as early as 1935, when we first proposed to the Government the creation of a stabilization committee, to establish a fromework for our collective-bargaining relationships. This framework would eliminate most of the violent industrial unrest which had characterized the industry after the First World War, and during the early part of the 1930's.

It was not until a time close to the outbreak of the war, however, that the Government initiated the stabilization committee which we had been requesting for over 5 years.

On November 27, 1940, Mr. Sidney Hillman, at that time Commissioner in charge of the Labor Division of the National Defense Advisory Commission (subsequently appointed Associate Director General of the Office of Production Management), announced the creation of the Shipbuilding Stabilization Committee, composed of representatives of labor, the shipbuilding industry, the United States Navy, the United States Maritime Commission, and the OPM.

At the time the committee was organized, labor shortages were already occurring in certain shipbuilding occupations. This was especially true of ship carpenters, loftsmen, and shipfitters, while there was also an inadequate supply of marine architects, shop electricians, marine gas-engine machinists, and template makers. A 500-percent increase in the total number of workers in the industry was expected by September 1942, according to the estimates of the Bureau of Labor Statistics.

The committee was established, as stated by Mr. Hillman, to explore ways and means of stabilizing employment in the country's shipyards, in order to insure the most efficient and speedy construction of ships for defense. It was generally understood that the committee would undertake a detailed investigation of wage rates and working conditions, with particular emphasis upon the migration of workers from yard to yard, and its effect upon production. At the time the Shipbuilding Stabilization Committee was appointed, it was suggested that if the stabilization plan worked out satisfactorily it might later be applied to aircraft construction. Stabilization was acceptable to all three interested groups. Labor favored it because such a system was akin to its desire for uniformity of pay for equivalent jobs, and the removal of major working conditions from a local area of dispute. The industry saw in stabilization an opportunity to remove one item of competition normally beyond their control—unequal labor costs. Government, of course, wanted more and more ships with stabilized wages and costs.

The first members of the Shipbuilding Stabilization Committee were as follows:

(1) *Labor.*—(*a*) A. F. of L.—Harvey Brown, president of the International Association of Machinists, and John F. Frey, president of the metal trades department; (*b*) CIO—John Green, president of the Industrial Union of Marine and Shipbuilding Workers of America, and Philip H. Van Gelder, secretary of the same union.

(2) *Industry.*—Gregory Harrison, for the Pacific Shipyards; H. Gerrish Smith, president of the National Council of American Shipbuilders, for the Great Lakes shipyards; E. A. Lidell, for the Gulf shipyards; and Prof. H. L. Seward, representing the Atlantic shipyards.

(3) *Contracting agencies.*—Joseph W. Powell, Special Assistant to the Secretary of the Navy (Capt. C. W. Fisher, U. S. Navy, as alternate). Chairman of the United States Maritime Commission.

(4) *OPM.*—Morris L. Cooke, industrial engineering consultant to the Labor Division of the OPM, chairman, and Thomas L. Morton, executive Secretary.

The shipbuilding industry group which met to formulate a policy for the Shipbuilding Stabilization Committee was truly representative of the views of management, because the 21 members present represented 42 yards employing at least 90 percent of the workers in the industry. It cannot be said that management was forced into its participation in the shipbuilding stabilization agreements. All of the parties agreed that the zone standards agreements were to be formulated by national zonal conferences in four ones, and were to be arrived at by a process of collective bargaining resulting in unanimous concurrence with the provisions of the agreements.

At the national conferences called in each of the four zones, the zone standards agreements were worked out. The Government took an active part in most of the negotiations of these agreements, and was signatory to the agreements. These agreements were not local collective-bargaining agreements. Their provisions were inserted, in some cases, and in others incorporated by reference into such local agreements.

All four zone standards agreements set the following types of working conditions:

Standard skilled mechanics' rate on all zones but the Gulf, $1.12; Gulf zone, $1.07.

Overtime rates.

Night-shift premium.

No-strike and no-lock-out pledge.

Agreement on arbitration for all disputes.

A provision against limitation on production.

A duration clause.

In 1942, the membership of the Shipbuilding Stabilization Committee was increased and, in the same summer, a national conference was held to amend all four zone standards agreement. The amendments to the agreements established a wage rate of $1.20 throughout the United States for standard mechanics. They also established the procedure for a yearly wage review to be conducted by the Shipbuilding Stabilization Committee. They established the Shipbuilding Stabilization Committee as the body for the interpretation of and ruling upon the agreements; and they abolished calendar premium days. Further, the zone standards agreements were amended to apply for the duration of the national emergency, as proclaimed by the President of the United States. This was also unanimous.

Because of the issuance on October 3, 1942, of Executive Order 9250, the wage reviews of 1943 and 1944 as outlined by the Chicago amendment to the zone standards agreements, were held by the National War Labor Board. The wage review for 1945 was held by the National Shipbuilding Conference in Colorado Springs, where an 18-cents-per-hour increase was granted by majority vote of government and labor, with management dissenting. However, all parties to the Colorado National Conference agreed that the zone standards themselves could only be amended or terminated by unaniomus consent.

Since the wage review of 1945 was held so late, the Shipbuilding Stabilization Committee voted to hold the 1946 wage review in January of 1947. However, management in the industry, by unilateral determination, was resolved to scuttle the zone standards agreements, even though it was officially determined that the agreements could only be dissolved by the consent of all three parties. When the time came for the 1946–47 wage review, management refused to allow the review to convene, by refusing to have a quorum present at the meetings of the

Shipbuilding Stabilization Committee. In other words, by their absence, they unilaterally abrogated this tripartite agreement.

This union had been attempting, since 1945, to avert a major strike in the industry by having management agree to continue the application of zone standards, even after repeal of the declaration of the emergency. Management refused this continuance, as was their right. Yet, they insisted upon scuttling the zone standards before they had the legal right to do so. (A history of the Shipbuilding Stabilization Committee until December of 1946 is attached herewith as exhibit A.)

The scuttling of the zone standards agreements led directly to the shipyard strike in the summer of 1947. Management, by refusing to allow the convening of the wage review, under the auspices of the Shipbuilding Stabilization Committee, and at the same time, presenting identical demands to the union for 1947 negotiations, seemed to be taking the attitude that "We will bargain nationally, but we will not allow you to do so."

The demands presented to the union in 1947 were identical throughout the country. These demands seemed to be conditioned by the imminent passage of the Taft-Hartley Act. There was no doubt in the union's mind that the passage of this act indefinitely prolonged the shipyard strike of 1947.

This union has had a long and honorable history in attempting to solve the basic fundamental issues which make for peace in collective bargaining. We have grave misgivings as to what will happen in the rest of industry in the United States if restrictive and offensive labor legislation is allowed to continue. We have had our own experience of what effect mere talk of the passage of such legislation had upon our negotiations, upon our industry, and upon our collective-bargaining disputes.

EFFECT OF THE TAFT-HARTLEY ACT UPON THE SHIPYARD STRIKE OF 1947

There is no doubt in our minds that the demands which shipyard management made upon the union in 1947, which led to the shipyard strike, were directly conditioned by the discussion in the Eightieth Congress on the passage of the Taft-Hartley Act.

At a meeting of the IUMSWA wage conference in Manhattan Center, New York, on June 18, 1947, it was brought out by the various negotiating committees that the demands of management upon the union were the same for the following yards:

Bethlehem Steel Co.—all seven yards on the Atlantic coast.
Todd Shipyards Corp.—two yards in the port of New York.
Maryland Drydock Co.
Federal Shipbuilding & Drydock Co.
New York Shipbuilding Corp.

The demands made, which were almost identical, yard by yard, were the following:

Abolition of maintenance of membership, either a provision that good standing was to be recognized only as payment of dues, or complete abolition of union security, this was even before the passage of the Taft-Hartley Act.

Special concessions on seniority for certain preferred employees.

Special concessions on the incentive system.

Modification of call-in pay clauses.

Modification of vacation clauses.

Elimination of supervisors from the bargaining unit.

Elimination of pay for handling and investigation of grievances during working hours.

Elimination of zone-standards references from the collective-bargaining agreement.

Special causes on assignment of work and maintenance of productivity.

Special clauses on union liability in court.

A good many of the demands made by management in the summer of 1947 were identical to the law which was subsequently passed.

For example, a section of the Taft-Hartley Act states that it is unlawful "to cause an employer to pay or deliver any money or other thing of value in the nature of an exaction for services which are not performed or not to be performed."

The employers in the industry were using the above as a pretext for refusing to grant pay for handling grievances during working hours. This is one of the issues which indefinitely prolonged the shipyard strike.

The investigation of grievances prior to presentation to management is a time-honored practice in our industry. Our places of employment are vast, usually covering many acres of ground. An employee-representative (steward) whose responsibility it is to represent the aggrieved person, may be stationed many yards from the point of the supposed infraction.

To present the case properly, he must have time to ascertain the facts. Sometimes, after investigation, he may find that there is no basis for complaint. Then he tells the complainant that there is no grievance. The steward will explain the contract, the Government regulation or shop practices; the worker will be satisfied, at least in part.

If the complaint was justified, the steward would proceed to take up the grievance, usually settling it with the foreman.

In all this, because of adequate investigation and proper action by the steward, there has been little or no friction. There has certainly been no diminution of production. Nor were any festering sores permitted to grow in the field of labor-management relations.

The imminence of the passage of the Taft-Hartley Act (and its passage during the strike) led to an all-out attack upon this custom. Today, because of the language of the act, we have had to incorporate in our agreement some limitations upon grievance investigation. Without the time to investigate thoroughly, a steward refers the grievance to the next higher step. This does two things: first, it clutters up the grievance procedure and, second, it causes delays and thus creates an impression that management is stalling and the grievance machinery cannot function.

The question of the supervisors was another thing which indefinitely prolonged our strike. This topic will be dealt with later in this presentation. The question of call-in pay, because of the section in the act concerning payment for work not performed, became a burning issue during the strike, after the Taft-Hartley Act had been passed.

As a result of the break-down of the grievance machinery, there are wildcat stoppages, demonstrations, etc., which the union opposes, but for which it is expected, by management at least, to assume responsibility. Of course, management forgets that, under the provisions of the Taft-Hartley Act, union responsibility has been made impossible of attainment, because of the ban on the closed shop, and the limitations on the right of the union to discipline its members.

EFFECT OF THE TAFT-HARTLEY ACT UPON THE UNION

The Taft-Hartley Act, in its preamble, says that its purpose is to promote industrial peace, "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." With these objectives no one, in or out of the labor movement, can have a quarrel.

The act has definitely not attained the objectives mentioned in the preamble.. We do not think it advisable to burden this committee with a statement of all the trouble this union has undergone since the passage of the act, or with every single major and minor work stoppage that has occurred since the passage of the act, which was caused by the act. However, there are a number of major effects which the act has had which we think it important to stress.

1. *Effect of the exclusion of supervisory employees from the benefits of collective bargaining and from the protection of the law.*—The national constitution of our union forbids the inclusion of foremen within the union. However, the Taft-Hartley Act excludes all supervisory employees from the benefits of legal protection of collective-bargaining rights. This exclusion even covers work leaders in our shipyards, who are not permitted, under the NLRB interpretation of the act, to be represented by the union. These leaders, many of them, are the founders of the union.

Because of the contraction of the industry after the First World War, and the subsequent expansion during the Second World War, most of the supervisory staff in the industry below the rank of foreman, are members of our union. These are the men who were the original founders and officers of the union. The same ability which made a man recognized by his fellow men as fit for union leadership would normally cause the man to be recognized as fit for industrial leadership.

We are not here talking of ship foremen. We are talking about the little straw bosses who merely have the power to lead a small group of men on a job. Some of them were hourly paid employees, and still remain so. Some of them were on a salary. They were not challenged to any great extent as members of the union until the Taft-Hartley Act came into being.

Naturally, when a company seeks to discredit a union, the first weapon it will use is to strike at the leaders of such union. Where the leadership, because of the composition of the industry, is mostly contained in the lowest ranks of supervision, the passage of the Taft-Hartley Act made it extremely simple for a company to undertake a campaign of wholesale intimidation and discrimination. Virtual reigns of terror prevailed in some of our shipyards.

Let us illustrate by one example. In the Maryland Drydock Shipyard, a good deal of the leadership of the union was in the lowest supervisory ranks, that is, among working leaders and leaders. We had been fighting since 1943 to be recognized as the collective-bargaining agent for this group. (Although the Wagner Act never removed the protection of its prevention of unfair labor practices against the supervisors, the NLRB for some time would not certify unions of rank-and-file employees as the collective-bargaining representatives of supervisors.)

After the Jones & Laughlin case, when the Board decided that the same group which represented rank-and-file workers might also represent supervisory groups, we won an election and were recognized as the representatives of leaders and working leaders. Then the Taft-Hartley Act was passed, which removed even the protection of the guaranty against unfair labor practices from supervisors, and the shipyard strike of 1947 intervened.

Immediately after the passage of the Taft-Hartley Act, and during the strike, the company established, with certain of its supervisory employees, a Maryland Drydock Supervisors' Association and signed a contract with this association.

All of the supervisory employees who refused to cross the union's picket lines during the strike were either demoted or discharged immediately after the strike was over.

When the union brought the case of a great number of these supervisors to arbitration, the arbiter was forced to rule that, under the provisions of the Labor-Management Relations Act, he had no authority to hear the case. In March of 1948 we filed with the NLRB in Baltimore, a charge by this union that, by its intimidation of supervisors and others, the company is clearly seeking to intimidate rank-and-file employees to such an extent that this comes under the unfair labor provisions of even the Taft-Hartley Act. Yet, the Board's Baltimore office has indicated it intends to dismiss these charges, after 1 year of inaction.

The case of the supervisors in Maryland Drydock, under the Taft-Hartley Act, is clearly set forth by some of the statements of these leaders and working leaders. (A few of them are submitted herewith as exhibit B.)

We do not care to inundate this committee with statements of supervisors all over the country. We think that these two statements are clearly indicative of what has been happening under the act.

In the case of the Bethlehem Steel Co., this union has been fighting since the 1947 strike to correct discrimination shown by the Bethlehem Steel Corp. against its leaders and work leaders. Finally, an arbiter's award was recently handed down sustaining the position of the union in this case in all particulars.

After the settlement of the Bethlehem strike, the company and the union signed a side letter of agreement, agreeing that the company would not discriminate against any employee for participation in the strike, and the union would not discriminate against anyone who did not participate. Despite the agreement, the company demoted 74 leaders who refused to scab.

The union brought up the leaders' case under this side letter of agreement immediately after the strike. The decision in favor of the union was handed down on April 20, 1948, ordering the company to reinstate the supervisors and to negotiate with the union on the question of which ones should be reinstated. Negotiations were completely unsuccessful, and the case was brought back to the umpire shortly thereafter. Hearings were held during September, October, and November, and the final decision was handed down in February 1949.

It may as well be stated that the umpire felt so strongly on the matter that, for the first time in the history of arbitration with this company, he assessed future damages if the company failed to comply with the award.

(These two arbiters' decisions are herewith attached as exhibits C and D.)

Had we had to rely upon the Taft-Hartley Act, these 74 leaders would have been without remedy.

No one truly conversant with modern industrial establishments can claim that the wage differentials paid to the lower ranks of supervision are sufficient to repay such employees for their noncoverage by legal safeguards against discrimination, intimidation, and other forms of unfair labor practices. Is a 10 to 20 cents an hour wage differential to preclude a supervisor from supporting a bona fide strike of rank-and-file employees? Is such a wage differential to subject him to discriminatory discharge, unprotected by law, and unappealable to any Government agency? Can the Congress actually mean to go back to the days when blacklists and "yellow dog" contracts will be applied to supervisors?

The overwhelming evidence upon the exclusion of supervisors from the benefits and protection of laws protecting collective-bargaining rights, is that this means discrimination, intimidation, and terrorism among the rank and file.

2. *The Norfolk Shipbuilding Co. case, and the effect of the transfer of the office of general counsel to an autonomous division.*—The Norfolk Shipbuilding Co. case has been going on since 1944, as far as this union is concerned. The introduction of the Taft-Hartley Act caused this case to drag for 2 years, from 1947 until 1949, until court enforcement could be obtained.

In June of 1944, the union petitioned for a collective-bargaining election in the yard of the Norfolk Shipbuilding Corp. The NLRB ordered this election, which then went into a run-off on October 10, 1944. The Board certified the union as the collective-bargaining agent for the yard.

After the union had been certified as the collective-bargaining agent for the yard, we requested negotiations with the company. The company refused to negotiate. The case was brought to the attention (since the war was on) of the National War Labor Board's Shipbuilding Commission, which ordered the company to negotiate. The company still refused to negotiate a contract.

The case was then brought back to the Shipbuilding Commission, and eventually to the National War Labor Board, which handed down the terms of a collective-bargaining agreement in 1945. The company refused to sign the collective-bargaining agreement.

All during 1944 and 1945, the company was discharging union members. The union was continually filing unfair labor charges before the NLRB.

Finally, in January of 1946, the NLRB held a hearing on the unfair labor practice charges. The trial examiner issue an intermediate trial report sustaining the position of the union on April 16, 1946. The company appealed this intermediate report to the full Board. A hearing was held by the full Board and the Board issued an order sustaining the position of the union in August of 1946. The Board order required the reinstatement of all the employees discharged, with full pay for time lost.

The company proceeded to ignore the order of the Board and waited for the Board to take the case to court. However, as this committee will remember, the Board at that time was very much rushed, and just as the Board was about to take the case to court, the Taft-Hartley Act was passed. From the passage of the Taft-Hartley Act, we waited until November 1948 until we were notified that the Board had instituted proceedings against the company in the Fourth Circuit of the United States Circuit Court of Appeals. This was 1½ years since the passage of the act. Presumably, the office of the general counsel was too busy to take the case to court. The union had no right to take the case to court, which we would have done before the case was taken before the circuit court. Naturally, the court ordered the company to comply with the NLRB order.

This type of delay in prosecution of a union's unfair labor practice charges is not a single instance. We have been informed by other unions that the same thing has happened to them in more than one case.

3. *General experience with the workings of the Taft-Hartley Act.*—The unworkability and rank stupidity of many of the sections of the act have been increasingly acting as a goad in our negotiations and in the general functioning of the union.

Our union, while opposed to the act, has complied with its provisions. We needed no act to make our financial statements available to our members or the public, this was always done, or to declare that we were non-Communist.

In September 1941, we incorporated into our national constitution a clause which says, "Communists, Nazis, or Fascists, or members of the Ku Klux Klan, or anyone adhering to these philosophies shall be barred from holding positions of responsibility or authority in this union or any of its subdivisions, and any person advocating the overthrow of the Constitution of the United States shall be barred from office in this union."

At our convention held during February 1948, the delegates instructed our union to continue vigorous opposition to the act, but, at the same time, to comply with its registration provisions. We shall continue to oppose the law, yet, until the law is amended, repealed, or declared unconstitutional, we would like to comply. Under the act and its present interpretation, we cannot.

According to the present interpretation of the act, our financial report must be filed 1 day after the end of the union's fiscal year. This is impossible. We request an extension and the union is granted 90 days in which to file its national financial report and those of its constituent locals. We have over 100 locals who come under the act. We cannot, unless a prohibitive sum is expended for auditing services, complete all necessary audits. Therefore, this union which is instructed by its convention, because of interpretation of the act, may be forced to channel all of its cases involving the NLRB through the national organization, for the locals will have to be in noncompliance, although all of the affidavits will be filed and although the union and its locals have signified the intention to comply.

Employers have used the act to bedevil us in negotiations. One instance comes to mind immediately, that of the Merrill-Stevens Shipyard in Florida.

We have within our ranks many ship-repair employees. These men may not have steady work. Yet they are required to report to their jobs. For a number of years, in order to compensate these workers for their carfare, etc., our contracts mutually agreed to by management and labor, and approved during the war by public agencies, have contained call-in pay provisions which stated that when a worker was ordered to report, and there was no work available, he was compensated for his time and expenses (and some of our members travel considerable distances to report to work) by the payment of a sum representing a specified and agreed-upon number of hours pay.

The Merrill-Stevens attorneys seemed to think that this payment or the payment of an increase retroactively was in violation of the act. Whether it was or not was resolved; meanwhile the negotiations were fruitless and protracted.

There is much red tape and even more silly interpretations. One such insists that sergeant-at-arms are officers of our local unions, even though our national constitution spells out in article IV, section 11, the number and titles of our local union officers. This constitutional provision states "each local shall annually elect a president, vice president, recording secretary, treasurer, financial or executive secretary and three trustees by the vote of the local membership." These constitute our local union officers. Subsequent sections spell out their duties.

In a separate paragraph in the same section is the following: "The president shall appoint a sergeant-at-arms and sentinels to assist him in maintaining order and to see that all members present at meetings are in good standing."

It is evident that a sergeant-at-arms who is appointed and not elected, and whose sole function is to help the president maintain order, is not an officer of the local union. He has no greater responsibility, other than aforementioned, than any other rank-and-file member in shaping policy or in the carrying on of the union's business. But the Board insists that he file affidavits as an officer of the local, even though the local president may choose to appoint a different member at each meeting to serve in this capacity.

This may seem picayunish, but it is a problem for us. Not only is the act, in our opinion, unfair and burdensome to unions, but the interpretations make it even more onerous.

Some of our locals' members are engaged in repairing and maintaining ships. Employment in this field, as in the building trades, is intermittent. Contractors cannot maintain permanent staffs. The union, prior to the passage of the act, maintained hiring halls for the convenience of such employers. In this way, a constant source of labor was available as jobs were let.

This eliminated the vicious "shape-up," with the men waiting around until a foreman chose a "gang." It helped build up a corps of permanent employees; it reduced the casualness of jobs and it helped stabilize waterfront employment. At the same time, it gave the waterfront worker, because of steadier employment, an opportunity to develop skills and competence. It helped stabilize his income and gave him a chance to plan a better home life on the basis of steady income. More important than this, the hiring hall eliminated on the water-front the pernicious and criminal practice of the "kick-back." No longer did a worker secure a day's work by bribing a foreman or by working under the scale.

When ships dock, they need to be cleaned and may have need for minor repairs. These are performed at dock side, and must be done quickly as the ship invariably has a schedule to maintain.

Some days there may be more work than men available, other days, less. By eliminating the closed shop and the concommittant hiring hall, waterfront labor is in serious jeopardy of having to return to the days of the "auction block" with its slave-like conditions of bidding for human labor.

Gentlemen, we submit that according to the protestations of the proponents of the Taft-Hartley Act, the law was designed to promote industrial peace; in this instance it attempts to do this at the expense of human dignity and justice.

In one port we have a local with about 50 collective-bargaining agreements with employers who contract for dock-side work.

Without a hiring hall, these employers, none of whom are gigantic in terms of financial resources, must maintain a crew even if there is no available work, so that these men will be ready when work becomes available. We wonder if this is not a violation of that section of the act which prohibits pay unless work is performed. We do know that this is costly, uneconomical, and solves no problems. The local representing these employees has about 1,000 members. Under "closed shop" agreements, the employers would call the union office and request sufficient workers to perform a specific job. The union would see to it that competent labor was provided, allocating the work so that each member received a fair share of the work on the basis of skills required.

All this is illegal now. Serious problems arise; there is constant bickering and the contractors now vie with each other for particular men. Certainly, this is not conducive to industrial peace.

There is much more that is oppressive to labor in the act. We would like to cite another instance, occurring during our recent strike because of the act. A small group of scabs attempted to form a union, and petitioned for an election while our members were in the picket line. Only the settlement of the strike, made possible by the loyalty of the majority, forestalled the creation, through connivance, of what could only have been a company union.

The act is truly unworkable. The union does not like to bother the Members of the Congress of the United States with its problems, but, as many of you have been administrators, we think you will understand what we mean when we say that the passage of the Taft-Hartley Act has caused us to issue over 100 form letters of instruction to our locals (these are 100 different letters of instruction); has caused us to maintain a new series of files which contain absolutely nothing but locals' filings under the act, so that we can check when these filings are lost, as they frequently are; has caused us to purchase 10 new filing cabinets and all the supplies incidental thereto, and has taken one person full time to do absolutely nothing but see that the locals remain in compliance under the act.

SUMMARY

This union had had long experience in attempting to solve the basic fundamental issues, which cause peace in collective bargaining, on a tripartite basis.

If restrictive and offensive labor legislation and regulation is allowed to continue, the progress of labor relations in this country will be marked by increased strife, increased disruption, and increased accumulation of hatreds which may take generations to wipe out. The Taft-Hartley Act, to our minds, is such legislation. It will not lead to industrial peace. In our own case, it has already led to industrial unrest and intensified antagonism between management and labor.

There is no doubt that the demands which shipyard management made upon the union and which led directly to the shipyard strike of 1947 were based upon a prescience of the passage of the Taft-Hartley Act. The passage of the act in the midst of that strike prolonged the strike for many months.

The Taft-Hartley Act has not attained the objective of promoting industrial peace. The exclusion of supervisory employees from the legal protection of collective-bargaining rights; from protection against discrimination, intimidation, and other forms of unfair labor practices, made it extremely simple for a company to undertake a campaign of wholesale intimidation and discrimination against union leadership, where such leadership is contained in the lower supervisory ranks.

The Taft-Hartley Act, because of the division of powers between the Board and its general counsel, has delayed prosecution and court charges in cases of labor's unfair labor charges against an employer. It has not delayed prosecution of unions.

The Taft-Hartley Act is cumbersome, unwieldy, and many of its minor provisions are completely unworkable. The exclusion of the hiring hall restored, in many instances, the vicious "shake-up" on the waterfront. It returned the hiring of longshore workers to the days of the auction block.

The Taft-Hartley Act has infinitely facilitated the formation of company unions.

The Taft-Hartley Act will mean the virtual end of any union which will strike to obtain legitimate collective-bargaining objectives, because of the recognition of scab labor.

In summary, we must conclude that the longer this law remains on the statute books, the longer will be the period required to erase its history from the minds of labor, and the longer will be the period required to quieten the antagonism and hatreds which have arisen between labor and management as a result of this act.

Exhibit A

The Story of Shipbuilding Stabilization; a Tripartite Agreement

Early history.—On November 27, 1940, Mr. Sidney Hillman, at that time Commissioner in charge of the Labor Division of the National Defense Advisory Commission (subsequently appointed Associate Director General of the Office of Production Management), announced the creation of the Shipbuilding Stabilization Committee, composed of repreesntatives of labor, the shipbuilding industry, the United States Navy, the United States Maritime Commission, and the OPM.

At the time the committee was organized labor shortages were already occurring in certain shipbuilding occupations. This was especially true of ship carpenters, loftsmen, and shipfitters, while there was also an inadequate supply of marine architects, shop electricians, marine gas-engine machinists, and template makers. A 500-percent increase of the total number of workers in the industry was expected by September 1942, according to the estimates of the Bureau of Labor Statistics.

Experience during the First World War had proven how exceedingly grave were the problems created by an even lesser expansion in the shipbuilding industry. Strikes had occurred in the summer and fall of 1917 with the country already at war. Practically the entire shipbuilding program on the Pacific coast was disrupted. The system of competitive bidding was leading on the one hand to a spiralling of wages and pyramiding of costs to the Government, and on the other to futile movement of men from yard to yard and city to city.

In the fall of 1940 there existed an extreme lack of wage uniformity. Skilled burners and welders along the Atlantic coast were being paid as much as $1.267 and as little as $0.621. This was leading to unnecessary migration of labor and adversely affecting production.

The committee was established, as stated by Mr. Hillman, to explore ways and means of stabilizing employment in the country's shipyards, in order to insure the most efficient and speedy construction of ships for defense. It was generally understood that the committee would undertake a detailed investigation of wage rates and working conditions, with particular emphasis upon the migration of workers from yard to yard, and its effect upon production. At the time the Shipbuilding Stabilization Committee was appointed it was suggested that if the stabilization plan worked out satisfactorily it might later be applied to aircraft construction. Stabilization was acceptable to all three interested groups. Labor favored it because such a system was akin to its desire for uniformity of pay for equivalent jobs. The industry saw in stabilization an opportunity to remove one item of competition normally beyond their control, unequal labor costs. Government, of course, wanted more and more ships with stabilized wages and costs.

The first members of the Shipbuilding Stabilization Committee were as follows:

(1) *Labor.*—(*a*) AFL—Harvey Brown, president of the International Association of Machinists, and John P. Frey, president of the metal trades department; (*b*) CIO—John Green, president of the Industrial Union of Marine and Shipbuilding Workers of America, and Philip H. Van Gelder, secretary of the same union.

(2) *Industry.*—Gregory Harrison, for the Pacific shipyards; H. Gerrish Smith, president of the National Council of American Shipbuilders, for the Great Lakes shipyards; E. A. Lidell, for the Gulf shipyards; and Prof. H. L. Seward, representing the Atlantic shipyards.

(3) *Contracting agencies.*—Joseph W. Powell, special assistant to the Secretary of the Navy (Capt. C. W. Fisher, U. S. Navy, as alternate, Chairman of the United States Maritime Commission).

(4) *OPM*—Morris L. Cooke, industrial engineering consultant to the Labor Division of the OPM, chairman, and Thomas L. Morton, executive secretary.

The shipbuilding industry group which met to formulate a policy for the shipbuilding stabilization committee, was truly representative of the views of management, because the 21 members present represented 42 yards employing at least 90 percent of the workers in the industry. It cannot be said that management was forced into its participation in the shipbuilding stabilization agreements. All of the parties agreed that the zone standards agreements were to be formulated by national zonal conferences in four zones, and were to be arrived at by a process of collective bargaining resulting in unanimous concurrence with the provisions of the agreements.

The first zone standards agreement to be negotiated was one covering all shipyards doing new construction work on the Pacific Coast. The Bethlehem Steel Co., shipbuilding division, declined to participate in the conference to formulate the agreement on this coast, but declared its willingness to abide by the working standards agreed upon by the conference. The agreement drawn up on the Pacific coast was submitted to the principals and reviewed and accepted by them, including management, the procurement agencies representing Government and labor. This Pacific zone standards agreement merely set general principles. In this Pacific conference at the first session only labor and management were active conferees. In all other conferences, the Government took an active part.

The Pacific coast zone conference finished formulation of the zone standards on April 21, 1941. The three remaining zone conferences were held as scheduled for the Gulf coast, the Atlantic coast, and the Great Lakes. The Gulf coast zone standards agreement was more detailed than those of the other zones, because both the employers and the union representatives on the Gulf coast wanted to incorporate the zone standards bodily into local agreements rather than to translate general working conditions into specific clauses.

All four zone standards agreements set the following types of working conditions:

Standard skilled mechanics' rate on all zones but the Gulf, $1.12; Gulf zone, $1.07.

Overtime rates.

Night-shift premium.

No-strike and no-lock-out pledge.

Agreement on arbitration for all disputes.

A provision against limitation on production.

A duration clause.

The zone standards were not local collective-bargaining agreements. The provisions of the zone-standards agreements were incorporated into the local agreements, sometimes in toto and sometimes by reference. They were zonal agreements between management, Government, and labor.

It was felt that the shipbuilding stabilization committee alone, under whose auspices the zone conferences were called, would have the power to interpret the zone standards.

In 1942 the shipbuilding stabilization committee was revised. Industry evinced a desire to have 12 representatives instead of 6 (industry acted through the National Council of American Shipbuilders), and later it again increased representation. The Government added 2 representatives of the War Department.

An administrative order of Donald Nelson on August 1, 1942, established the new committee, giving it the following powers:

(*a*) To develop procedures for and conduct an annual review, and, if necessary, special reviews of wage rates; to recommend and take appropriate steps to bring about such changes in wage rates as the review indicates are required.

(*b*) To consider and determine all questions with respect to interpretation, application, and coverage of zone standards and the securing of compliance therewith provided that the committee shall not alter or amend the zone standards (which can only be done by zone or national conference).

(*c*) To establish or maintain approximate uniformity within zones or subzones in respect to length of shifts.

The committee was not granted the authority to alter or amend existing local agreements, except where such agreements were in conflict with zone standards.

When war broke out in December of 1941, it was contended that continuous operation of shipyards was necessary. The Pacific coast zone groups had a conference on January 13 and 14, 1942, which agreed to abolish calendar premium days, to pay time and one-half for the sixth shift, and double time for the seventh shift and holidays.

Chicago national conference.—The National Shipbuilding Conference began in Chicago on April 27, 1942. The very next day the conference recessed until May 16, leaving a working committee to dispose of its problems and to draw up national amendments to the zone standards agreements in the interim.

This conference was most important, in that it was the first time that representatives of management and labor met on a national and not on a zonal scale. It marked the beginning of Nation-wide planning for the shipbuilding industry, and the elimnation of wage differentials for "standard skilled mechanics." At many points during the meeting, it very much looked as if the conference would be forced to adjourn without accomplishing anything, but finally the zone standards were amended to the satisfaction of the majority, and accepted by unanimous vote.

The meeting had originally been called to arrive at a uniform national system of wage adjustments to the rising cost of living, which had not been done by the first zone standards. The faulty adjustment clauses in the zone agreements had raised the question of the specified wage adjustments scheduled in each of the four zones. It was recognized that price stabilization, as promised by the Office of Price Administration, would probably shift the level of retail prices in the United States back to that of the middle of March 1942. If this were to be the case, and the wage adjustment clauses in the zone standards agreements were to be acted upon before this became effective, after such price stabilization had been established, the real wages of shipyard workers would be higher than those of any other group in the community. Moreover, if wages were actually adjusted according to zone standards, the latter would become more divergent than ever before; and the practical measure of stabilization achieved throughout the country—$1.07 per hour for the Gulf Coast zone, and $1.12 for the other three zones would be ruined. For example, according to a weighted percentage change in the cost of living, that of the Gulf Coast rose 12 percent, the Pacific coast rose 13 percent and that of the Atlantic coast and Great Lakes area would not rise the 5 percent necessary for any wage adjustment as authorized by zone standards.

At the final meeting of this conference "Amendments to the Pacific coast, Atlantic coast, Great Lakes, and Gulf Coast zone standards" were adopted and forwarded to the procurement agencies.

These amendments made the following adjustments in the four zone standards;

(*a*) Wage rate for all standard (or standard first class) skilled mechanics was increased to $1.20 per hour in all four zones.

(*b*) All other employees receive an increase of 8 cents per hour, except in the Gulf zone, where the following schedule applied:

Wage rate per hour:	*Increase, cents*
Up to 69½ cents	9
From 70 to 79½ cents	10
From 80 to 89½ cents	11
From $0.90 to $1.06½ cents	12
$1.07 and above	13

(*c*) Upon inclusion of repair work in the Pacific coast zone standards, this increase, retroactive to April 1, was to apply. (The Pacific coast zone standards were the only agreements which did not include repair and conversion work.)

(*d*) Rates to remain in effect until June 1, 1943, on or about which date, and yearly thereafter, a wage review shall be conducted under procedure to be developed by the Shipbuilding Stabilization Committee.

(*e*) Calendar premium days were to be abolished.

(*f*) Sixth shift worked—time-and-one-half rate.

(*g*) Seventh shift worked—double-time rate.

(*h*) The following were to be considered shifts worked:

(1) Time lost through injuries in the course of employment.

(2) Time lost through lack of work, or other reasons beyond employees's control.

(3) Time lost because of holiday shut-down.

(*i*) Overtime and shift premiums for repair and conversion work to be referred to zone conferences.

(*j*) Employees might waive right to vacations, but should receive vacation pay, over and above wages for work, at the time the vacation was due.

(*k*) Establish training programs.

(*l*) The shipbuilding stabilization committee has no power to alter or amend zone standards, but shall interpret and apply them.

(*m*) The shipbuilding stabilization committee might convene conferences to establish approximate uniformity in length of shifts.

(*n*) The effective dates for the above provisions were:

(1) Pacific coast, April 1.
(2) Atlantic coast, June 23.
(3) Gulf coast, August 1.
(4) Great Lakes, June 2.

Further, the zone standards agreements were altered to apply for the duration of the national emergency, as proclaimed by the President of the United States. This was also unanimous.

It should be noted that the abolition of calendar premium days in the shipbuilding industry took place almost 4 months prior to President Roosevelt's Executive Order 9240.

Later history—Wage reviews.—Because of the issuance on October 3, 1942, of Executive Order 9250, the wage reviews of 1943 and 1944 as outlined by the Chicago amendments to the zone standard agreements were held by the National War Labor Board. The wage review for 1945 was held by the National Shipbuilding Conference in Colorado Springs, where an 18 cents per hour increase was granted by majority vote of Government and labor, with management dissenting. However, all parties to the Colorado National Conference agreed that the zone standards themselves could only be amended by unanimous consent.

Since the 1945 wage review had been postponed until December, it was felt by the stabilization committee that to hold the 1946 wage review at the customary time, in June, would be meaningless. Therefore, the stabilization committee voted to hold the 1946 wage review in January of 1947. The shipbuilding workers still have an equity in the 1945 wage review which has not yet been held. Even if the national emergency were declared at an end by the President of the United States or by joint resolution of Congress, the equity of the workers in the 1946 wage review to be conducted under the auspices of the shipbuilding stabilization committee would still remain, and the review, according to the promise of the committee, would still have to be held.

Since the wage review of 1945, management has been taking the attitude that the zone standards agreements should be done away with, even prior to the end of the national emergency. As a matter of fact, eight management members of the shipbuilding stabilization committee have submitted their resignations to this committee. Management does not want to abide by its agreement of 1941 and 1942. It is trying unilaterally to dissolve its collective-bargaining contract. Labor takes the position that management cannot be allowed unilaterally to dissolve a collective-bargaining agreement, even though such agreement be national in its scope. Such allowance of dissolution by a single party would lead to the abrogation with impunity of every collective-bargaining agreement in the United States. Management must abide by its contract and by its pledged word.

The termination of the zone standards agreements was set by the Chicago amendment to such agreements at the end of the national emergency. This termination date can be changed only by the unanimous consent of all parties, because to change this date would be amending the zone standards. Also, to change participation in the zone standards agreements can be done only by unanimous consent, because it would, in effect, be amending these standards. Thus, one party cannot withdraw without the consent of the other two. The termination date of the zone standards agreements cannot be changed except by the unanimous consent of the parties.

During the wage review of 1945 the Government procurement agencies indicated their desire to withdraw from participation in the national conference, although promising to recognize the force and effect of the zone standards agreements. Both management and labor refused to allow a party to the zone standards to withdraw without unanimous consent, and would not give the Government agencies consent to withdraw.

Management has attempted to stop the working of the shipbuilding stabilization committee itself by refusing to have a quorum present at the last two meetings of the committee. This is an indirect method of single-handed and arbitrary elimination of responsibility under the collective agreements.

This union has always taken the position that the zone standards agreements and the stabilization committee should be continued after the termination of the state of national emergency, as proclaimed by the President of the United States. The other two parties to the zone standards agreements—namely, management and Government—have refused to agree to our proposal to extend the termination date of the zone standards agreements. In turn, they cannot shorten or abridge the termination date of the zone standards agreements without unanimous consent, nor can they destroy the previous action of the shipbuilding stabilization committee setting the 1946 wage review date for January 1947 without destroying the effectiveness of the zone standards agreements.

Even when the President of the United States abolished all wage and salary controls he recognized the equity of labor in awards and gains previously granted by the wage and salary stabilization bodies.

The shipbuilding workers have such an equity in the 1946 wage review. This cannot be destroyed without a complete abrogation of the tripartite collective agreement.

The amendments to the zone standards agreements adopted at Chicago specifically stated the following with regard to the wage review:

"The rates herein established and put into effect shall remain in effect until June 1, 1943, on or about which date a wage review shall be conducted under procedures to be developed by the shipbuilding stabilization committee and thereafter annually on or about June 1, a like review will be conducted by that committee."

Management, by refusing to allow a quorum of its representation to be present at the last two meetings of the stabilization committee, and thus obstructing the conduct of the wage review, is not abiding by the terms of its contract, which is still in full force and effect.

Management is attempting unilateral abrogation of a tripartite agreement.

Exhibit B

Statement of Frank W. Bemrick

(Age, 42; electrician leader)

January 22, 1948.

History of employment.—My last period of employment at the Maryland Drydock Co. began in August 1933. My hourly rate at that time was 62½ cents an hour. I was not rated as a first- or second-class electrician at that time, but instead I was classified merely as an electrician.

During the time between the date of my employment and February 1939 I received numerous increases in pay, all of which were small (a few cents an hour). The increase referred to here raised my hourly earnings up to 86 cents an hour, and the increase (2 cents an hour) received as a result of the first agreement between local No. 31 of the Industrial Union of Marine and Shipbuilding Workers of America and the company raised my hourly rate of pay up to 86 cents an hour.

As stated above, I was merely rated as an electrician, but the newly signed agreement brought with it four classifications of electricians and four rates of pay, two each for the first- and second-class classification. The rates of hourly pay were 76 and 82 cents an hour for second-class electricians, and 88 and 94 cents for first-class electricians.

A group of electricians, one of whom was myself, filed grievances for increases in pay which, if granted, would have raised our hourly earnings up to 94 cents. The grievances referred to here were filed early in 1940, and the company denied our requests.

However, late in the summer of 1940 I finally received the top rate of pay (94 cents an hour) for first-class electricians.

In September 1940 I was promoted to the position of temporary supervisor and received a bonus of 5 cents an hour for the supervisory responsibilities and duties required of temporary supervisors. I was assigned to work on the night shift (4:30 p. m. to 12:30 a. m.). I also received 5 percent of my base rate for the first 8 hours of work on the night shift. When I was required to work beyond the end of the second shift (12:30 a. m.), the payment of the night-shift differential promptly ended, but, of course, I received a premium of time and one-half after the first 8 hours of work.

My duties on the second shift consisted primarily of the supervision of electricians who were installing degaussing systems. Degaussing systems are a layer or coil of numerous electrical wires that protect ships against magnetic mines which, at the time, were proving to be quite devastating to Allied shipping.

Effective March 3, 1941, I was one of hundreds of other employees who received an hourly increase of 6 cents which raised my base pay up to $1 an hour. The hourly increase coupled with an additional 5 cents an hour premium raised my total hourly earnings up to $1.10 an hour.

The increase in the base rate and the added bonus for temporary supervision resulted from demands by the local union. Needless to say, the company reluctantly agreed to the union's demands.

I was now working on the day shift, having been reassigned to it early in 1941.

In June 1941, the shipbuilding stabilization commission granted the shipyard workers an increase of 12 percent an hour which raised my base rate up to $1.12 an hour. Again, in June of 1942, the shipbuilding stabilization commission awarded the shipyard workers an increase of 8 cents per hour. The shipbuilding stabilization commission award raised my base pay up to $1.20 an hour.

I was still receiving the hourly premium of 10 cents for temporary supervision. The term "temporary supervisor" can be best described as a misnomer because I had supervised other employees continuously since first receiving a promotion to that level.

On September 21, 1942, I was promoted to the next highest level of supervision—working leader. Because the bonus (10 cents) for temporary supervision had increased my hourly earnings to $1.30 an hour, the increase (8 cents) received as a result of promotion to working leader raised my total hourly earnings up to $1.38 an hour.

On July 12, 1943, I was again promoted, this time to the position of leader. The promotion carried with it an hourly increase of 5 cents which boosted my base rate up to $1.43.

I did not receive any more wage increases until February 5, 1945, when I was granted an hourly increase of 5 cents, but I still retained the classification of leader. This increase, of course, did not affect my supervisory status, but it did result in raising my hourly earnings up to $1.48.

In May 1946, the local union was finally able to force the company to effectuate an 18-cents-an-hour wage increase for its employees. The award had been made by the shipbuilding stabilization commission. As a result of the effectuation of the shipbuilding stabilization commission award, my hourly rate of pay was raised to $1.66.

My last wage increase (18 cents) came in August 1947, and it was the result of an agreement between the company and a newly formed supervisors' organization which is known as the Maryland Drydock Supervisors' Association.

Commendation for excellent work.—I am forced to admit that my foreman never praised my work, but top representatives of management quite frequently praised my work as well as that of other supervisors.

On or near the commission dates for naval auxiliaries or other large outfitting and reconversion jobs, the company's representatives, almost invariably, called together the supervisors in charge of the jobs and highly praised them for their excellent work. The jobs referred to here are mentioned in the latter part of this statement.

The company officials who praised us were: John McLay, works manager and vice president; Fred Liedtke, assistant works manager; Gerald Stein, production superintendent; Joseph Murphy, production superintendent.

As stated above, my foreman, William Seifert, never praised my work at any time, but he did tell me in 1944 that I was the only supervisor capable of supervising a big rewiring job on the steamship *E. H. Blum.*

The originally installed wiring proved to be defective which necessitated rewiring the engine room in its entirety.

I supervised the installation of all new electrical cables (feeders) for machinery, ranging from ventilators (fans) to the fire pump, the largest single piece of electrically driven machinery. Other pieces of electrically driven equipment included; ice machine; forced-drafe motors, forward, center, and starboard; air compressors, aft and forward; cargo priming pumps; forward, center, and starboard main circulators, forward and aft; and many other motors and machines too numerous to mention.

The feeders installed ranged in size from 2 conductor, 6,530 circular mills (an electrical term denoting the electrical conductivity of cables) to others which were 3 conductor, 250,000 circular mills. The length of the cable varied from 30 to 180 feet.

The ship's owners' (Atlantic Refining Co.) representative was Mr. Lee Lineburg, chief electrical inspector, who later asked me to assume responsibility for a big electrical job similar to one which had caused the company serious trouble which resulted from damaged cables.

I told Mr. Lineburg that I could not select my jobs, but I could do only what my foreman, William Seifert, told me to do.

Union activity.—I was a member of local 31 from its inception in the fall of 1938, and I am still a member in good standing.

I was elected to positions on the union's negotiating and grievance committees and served on both until my terms expired. The negotiating committee's duties terminated with the signing of an agreement by the company and the union on February 21, 1940, but the grievance committee served the union for the full year 1940.

I was elected shop steward of the electrical department in December 1940, and served the department until April 1941.

I was the union's representative on the safety advisory board of the company for the year 1940. I attended a safety school, and I also attended, as a company representative, a conference of shipyard representatives which was held in New York City. Mr. George H. French, president of the company, attended the conference, and he was accompanied by Messrs. W. P. Hall and George A. Bopp, assistant to the president and personnel manager, respectively.

I was one of the union's supervisory witnesses at the NLRB hearing in April 1943. Mr. M. H. Goldstein represented the union, and the hearing was before Mr. Will Maslow, trial examiner, for the Board. I was a working leader at that time.

I was reelected to the local union's trial board in 1943 and served on the board until the end of 1945. The period served on the board exceeded 2 years.

I was elected shop steward for the supervisors on the night shift, and served until the expiration of the agreement for supervisory employees. The agreement was signed by both parties in December of 1946, and it expired June 23, 1947. The agreement provided for maintenance of membership, and the check-off of dues which obviously revealed that I was a member of the union. The company was also notified that I was one of the union's shop stewards for supervisors.

I was also a member of the union's top strike committee in 1946 and 1947—the strike policy-making body of the local union.

I was picket captain for the local union daily from 9:30 p. m. until 9:30 a. m. In order to enter the plant, the company's top executives were forced to cross our picket lines. They, undoubtedly, saw me at the head of the picket line as I was certainly conspicuous enough. Officials of the company who saw me were: Messrs. French, Hall, McLay, Jory, Murphy, Danterich, Bopp, Stein, and Lake who hold the respective positions of president, vice president, vice president and works manager, assistant to the president, production superintendent, industrial relations manager, personnel manager, production superintendent, and employment manager.

Of course, many others too numerous to mention observed my militant conduct on the picket line.

While picketing the company in July 1947, Mr. Jerry Hnyla, assistant foreman of the electrical department, told me that William Seifert, my foreman, wanted me to call him by phone.

I phoned Mr. Seifert the same morning, and he asked me numerous questions. He wanted to know if I was in favor of the strike, and I told him that my daily presence on the picket line plainly indicated that I was. In reply to another of Mr. Seifert's questions, I told him that I was very much in favor of belonging to the same union that represented the nonsupervisory workers, and, of course, I was solidly for the union.

Mr. Seifert also asked me if I wanted my vacation, and I told him that I was already on vacation.

I sent a letter to Mr. French that criticized the company's failure "to grant us our just demands." The letter also reminded Mr. French that it was "the failure of industry members of the shipbuilding stabilization to appear at the wage-review meeting last January 2, 1947," that caused the strike.

The letter also stated that Mr. French, "by attempting to resign from the stabilization committee," sabotaged "the wage functions of this committee."

The letter also urged Mr. French to "make a sincere, above-board effort to agree on a contract." And, I concluded the letter by stating that I was "standing back of local 31's negotiating committee."

Mr. French sent me a letter in reply, the text of which follows:

"Your reply to my letter of July 2 didn't tell me very much about what's on your mind. The form letter the union gave you to send me was both inaccurate and misleading. I covered that subject in my letter of July 7.

"I'm asking you, man to man, to tell me straight from the shoulder what you think about this strike. I'd like to hear from you whether you agree with me or disagree with me. Your comments and ideas may help to lead us to a settlement.

"How about it? Use the enclosed envelope. Your replies will be treated confidentially."

I attended a meeting called by Mr. French at the Lord Baltimore Hotel July 24, 1947, and walked out of the meeting when Mr. Hall took exception to some of the statements made by Vic Mastropiorio. I was one of a large group of the more militant supervisors who left the room in anger and disgust over the rotten treatment that our spokesman had received.

The company's top executives were present at the meeting, and all of the foremen and assistant foremen were there, too. Most of the working leaders, leaders, and sergeants and lieutenants of the company's guard force attended also.

Mr. French and Hall told the supervisors that the company would not bargain with local 31 for supervisors. They suggested that the supervisors form an independent union. The supervisors elected a negotiating committee which negotiated an agreement in the relatively short period of 1 week, and it was signed July 31, 1947.

I was one of a group of supervisors who patrolled the street in front of the Lord Baltimore Hotel and distributed leaflets and urged the supervisors not to attend the meeting.

About a week or 10 days after the agreement was signed, some of the supervisors began to return to work. Many of the supervisors remained loyal to local 31 and continued to picket the plant. Of course, as stated heretofore, I was a picket captain and could readily see and hear what happened on the line.

The pickets called the returning supervisors scabs, rats, bums, stooges, and many other uncomplimentary names that cannot—for obvious reasons—be printed here.

By publishing incorrect and padded figures of the number of supervisors who had returned to work, the company managed to swell the ranks of returning supervisors daily. The local union's leadership realized that the loyal supervisors would soon be left "holding the bag" and ordered them to return to work. It was then, and only then, that I returned to work.

After returning to work on Thursday, August 14, 1947, Mr. French called all of the supervisors together in the mold loft and told us he would tolerate no funny stuff and if any of us had a chip on our shoulders, we had better get it off. I had picketed the plant up until 9 a. m. that very morning. I worked until noon that day and knocked off as I had been picketing all night.

The next day, Friday, August 15, 1947, I applied for and received my 2-week vacation because I could not bring myself to cross the picket lines of the hard-fighting, nonsupervisory workers who still showed no signs of giving up the battle, even though the plight of many of them was rather desperate.

Several years prior to the strike in November 1943, I was one of a group of electrical supervisors who walked out of a meeting between the top executives of the company and the electrical supervisors who were demanding union recognition.

We then struck the yard for 4 days and returned to work upon being ordered to do so by our local union leaders. Many of the striking supervisors were about to be inducted into the armed services because the company had notified the draft boards that we no longer worked for them, which was, of course, an extremely essential industry.

In May 1943, I was instrumental in ending a work stoppage in the electrical department among the workers on the second shift. I was unable to locate Myril Webster, one of the assistant foremen of the electrical department, but Jerry Stein, production superintendent, helped me to convince the workers they were wrong. The electrical department was strongly organized at the time, and the men apparently trusted me because I had an excellent reputation as a unionist.

Discharge.—I was discharged by William Seifert, foreman of the electrical department, about 4:55 p. m. Wednesday, October 22, 1947. The reason given for the discharge was "unsatisfactory."

Mr. Seifert told me in the presence of John Conley, Jr., "Frank, I'm sorry, but I have to fire you." I asked Mr. Seifert if the discharge was his doings or if he had received orders from the main office. He did not give a direct answer to the question, but evasively replied, "I'm still foreman."

I was given a written pass out of the yard, and I was paid until 5 p. m. as I had started to work at 3:30 p. m. that day, which was customary for me.

During the 1½ hours spent working that day, I had lined up my subordinates (mechanics, helpers, and handymen) on four repair jobs.

I had been told at 3:30 p. m. that day by Mr. Conley that I was to report to Mr. Seifert at 4:45 p. m. When Mr. Seifert discharged me, Mr. Conley told me he was very sorry and he hoped that I would get my job back.

I have many reasons for feeling that the company retained supervisors in the electrical department who were less competent than myself and to support this contention, I will give a brief history of their employment and their capabilities or the lack of the same.

Hugh Taylor, leader.—Mr. Taylor was first employed by the company in 1940 as an electrican. He was promoted to the rank of working leader and worked under my direct supervison in 1943, and was assigned by me to supervise lighting installations (wiring and fixtures.) We were converting a ship of Dutch registry into an armed Army transport.

Mr. Taylor also worked under my direct supervison when he was still a working leader in 1943 on the 42, a ship that had been built at a Pascagoula, Miss., shipyard. It was hardly more than a hull with housing, masts, stack, boilers, engines, etc. We were completely outfitting this ship and making it into a naval auxiliary. Mr. Taylor was also in charge of lighting on this vessel. His work did not meet with my approval as he did not possess enough experience which required me to supervise him too closely, so I made arrangements (there are many methods) to prevent Mr. Taylor from being assigned to work for me on other jobs.

Mr. Taylor was promoted to leader in 1944 while he was working as a go-between for the company, and his duties required him to see that the Conlon Electric Co., a subcontractor, received all of the material it needed to complete a ship on which its men were working. He could best be described as a material checker or expediter or a materialman.

John Himes, leader.—Mr. Himes was first employed by the company in 1940 as a mechanic. He had worked for me as my helper at the United States Coast Guard depot in Curtis Bay, Md., about 1930. He was laid off or fired for playing about this time.

He has never worked under my direct supervision at the Maryland Drydock Co., but I can honestly state that he is not a marine electrician. I relieved Himos on degaussing jobs when he was working the day shift and I was working the night shift, and of course, had ample opportunity to observe that he certainly left a lot to be desired as a marine mechanic and supervisor.

It was generally known that during the war, Mr. Seifert complained bitterly about Himes losing time (absenteeism) when the jobs under his supervision reached a critical stage or as we say in the shipyard, "the going got tough."

Himes was promoted to leader in 1943 while checking on work being done by a subcontractor, Blumenthal Kahn. To the best of my knowledge, he has never been in complete charge of a big job.

Ernest Bermick, leader.—Mr. Bermick was hired as an electrician about 1941 or 1942. He worked for me as a mechanic on LST's (landing ship tanks). He was promoted to supervisor (I am not sure of the rank) a year or so after being hired. He very frequently lined up with my working leaders (day-shift men). "Lining up" is a term meaning exchanging information concerning jobs between the outgoing and incoming shifts.

When I was taken off the night shift, he took over my duties on the second shift. His work was most unsatisfactory as I had to get my men to rip out work that his men had installed which did not meet with the approval of Navy inspectors who, of course, would not O. K. it.

Richard Hogan, leader.—Mr. Hogan started to work under my supervision October 1942 on the night shift. He was classified as a helper. He was promoted to a handy man February 8, 1943. He had been a CP (constant potential) set operator (CP sets generate the current used in electric-welding operations). His duties required him to make adjustments by turning knobs which kept the machines operating efficiently. This was not a skilled or laborious task, and when women were first employed in the shipyard, they were given those jobs. About 1944 Mr. Hogan was promoted to the rank of temporary supervisor. He was demoted to electrician shortly after the end of the war in 1945 and was repromoted to working leader in 1946. He was promoted to leader shortly after

I was discharged. Hogan also worked under my direct supervision in 1947. He has less experience than Himes, Taylor, and Bermick, and he could not be relied on to do good work which required me to supervise him closely.

Himes, Taylor, Hogan, and Bermick all returned to work before the local union's leadership ordered them to do so.

John Conley, Jr., assistant foreman, electrical department, also worked for me when he was a helper and I was a mechanic.

James Gutermuth, leader, electrical department, was fired by John Baldwin, foreman, drydock department, and I arranged to get his transferred to the electrical department.

Albert Bauman also worked for me as a helper when I was a mechanic.

Vince Vaise, Charles Hart, Robert Linden, Charles Bush, George Deveau, and Jack Glennon all worked under my supervision as a mechanic, helper, or supervisor, and they are still working for the company.

All of the men named herein were hired after me.

Supervisory duties.—My duties as a supervisor required me to be at work at 3:30 p. m., which is 1 hour before the starting time of nonsupervisory employees.

The ships requiring various kinds of repairs or installations were listed in a book. The number of men who will be assigned to each job is also listed. If conditions made it necessary for a change in the work schedule, the assistant foreman was the person who informed of the change.

I had direct supervision at the time of my discharge of six gangs of men, two to a gang. I selected the men that I felt best qualified for each job and gave them the location of the ship, a written order of the work to be performed, and a written order on the storeroom for materials if the job required it.

If a ship was away from the yard, which was frequently, I arranged for the men to be transported to the job by boat or truck. When ships on which we were working were scheduled to sail, it was my responsibility to see that every reasonable effort was made to finish the job or jobs. If we could not finish the job at 12:30 p. m. (the end of the regular shift), it was necessary for me to get permission from one of the top officials from the main office to work overtime to enable the ship to meet its sailing date.

I was required to keep an accurate account of the time worked by the men on each job, and I also turned in a daily time report showing the amount of time worked by such men on each job. In addition to this, I was required to keep an accurate record of the material used on each job.

After the strike, the company began to require the presence of some of the supervisors, including myself, at the production meetings. Top management representatives were present at the meetings and production problems, work schedules, and the work schedule for Saturdays and Sundays were discussed.

An average night's work consisted of the following:

Job No. 5288, item 4 Steamship *Beckley Seem*, bulk-cargo carrier; install radar; two gangs; four men; location, No. 1 Pier, main yard.

Job No. 5400, item 33; Steamship *Wm. Halstead*, freighter; install float lights; one gang; two men; location, No. 3 Pier, Pratt Street plant.

Job No. 5140, item 99; Steamship *Philip Livingston*, freighter; install anchor light; one gang, two men; anchorage.

Item No. 146; Install three floodlights, one forward, two aft.

Job No. 5424, item 12; Steamship *Joyce Kilmer*, freighter; renew 1 glass and rim for light in crew mess; 1 gang; two men; location, Pratt Street plant.

When employed as a temporary supervisor, I received 5 cents more an hour for supervising 30 to 40 men. We were working from 8 p. m. to 8 a. m. on the Navy transport U. S. S. *George B. Elliott*. The job was the first big Navy reconversion. I also supervised electrical repairs on two large Navy tankers, the U. S. S. *Mattole* and the U. S. S. *Maumee*. Those jobs were reconditioning jobs.

In 1941–42, while employed as a working leader, I supervised men in the conversion of two large luxury liners into transports. The ships were the *President Madison* and the *Tasker H. Bliss*.

In 1942 I also supervised the outfitting of several LST's that had been built at the Bethlehem Fairfield shipyard.

I also supervised electrical installations on four large Navy tankers, the U. S. S. *Patuxent*, *Stillwater*, *Millicoma*, and *Monongahela*.

All of these jobs were big jobs that required a wide variety of electrical work, including wiring, power, motors, communications, fighting lights, and many other types of electrical work.

In 1943, while employed as a working leader, I was in charge of the electrical work on the U. S. S. *San Gay*, an Army transport and an auxiliary, the *A. O. 78*.

In 1943 I was in charge of the liner *Keta Baree*, which was being converted into a troop carrier. The conversion was scheduled to be completed in 30 days, and I had 11 supervisors and about 120 employees under my supervision and that of my 11 subordinate supervisors.

In 1944–45, while employed as a leader, I was in charge of the outfitting of numerous naval auxiliaries including the *A. R. 17* and *21* and the *A. R. G.'s 4* and *5*. These were tremendously large jobs that required electrical work of almost every description.

I had three working leaders under my supervision, and they in turn had from three to five temporary supervisors under their supervision. Each temporary supervisor had about 12 to 20 employees under their supervision. We were outfitting two ships at the same time the *A. R. G.'s 4* and *5* and the *R. R. 17* and *21*. I was responsible for about 100 employees on each ship.

In the latter part of 1945 I was removed from the Navy side of the yard and reassigned to the commercial side. I supervised extensive repairs to the *M. V. Horbrand*, which had been heavily damaged by an explosion. I also supervised a big repair job on the steamship *Simon* which had been badly damaged by fire. I also supervised a general overhauling of the tanker steamship *Stanvac Capetown*.

I was the leader in charge of the conversion and outfitting of four Victory ships into troop carriers. The ships were the *Marshall*, *Rennsalaer*, *Webster*, and *Montclair* Victorys.

I also acted as a go-between for the company and Catos & Shepherd, a subcontractor, responsible for the conversion of the ship *Goucher* Victory into a troop carrier.

Catos & Shepherd also attempted to convert the *Rennsalaer* Victory and failed, and I was given the job and completed it.

After the war, I worked at the company's Pratt Street plant for several weeks at several different times. I was in charge of all repairs of vessels berthed there.

In 1946 I also had charge of the reconversions of Navy transports steamship *Mormacmoon*, steamship *Robin Sherwood*, and the steamship *Robin Wently*. We were reconverting the ships into combination cargo and passenger vessels.

I also supervised the electrical work on the company's oil barge, the *Jacob Pilsch*, and the newly built ferry boat, *Governor Herbert O'Connor*.

Some of the work on the jobs listed herein required, among other things, installation of radar, telephones, alarm bells, lighting, motors, generators, fans, switchboards, public-address systems, controllers, fire-fighting systems, smoke indicators, and of course, repairs of almost every decription.

In June 1944 I was called off my vacation by Mr. Seifert and sent to the Brookly Navy Yard. I took 4 men with me and observed the installation of some electrical work that would be done by the Maryland Drydock Co. in the very near future.

I was also sent to look over some work on ships in the laid-up fleet in July 1946 and May 1947.

I helped to prepare an electricians' handbook which was widely used by employees in the electrical department.

Authorities.—I could recommend transfers, promotions, discharges, and suspensions, but the foreman had to give his approval and top representatives of the company had to approve all promotions and increases in pay.

I did not attend the production meetings until after the strike, and my advice was never sought as the supervisors (leaders and working leaders) merely listened to top representatives of management.

This is a factual statement, and its contents are to the best of my knowledge true.

FRANK BEMRICK.

STATEMENT OF CHARLES E. BOCK

(Age, 28; shipfitting leader)

FEBRUARY 19, 1948.

History of employment.—I was first employed at the Maryland Drydock Co., about February 1936. My classification was shipfitter helper and my rate of pay was 45 cents an hour.

I progressed from the helper's classification through the third-, second-, and first-class shipfitting classifications fairly rapidly.

I was a helper for approximately 2 years, third-class mechanic about 6 months, second-class mechanic about 6 months, and a first-class mechanic for about 6 months, after which I was promoted to the position of temporary supervisor.

The promotion to temporary supervisor occurred in 1940, and I worked as such until the autumn of 1942 when I was promoted to the position of working leader. I held the position of working leader until I was promoted to leader in 1943.

I am not sure of my hourly rates of pay up to the time I became a temporary supervisor, but I am fairly certain that I received $1.38 an hour as a working leadern until I was promoted to leader when my hourly rate of pay was changed to $1.43.

I received an hourly increase of 5 cents in February 1944, but my classification was not changed. This increase raised my hourly earnings to $1.48, which I continued to receive until all employees were granted an 18-cents-per-hour increase in May 1946.

This increase was awarded by the Shipbuilding Stabilization Commission. I received no more increase in pay until August 1947, when I received 18 cents per hour increase as a result of negotiations between the Maryland Drydock Co. and an independent union known as the Maryland Drydock Supervisors' Association.

This raised my hourly earnings to $1.84 which I was receiving on the date of my discharge.

Mr. Vernon Tydings, hull superintendent, praised the work I was doing on several occasions when I received promotion during the time I was supervising.

Mr. George Loskarn who later became hull superintendent also praised my work at the time I was rated as working leader.

Mr. Alolph Voit warmly commended me on my work just prior to the times I was about to receive promotions of a supervisory nature.

I first joined local No. 31 in February of 1939 and was a member at the time of my discharge.

I was on the supervisors' negotiating committee in 1946, and after the agreement between local No. 31 and the company was signed in December 1946. I was a shop steward for superivsors until the contract expired in June 1947.

As shop steward, I represented the shipfitters, ironworkers, and steel fabricators. These classifications represent three different departments.

I picketed very frequently during the strike and in addition to regular picket duty, I did extra duty every morning when the company was having some success in getting supervisors to cross our picket lines.

All of the company's executives could have and should have seen me on the picket line as they had to cross it to enter the plant.

Messrs. George H. French, president; John McLay, vice president; Purnell Hall, vice president; Douglas Dauterich, manager of industrial relations; George Bopp, personnel manager; Harry Lake, employment manager; William Jory, assistant to the president; Adolph Voit, foreman, shipfitting department; George Roth, assistant foreman, shipfitting department; Jerry Stein, Martin Castle, Walter Goetz, and Joseph Murphy, production supervisors, main office, are some of the company's executives who crossed the line when I was picketing.

The first and only agreement for supervisors signed between local union and the company included a check-off provision which, of course, enabled the company to know that I was a member of the union.

I testified in behalf of a man who had been given a disciplinary lay-off when the union was attempting to get an arbitrator to award the man pay for all time lost.

Early in 1947 I filed a grievance for equalization of time in my department. My foreman, Mr. Voit, told me I was going to get in a lot of trouble for my union activity.

Mr. Voit called on me at my home in July 1947 at the time I was still on strike. He wanted to know how I was making out and I told him O. K. He then suggested that I might be able to do O. K. but others may not be so fortunate.

He then questioned me concerning my views on the company union and I told him that as far as I was concerned, no company union was any good for the workers.

Mr. Voit asked me how I had voted on the strike question, and I told him I had voted for the strike and was in favor of it.

Mr. Voit then asked me if I had returned the ballot sent me by Mr. French which inquired of me how I felt about the strike. I said, "No." He asked me why, and I told him I saw no sense in it.

Mr. Voit then told me I was making a serious mistake, and I had better think it over.

Just before leaving, Mr. Voit told me that the statements I had made would be held against me.

I attended a meeting called by Mr. French for supervisors July 24, 1947, and walked out in disgust and rage when Mr. Hall refused to give a union spokesman an opportunity to present our views supporting our right to representation by local 31.

At a second meeting of the supervisors, I picketed the hotel in which it was to be held, distributing leaflets and urging my fellow supervisors not to attend. This meeting was held Thursday, July 31, 1947, and on Saturday, August 9, Jack Tygeson, rigger leader, and I visited the homes of many supervisors urging them to support local 31 and to disavow any affiliation with the company union.

We were able to get numerous forms signed that provided for their support, and the previously mentioned disavowal of the company union.

I was discharged about 4:45 p. m., October 22, 1947. I was discharged by Mr. Voit and the reason given was "unsatisfactory supervisor."

On the day of my discharge, I met Mr. Voit at the entrance to the mold loft, and he motioned for me to come in the mold loft. I entered the loft and then entered Mr. Voit's office which is located in the mold loft.

Mr. Voit asked me to give him various records and drawings which listed insurance damages and illustrated the ship's construction—frames, plates, strakes, etc.

I gave them to Mr. Voit, and he handed me my discharge slip with one hand and shook hands with me with the other. He said, "Charlie, don't ask me any questions now, but you are fired."

He appeared to be terribly upset and had some difficulty in telling me of my discharge.

I accepted the release and left the yard. The next day I returned to the yard and was cleaning out my locker when Mr. Voit approached and told me not to leave the yard until I talked to him.

When I finally talked to Mr. Voit, he said, "Charlie, you know how I feel about you and your work, and I want you to know that this is none of my doings."

He also told me, "If there is any way possible, I will get you your job back."

I then went to see Mr. A. R. Leighton, president of the supervisors' union, and after he listened to my story he said that I had every right in the world to file a grievance. (The agreement between the company and the supervisors' union provides for grievance procedure.)

He told me that John Himes was the union's representative for handling grievances, left his job, and took me to see Mr. Himes. We had to walk approximately 150 to 200 yards to the ship where Himes was working. Leighton went aboard the ship to get Himes. I waited about an hour for Himes and upon returning, Leighton said, "Johnny will take care of you."

Mr. Himes then took me to see an electrician leader, Jack Devine.

After telling Himes and Devine my story, Himes asked me if I knew what it was all about and I told him I didn't.

Himes asked me if I wanted to file a grievance and I said, "Yes."

Himes then suggested talking the matter over with Mr. Voit, but after I told him that I thought Voit had nothing to do with it, he told me he would go over to the main office.

I suggested to Himes that it seemed proper for me to accompany Himes, but he refused to take me along and went to the main office alone.

He returned after about 1½ hours and told me that he could do nothing for me. I have no way of knowing whether or not he tried to help me.

Shortly after this, I met Mr. Leighton again, and he inquired about my grievance. I told him that nothing was done for me, and he then told me that he had no previous knowledge of my discharge, and he was awfully sorry.

After my return to work, Mr. French addressed a meeting of supervisory employees in the yard. He told us that he intended to make it (his talk) short and sweet. He acted very tough and stated that any supervisors entertaining ideas of breaking up the association had better get them out of their heads. He also told us that if we were looking for trouble we would get it, and if any of us had a chip on our shoulders, we had better get it off.

Gabe Matson and Chris Mack, supervisors in the fabricating shop and ironworking department, respectively, suggested to me that I ought to join the association. I interpreted this as a threat and made application for membership in the supervisors' union, but I do not know if the application was accepted.

Mr. Voit also told Fred Gavin, working leader, shipfitting department, and myself after the strike that we had better get on the right side of the fence.

Some of the shipfitting supervisors who had less seniority than I, but were retained by the company, are B. Antowiak, P. Morgan, A. Leighton, F. Gavin, R. Undutch, J. Tracy, B. Yonkin, W. Roohner, G. Kroon, J. Schmidt, and G. Bador. Bador was transferred from the labor department to the shipfitting department.

As stated herein, all of those men were promoted to supervisory positions after myself, and all of them are still supervising.

For example, A. Leighton had the extremely simple job of making some steel scrap tubs, and after completing that job he was promoted to a supervisory position.

P. Morgan, G. Bador, and G. Kroon worked under my supervision as working leaders.

I believe that my foreman recognized the inferior qualifications of the following men because they were still employed as working leaders at the time of my discharge: R. Undutch, J. Schmidt, G. Kroon, J. Tracy, B. Yonkin, and W. Roohner.

In addition to my feelings along these lines, my foreman apparently placed great trust in me because he hardly ever visited my jobs unless the main office issued a list of incomplete items and he then merely asked me questions about them.

My duties required me to report at 7:45 a. m. (15 minutes before the nonsupervisory workers) at which time I would go directly to the office of the mold loft. I then contacted my foreman to find out if he desired to discuss anything with me. I then picked up my specifications and the line up from the line-up book. By checking the line-up book, I could determine the progress made by the night-shift workers.

When my workers reported to me at 8 a. m., I assigned the men to that particular job for which I thought they were best suited. I would also tell the service craft supervisors (riggers, burners, welders, ironworkers, etc.) where they should start in order to facilitate the repairs or changes needed.

During the course of the day, I went from ship to ship (I supervised 3 to 8 ships at the same time) and checked the progress being made, made suggestions, and lent assistance wherever I could.

On occasion, I was required to attend meetings for the purpose of discussing the progress or the lack of the same on jobs to which I was assigned.

About 2:30 p. m. I prepared my leaders report which showed the badge numbers of the men under my supervision and the number of hours worked on each job. If a man worked on more than one item (job) my report had to indicate it.

I also prepared my line-up sheet which indicated the type of service and the amount needed by the workmen on the night shift in my department.

About 4 p. m. I lined up the supervisor in my department who was relieving me and explained just what I wanted done and suggested how it might best be done.

I supervised the work on many large jobs during the war including the following:

Navy tankers: A. O. 78, A. O. 77, U. S. S. *Patuxent*, U. S. S. *Monangahela*, U. S. S. *Millicomo*, U. S. S. *Stillwater*, U. S. S. *Saranac*.

These were new tankers that had been built in other yards, but were sent into our yard for the necessary outfitting that would make them ready for warfare.

"Old" S. S. *America*. This was the largest ship the Maryland Drydock Co. ever handled and was converted from an Army transport to a ship suitable for carrying GI brides and babies.

Naval auxiliaries: A. R. G. 4 repair ship, A. R. G. 5 repair ship, A. R. B.'s (several) repair ships, A. P. A. Navy transport.

These were new or relatively new ships that required a tremendous amount of converting, installing, etc.

In addition to the jobs previously listed, I supervised the conversion, outfitting, and repairing of jobs so numerous that I couldn't possibly remember all of them.

I worked on the Navy side of the yard which handled almost all of the jobs of the kind described herein. My foreman told me a number of times that my work was satisfactory, and my work on the Navy tankers must have been especially good as my foreman asked me to go on the night shift for a few weeks when the work on Navy tankers began to lag. He told me I could have my choice of any 14 men in the department, and after agreeing to try to help him,

I transferred to the night shift and was able to help bring the work up to schedule. I was thanked by my foreman and the hull superintendent who was

Mr. Tydings at that time. Mr. Tydings had also been foreman of my department before Voit got the job.

I could recommend raises for the men working under my supervision, but Mr. Voit very frequently strenuously objected and very often I appealed to Mr. Francis Plagman, shop steward of our department, for help.

I was not able to effectively recommend transfers or discharges as my foreman almost always decided matters of this kind.

Before and after the strike, I attended meetings of production superintendents (main office) and supervisors of rank below or equal to myself. These meetings were called when it became necessary to discuss production problems on big jobs that were behind schedule or when the completion date of the job drew near.

The production supervisors (main office) would ask leaders and working leaders when we thought we would finish certain items and after getting our opinions, they almost always slashed the amount of time that we thought was needed.

Our suggestions were almost always ignored because the production supervisors set their own completion dates.

SUPPLEMENTAL STATEMENT OF CHARLES E. BOCK

My duties required me to lay out work, take measurements, get material, instruct and assist men under my supervision, make templates, and many other jobs normally done by men under my supervision.

Whenever men needed help, I, of course, felt that in the interest of production, I was obliged to assist them. It was necessary to use tools to instruct them and demonstrate to them the most efficient and least laborious method of doing jobs.

During the course of a day's work, I found it necessary to do the relatively small jobs that would ordinarily be done by my men, but by doing them myself, production was naturally boosted. The company, needless to say, constantly demanded more production which made it imperative for me to use tools in order to keep pace with production requirements.

This kind of work kept me busy about 65 percent of the time. The remainder was spent in (1) checking the progress of the men in gang or gangs; (2) recording the amount of time spent by each of the men in my gang; (3) accompanying inspectors and shipowners' representatives when surveys were made of shell damage (surveys were made to determine the type and amount of work to be done); (4) estimating the number of man-hours required to do jobs; (5) writing out orders on store for supplies and other material; (6) conferring with my foreman to determine if anything of importance had developed since the last time I saw him or discussed matters with him; (7) reporting difficulties that arose from time to time. This was required sometimes because I was not authorized to make every decision even though I knew how to overcome problems.

EXHIBIT C

Bethlehem Steel Co. (Shipbuilding Division), Baltimore Yard, Baltimore, Md., *and* Industrial Union of Marine and Shipbuilding Workers of America, local No. 24.

Umpire decision No. 19–A. Grievance Nos. 1964, 1967–99 (inclusive), 2001, 2002, and 2004. Date of hearing, March 16, 1948. Date of decision, April 20, 1948.

Nature of case.—Claim of the union that after the 1947 strike the company violated paragraph 2 of the side letter of November 10, 1947, by its failure to restore some 36 or more employees to their former positions as leaders.

Introduction.—The May 6, 1946, agreement between the parties expired on June 23, 1947, and a strike began on June 26, 1947. The strike was terminated on November 10, 1947, when the current agreement became effective.

Just prior to the strike, the 36 complainants in the specific grievances involved in this case, and perhaps others who might be covered by grievance No. 1964 (a general grievance), were working as hourly rated leaders at the Baltimore yard. After the strike, all these employees were recalled to work but, except for one employee covered by grievance No. 1987 who is not now employed, they started work as mechanics and not as leaders. As of the date of the hearing, it appears that none of them had been restored to a job as leader (hourly rated or salaried).

A leader (snapper at some yards) is the lowest rank of supervision. Some leaders remain leaders almost continuously unless demoted for cause or promoted to higher ranks of supervision. However, at repair yards, fluctuations in yard employment and in activity of various departments occur from time to time in addition to changes in the general level of shipyard activity. For these reasons, there may be occasional shifting back and forth between work as a leader and as a mechanic, with corresponding changes in rate of pay. At some yards, some leaders carry dual classifications (leader and mechanic), and the shifting may even be on a day-by-day basis.

Ever since there has been a collective-bargaining relationship between the parties, there has been a difference of opinion between them as to the status of hourly rated leaders. The union contended that they should be and actually were in the bargaining unit as defined in the contract and as illustrated by yard practices. The company held the point of view that they should not be in the bargaining unit. The definition of the bargaining unit in the 1942 contract was claimed to be somewhat ambiguous on this matter, and there was much difference of opinion as to how it had been interpreted by the parties themselves at the various yards. In a disputes case before the National War Labor Board's Shipbuilding Commission, the union requested a change in the wording of the contract section defining the bargaining unit. The requested change would definitely have included hourly rated leaders. The Shipbuilding Commission denied this request and also denied a counter company request for contract language which would have specifically excluded such leaders. The basis for this Shipbuilding Commission action was that questions as to the scope of the bargaining unit were matters for National Labor Relations Board procedures or for interpretation of the parties' own contract language. The language of the 1942 agreement which had been in question was continued unchanged in the 1943 agreement, and the parties were ordered to submit to arbitration, under the terms of the agreement, such questions of interpretation of the parties' own language as might be within the jurisdiction of the umpire.

Subsequently, an umpire appointed by the parties conducted hearings and decided in favor of the union position at the yards then covered by the agreement.

When it came time to negotiate the terms of the next agreement (dated May 6, 1946), the clause of the contract defining the bargaining unit again remained unchanged in this respect, but the umpire's findings under the prior contract had clarified its meaning. And for the first time, a wage scale for leaders became a part of the negotiated wage scale. Thus, under the 1946 agreement (which was in effect until June 23, 1947), it is clear that leaders were in the bargaining unit. By signing that agreement, the company agreed to their inclusion, although it should be said that it did so despite top management's continued belief that the status of leaders should have been otherwise.

One of the major issues in the 1947 strike was a renewal of this perennial argument in terms of a company request to exclude hourly rated leaders from the bargaining unit. Technically, the result of the 1947 agreement was a compromise. Hourly rated leaders were left in the bargaining unit by leaving the language unchanged, and a wage scale for such leaders is included in the appendix to the agreement. Salaried leaders were excluded from the bargaining unit, as had been the case at all times. Thus, simple examination of the contract would indicate that the company had failed to obtain its objectives. However, the company really won "this round" because under the terms of paragraph 3 of a side letter of November 10, 1947, the company has the right (not subject to review by the union or the umpire) of changing leaders from hourly rated to salary, or vice versa. The hourly rates and salary equivalents are roughly comparable, and the duties are very similar. Therefore, the net result of the November 10, 1947, settlement is that, since November 10, 1947, it is solely within the discretion of the company whether any leader is in or is not in the bargaining unit. It can take an hourly rated leader out of the unit by the simple device of putting him on salary, and the union has no recourse to arbitration Since the union signed these November 10, 1947, documents, it has agreed to that result, despite its continued position that the situation really should be otherwise. Thus, the union now is in the same general position occupied by the company during the period of the 1946 agreement. Without any change in the contract language, the union won its point under the 1943 and 1946 agreements by arbitration. The company won its basic argument for the 1947 contract by paragraph 3 of the side letter.

The above résumé of the history of the general status of leaders is given here in the introduction as a statement of facts. While the parties might differ in minor respects as to my recounting of the story, the testimony at the hearing on March 16 would indicate that there can be no substantial disagreement as to this background.

It has been noted that the employees involved in this case were classified as hourly rated leaders when the strike began. After the strike had continued for several weeks, it began to appear that it would be a long one. Negotiations were stalemated and at some point the company began to sponsor a back-to-work movement. Some salaried employees were active in attempting to persuade employees to return, and the company began to achieve some success at this yard. One of the first company objectives was to persuade all leaders to return. As part of this program, the company sent a notice to all leaders (including the leaders involved in this case) and to certain other supervisory, engineering, and clerical employees. These notices were form notices, dated on or about September 6, 1947, and are illustrated by the following sample copy:

"SUPERVISORY, ENGINEERING, OR CLERICAL EMPLOYEE

"Name: McGuire, Raymond A.

"Symbol and No.: YB–22. Date: Sept. 6, 1947.

"Until further notice, you are hereby notified to report for work to perform your regularly scheduled duties during the strike which has been called by the Industrial Union of Marine and Shipbuilding Workers of America."

In addition to the notices, it appears that certain high-rated supervisory employees contacted these leaders by telephone, personal visits, and special meetings.

On September 8, 1947, the company amended the personal records of all the employees involved and apparently did likewise for all hourly rated leaders by changing their classification from hourly rated leader to salaried leader. An appreciable number of leaders did return to work, and the evidence indicates that most of those who did return have retained their leader classification and rate of pay as salaried leaders.

It also appears that at some time or times subsequent to September 6, 1947, all or some of those leaders who had not returned to work were somehow advised that, if they did not return by September 24, 1947, they would be demoted to mechanics' jobs. In any event, the complainants in this case did not return to work by September 24 and in each and every case their personnel record cards show that they were demoted to mechanic classification and rate of pay as of September 24, 1947.

When the strike was finally terminated, the parties signed a new and revised labor agreement dated November 10, 1947, and also a side letter of the same date. This case requires interpretation of paragraphs 2 and 3 of this side letter, reading as follows:

"2. The employees who were on June 23, 1947, on the pay rolls of the respective companies at such yards will be returned to work as soon as the orderly resumption of operations will permit. Neither the companies nor the union will discriminate against any such employee because he participated in or opposed or failed to participate in the strike or any action in support of the strike, and any claim that this provision has been violated in respect of any employee may be taken up as a grievance in accordance with the provisions of article XIX of the main agreement. The length of service of an employee shall not be deemed to have been broken during the period of the strike.

"3. The bargaining unit as defined in section 1 of article II of the main agreement shall not include any employee classified as "quarterman." The companies have advised the union that since June 25, 1947, they have placed on salary certain snappers and leaders who were previously paid on an hourly basis and that they intend from time to time to place additional snappers and leaders on salary. The question whether such snappers and leaders who have been or shall be so placed on salary shall be included in the bargaining unit defined in the main agreement shall remain open for further negotiation between the parties and neither such question nor any other question involving such snappers or leaders shall be handled as a grievance under the provisions of article XIX of the main agreement."

As noted earlier in this introduction, the complainants in this case (except McGuire) did return to work after the strike settlement, but in no single instance had any one of them been reinstated to a job as leader (salary or hourly rated) as of the date of the hearing. In each case they were assigned to work with the tools as mechanics and were paid at the mechanic rate applicable to such work with the tools.

The union's principal claim is that the company violated paragraph 2 of the side letter by its action with respect to these individuals. The company disclaims any violation of paragraph 2 and claims that its action is fully covered by paragraph 3.

It will be noted that paragraph 2 specifically provides for grievance procedure, including arbitration, in any case of an alleged violation of that paragraph. On the other hand, paragraph 3 specifically exempts certain matters under that paragraph from grievance procedure and arbitration. For this reason, a question of umpire jurisdiction has arisen.

A subsidiary question has also arisen as to grievance No. 1964. This is a general grievance reading as follows:

"The company has violated article III, section 5, and article XIII, of the agreement and paragraph 2 of the letter of November 10, 1947, for termination of the strike, by failing to restore hourly paid leaders who participated in the strike and did not return to work until the formal termination of the strike to their positions as hourly paid leaders.

"The union requests that the above-mentioned employees be restored to their positions as leaders, held by them at the inception of the strike, and be reimbursed with all wages lost by them by reason of the company's action described above."

The company claims that this general grievance is not properly before the umpire.

The specific grievances covering the 36 individual employees vary as to wording but not as to substance. An illustrative sample of these individual grievances is No. 1967, which reads as follows:

"The union charges the company with discriminating against Vincent Elliott for participating in the strike against the company.

"Vincent Elliott was a leader for 4 years before the strike. After he returned to work the company put him back to work as a mechanic.

"Therefore, the union requests that Vincent Elliott be restored to a leader's classification and be paid for all loss of pay due to the company's action."

Position of the union.—(1) These cases are positive proof of a company policy at this yard to punish hourly rated leaders who failed to join the back-to-work movement by refusing to reinstate them to a job as leader.

(2) Most of these men have long service at the yard, and their length of service as leaders varies from 1 to 17 years. Men with less yard service and no experience as leaders have been promoted to take their places.

(3) Except for the simple fact that these employees remained loyal to the union throughout the strike and refused to return to work at company request, no reasons have been advanced by the company to explain its refusal to reinstate them to their jobs as leader.

(4) This is an obvious violation of paragraph 2 of the side letter of November 10, 1947. It is also a violation of article III, section 5, and of article XIII of the agreement.

(5) The general grievance (No. 1964) is a proper grievance. It is necessary because a few employees similarly situated may have been afraid to initiate a separate grievance.

(6) The company has also violated assurances given in a letter to the director of the Federal Mediation and Conciliation Service.

Position of the company.—(1) The umpire is precluded from accepting jurisdiction in these cases for the following reasons:

(*a*) Paragraph 3 specifically excludes such questions from arbitration since all the complainants were known by the union to have been reclassified as salaried supervisors and then demoted before the strike settlement.

(*b*) Paragraph 2 of the side letter is not even applicable to these employees since it refers to employees and an employee is defined in the agreement as not including salaried leaders.

(2) Even if the umpire should overrule the company's jurisdictional arguments, he would have no authority to order back pay or to order reinstatement either to hourly rated or salaried leader jobs. There are no hourly rated leader jobs left at this yard.

(3) In addition to the above arguments, grievance No. 1964 is a general grievance and of a type not properly in the grievance procedure.

(4) Paragraph 2 is not a guaranty that every employee will be reinstated on November 10, 1947, to the same job and rate of pay he held prior to the strike.

(5) The company observed all commitments it made in the letter to the Director of the Federal Mediation and Conciliation Service.

Opinion.—As this matter is presented, it is clear that the umpire cannot make specific findings here as to individual cases. The argument on both sides was on the general issues involved and not on the facts and circumstances surrounding each separate grievance. The basic issue here is whether the umpire has jurisdiction. And even if the umpire holds that he does have jurisdiction, the next question is whether his authority includes the possibility of granting the relief requested by the union.

At the outset it is advisable to examine the provisions of the main contract referred to by the union in its claims of contract violation. Article III, section 5, reads as follows:

"Section 5. The company will not discriminate against any employee or applicant for employment at any of the yards by reason of his membership in the union *or by reason of any union activity on his part not in contravention of any provision of this agreement*, or because of race, creed, color, sex, national origin, or membership in any lawful organization." [Italics supplied.]

This section of the agreement is not without meaning in the case. All the individuals involved in this case presumably were members and are members of the union before, during and after the strike. By any possible interpretation of either the May 6, 1946, agreement or the November 10, 1947, agreement, they were "employees" up to June 23, 1947, and after November 10, 1947. Prior to the strike they were hourly rated leaders who were in the bargaining unit. After the strike, the company action of demoting them to mechanic classifications unquestionably made them "employees." There was no contract during the strike. But even if it should be assumed that the word "employee" had any meaning during the strike, all of these individuals were "employees" by the company's own testimony except for the brief period of September 8 to September 24, when the company unilaterally classified them as salaried leaders.

Whatever may be said about the advisability or inadvisability of this particular strike, it was a legal one. It was officially called by the union at the expiration date of an agreement and therefore was not contrary to article XVIII (prohibition of strikes and lockouts). That article begins:

"During the term of this agreement * * *"

The corresponding clause of the 1946 contract includes the same provision In short, the strike in question was not "* * * union activity * * * in contravention of any provision of this agreement."

Nor was the participation of any hourly rated leader in that strike any violation of the contract. Both before and after the strike, hourly rated leaders were and are in the bargaining unit and, as members of the bargaining unit, have the same right to participate in strike activity as any other employee.

While I do believe that article III, section 5, is material to the case, it was not discussed extensively at the hearing and will not be discussed further here. The reason is that paragraph 2 of the side letter of November 10 is a more specific reference to the same subject matter and in a very real sense is a clarification of and further acknowledgment of the company obligations regarding discrimination as they relate to this particular strike situation. Paragraph 2 also includes other provisions, as will be noted later. All that I am saying here is that article III, section 5, and that portion of paragraph 2 referring to company discrimination should be examined simultaneously in appraisal of this case.

The union also claims a violation of article XIII, seniority. Without discussing this matter in detail and without ruling out possible consideration of seniority in some future phase of these cases, I do not believe that article XIII has much signficance in deciding the issues which will be determined by this decision.

We will not turn to interpretation of paragraph 3 of the side letter. It has been reproduced in the introduction. What did the company gain by that paragraph? In the first place, it reaffirmed something which is already implicit in article II where in the bargaining unit is defined. The matter reaffirmed is that salaried leaders are not in the bargaining unit and that the union has no right to represent them in grievance procedure including arbitration unless the company should so agree. There is a reference to "further negotiation between the parties" but that, in effect, means that, unless the company should change its present policy, salaried leaders are excluded from representation by the union in any way, shape, or fashion.

Secondly, and probably more important, paragraph 3 gives the company the right to take any hourly rated leader out of the bargaining unit by the simple device of transferring him from hourly rated to salary. Nor is that right restricted quantitatively. At this yard, the company has seen fit to date to abolish hourly rated leaders entirely. Evidence indicates that it has not done so at its other repair yards. Because of repair-yard fluctuations in demand for leaders at any particular time, there are obvious advantages to the company in case of transfer to have at least some hourly rated leaders who can move in and out between mechanic and leader as production requirements dictate. But, for whatever reason, if the company decides to have all of its leaders on salary and therefore out of the bargaining unit, paragraph 3 gives it that right.

As I read paragraph 3 and examine the evidence presented at the hearing the two points made above were the principal company objectives during the strike and at the time of the strike settlement. To repeat, the company won its basic argument that it should be able to decide without veto power by the union or by an umpire whether any or all of its leaders should be in the bargaining unit.

But that is not the issue in this case. The simple fact is that, during the strike and specifically on September 24, 1947, when the company felt that these leaders were exhibiting loyalty to the union rather than to the company, it made a unilateral determination that these employees were no longer fit to be leaders and demoted them. Nor did it change that decision in any significant respect after the strike settlement on November 10 which included the placing of joint signatures on paragraph 2. The issue is whether that company policy and action is in accordance with paragraph 2 of the side letter and article III, section 5, of the agreement.

Before proceeding to an examination of the intent of paragraph 2, it is necessary, first, to consider the company argument that the complainants are not covered by paragraph 2 because they were not "employees" within the definition of that term. I have already considered this matter in a discussion of article III, section 5, but will repeat it here briefly. These individuals as hourly rated leaders were in the bargaining unit and were "employees" on June 23, 1947, under the terms of the 1946 contract. By the company's action of demoting them to mechanics, they were "employees" on November 10, 1947. If we use either the 1946 or 1947 definition of an "employee" and extend it through the strike period when there was not any contract, they were "employees" for all of that period except the period from September 8 to September 24 when the company gave them a paper rating of salaried leaders. On both technical and realistic grounds, they are covered by paragraph 2.

It has already been noted that paragraph 2 reinforces article III, section 5, of the contract as to the company's obligation not to discriminate against these employees. It even goes so far as to include:

"* * * *any action* in support of the strike * * *." [Italics supplied.]

Proceeding under that part of the paragraph, the company has even reinstated voluntarily employees who were arrested on the picket line and some who spent time in jail.

Paragraph 2 goes beyond company obligations and introduces something not even intimated in article III, section 5. I am referring to the reciprocal obligations assumed by the union. To put it very bluntly, when the union signed paragraph 2, it agreed to treat "scabs" as "brothers." The union represents all employees in the bargaining unit. It agreed to forget that, in the face of financial necessity and company pressure, many employees had gone back to work in spite of picket lines and union pressure. It agreed to represent those employees impartially and not to discriminate against them in any way.

In short, any realistic appraisal of either the language or spirit of paragraph 2 can lead only to one conclusion. The parties agreed to let bygones be bygones and just as far as is humanly possible wipe out the whole strike incident as something which had best be forgotten. That is the only meaning of paragraph 2, and it is a meaning which is important to the cause of future good relations between the parties. Nor am I as umpire just preaching a sermon in this matter. Paragraph 2 is the parties' own language "sweated out" at the end of a long strike which had been costly to both sides.

Viewed in the light of paragraph 2, the simple fact that every hourly rated leader who did not respond to the company's back-to-work movement during the strike has been refused reinstatement to a leader job cannot be construed as anything but a company violation of paragraph 2 of the side letter and of article III, section 5 of the main agreement.

There is one principal company argument which has not been discussed heretofore. The last sentence of paragraph 3 contains the words:

"* * * neither such question nor *any other question involving such snappers or leaders* shall be handled as a grievance under the provisions of article XIX of the main agreement." [Italics supplied.]

In effect, the company argument is that, even if these individuals were discriminated against because of strike activity, that discrimination was countenanced by paragraph 3 and the union agreed that nothing could be done about it. To put it even more bluntly, the company's argument is that these 36 odd men at the Baltimore yard were sacrificed in the strike settlement. I will readily agree that the words "any other question" can cover a good deal of territory. There is some territory they are known to cover. The preliminary words "such question" refer only to possible future bargaining (not arbitration) concerning the bringing of some or all formerly hourly rated, now salaried, leaders back into the bargaining unit. From past experience on leader and snapper cases, the additional words "any other question" undoubtedly include the general subjects of promotion, demotion, coincident with reduction in work force, etc. But to say that these words mean a negation of paragraph 2 as respects these 36 odd individuals at the Baltimore yard would mean that a "sleeper" was deliberately negotiated. My prior discussion of the meaning of paragraph 3 indicates clearly that the union gave up much when it signed the side letter. But the evidence does not indicate that the union gave up any paragraph 2 rights as respects these individuals. To repeat, when one examines the reciprocal obligations assumed by the union in paragraph 2 and the company's own actions as respects other individuals arrested on the picket line, as well as the obvious meaning of paragraph 2, it simply does not make sense that 36 people should be carved out as exceptions.

Having found a general company violation of paragraph 2 and of article III, section 5, as respects at least some of these individuals, what is to be done about it?

The company is unquestionably correct in its contention that I have no authority to order that any or all of them be reinstated as salaried leaders. Company determination must be final as to who is to be a salaried leader.

I would have authority to reinstate all or some of these individuals as hourly rated leaders. They were hourly rated leaders before the strike. This classification of employees is in the bargaining unit and within my jurisdiction. There is a rate of pay for hourly rated leaders specifically included in appendix 1 of the contract. But this possible action runs head-on into a finding I have already made, namely, that, if it so chooses, the company has the right to put all leaders on salary. The company is correct in its contention that the inclusion of a classification and rate of pay in the contract is not proof that it must be used. The most that can be said for its inclusion in the current Baltimore yard contract is that it is some indication of joint intent to use the classification which had not yet been borne out by subsequent company action. But if I should order the company to reinstate all or some of these employees to hourly rated jobs as of November 10, 1947, with or without back pay, it would be possible for the company to transfer them to salary and then immediately demote them again to mechanics. If the company wanted to take that action, there would be no technical ground for recourse by the union. The company has sole control of its salaried force.

In view of these practical difficulties, I would prefer not to order reinstatement of any or all of these employees as hourly rated leaders. But that does not mean that there is no remedy. The umpire has the authority to order damages payable by the offending party to the complaining party. In short, if it becomes necessary to do so, I can assess damages against the company for its violation of paragraph 2 and of article III, section 5, such damages to be payable to the aggrieved employee.

With this finding which may be a sword of Damocles held over the company's head, I return the matter to the parties for further negotiation.

It was noted early in this opinion that in no event would I be able to make a specific finding as to each individual case on the basis of the evidence at hand. The company is correct in its general position that paragraph 2 is not a guarantee that each and every employee will be reinstated to precisely the same job he held prior to the strike. My findings that there was a company violation does not necessarily mean that good reasons may not have existed for failure to reinstate some of these men to leader jobs.

The first and most obvious consideration in any individual case would be whether on November 10. 1947, or subsequently, the volume of work available would permit or require reinstatement. If the volume of work had declined, then the demotion of some leaders would have been necessary, entirely irrespective of the principal issue in this case.

In connection with the above paragraph, brief mention should be made of the letter addressed by the company to the Director of the Federal Mediation and Conciliation Service. It read as follows:

"This will advise you, as Director of the Federal Mediation and Conciliation Service, that Bethlehem Steel Co. and Bethlehem-Sparrows Point Shipyard, Inc., do not have any intention of placing hourly paid snappers and leaders on salary as a device for terminating their employment because of their membership in the union or their union activities."

Technically, that is not a letter which I am empowered to interpret since it is entirely outside the contract. However, it was a part of the strike settlement, and it is my considered opinion that it does not add much to the case on either side of the argument. It is clear that it is not a guarantee that hourly rated leaders, placed on salary, would remain as leaders. The company could not make the commitment if for no other reason than that production requirements might not necessitate retention of that many leaders. It was addressed to Cyrus S. Ching and not to the union, because the union does not represent salaried leaders. At least in this case, the company has not used paragraph 3 for the purpose of "terminating the employment" of any employees. But I cannot agree with the company that the Ching letter is confirmation of the company's alleged right to ignore paragraph 2 as to those 36 employees.

Another factor which might require consideration in individual cases would be whether the employee involved had demonstrated before the strike that he was not properly performing his duties in his capacities as this first rank of supervision. By the terms of paragraph 3, the company has acquired some closer control of its supervisory forces. Some control always existed. If an hourly rated leader demonstrated that he was not representing the company in his supervisory capacity, the company always had the right to discipline him by demoting or by discharge if the evidence warranted it. While the men were hourly rated, the only difference was that the right to demote or otherwise discipline was subject to grievance procedure. I have underlined the words "before the strike" as noted above. The basic company error in this entire case, in view of its commitments under paragraph 2, was in reaching the conclusion that continued participation in the strike disqualified an employee from future good and acceptable service as a leader. I have considerable sympathy with the company position that, if an individual has first loyalty to the union and only secondary loyalty to the company, he may find it difficult to be a good supervisor, even in this lowest rank of supervision. But whatever the theory may be on this point, these men, rightly or wrongly, were in the bargaining unit when the strike was called by their union. In a strike situation it simply is not sound to say that because a union man refused to "scab" he can never properly represent the company in this rank of supervision. It is possible that the strike experience may prove to have disqualified some of these individuals for that type of work. But to assume that it has done so without even giving the employee the right to a trial is not within the meaning of paragraph 2 any more than it would be to say that the union would be correct if it held that because a man had "scabbed" during the strike it should be free to relieve itself of its obligation to him under paragraph 2. In short, if a leader had had a satisfactory record as a leader before the strike, and if production requirements permit his reinstatement to a leader job, it is my considered opinion that paragraph 2 contains a minimum obligation on the company to give that individual a reasonable trial period before it pronounces him unfit for work as a leader.

There remains for discussion the question as to grievance No. 1964, which is a general grievance. In this sort of case, if the union had filed nothing but the general grievance without any bill of particulars supporting it, I might agree with the company that it was out of order. Charges of discrimination are usually individual worker cases and need specific reference either by separate grievances or by listing of the aggrieved along with the general grievance. But as respects the issue being decided by this decision, it is a general issue and there may be something to the union argument that in the situation prevailing immediately after the strike some few individuals might have been afraid to press a grievance. I rule that the grievance is in order but that, if the union intends to add any individuals to the list of leaders claiming to have been discriminated against, it must do so within 20 days after the date of this decision.

Decision.—(1) The company of this yard is guilty of a violation of paragraph 2 of the side letter of November 10, 1947, and of article III, section 5, of the agreement of the same date by virtue of its wholesale refusal to reinstate to a leader job all those hourly rated leaders included in the bargaining unit who failed to respond to a company request to return to work during the 1947 strike.

(2) This decision makes no finding as to any individual case. The matter is referred back to the parties for further negotiation at step 3 with the provision that, if any unresolved issues remain 30 days after the date of this decision (or longer if the parties agree to an extension of time), these unresolved issues may be referred back to the umpire for determination.

(3) The finding made in (1) above carries with it a corollary finding that damages may be assessed against the company arising out of such violations as may subsequently be determined in any individual case. The extent and amount of such damages, if any, in any individual case cannot, of course, be determined apart from the facts of that case.

(4) Under the circumstances of this case, the company objections to general grievance No. 1964 are dismissed. However, if the union intends to present any additional individual claims under this grievance, it must do so not later than 20 days after the date of this decision.

(S) WILLIAM E. SIMKIN, *Umpire.*

EXHIBIT D

Bethlehem Steel Company (Shipbuilding Division), Baltimore Yard, Baltimore, Md., *and* Industrial Union of Marine and Shipbuilding Workers of America, Local No. 24.

Umpire decision No. 24–A (supplement to decision No. 19–A). Grievances Nos. 1964, 1967–1999 (inclusive), 2001, 2002, and 2004. Dates of hearings, September 20, 21, 22, October 14, and November 15 and 16, 1948. Date of decision, February 9, 1949.

Nature of case.—Determination of remaining issues in connection with above-numbered grievances.

Introduction.—Decision No. 19–A outlines the general background of these cases.

The basic issues presented to the umpire at the hearing preceding issuance of that decision were questions of umpire jurisdictions, and a preliminary appraisal of the general problem presented by these grievances. No testimony was offered or taken at the hearing on March 16, 1948, regarding specific grievances except as illustrative examples of the general problem. The summary decision of 19–A reads as follows:

"1. The company at this yard is guilty of a violation of paragraph 2 of the side letter of November 10, 1947, and of article III, section 5, of the agreement of the same date by virtue of its wholesale refusal to reinstate to a leader job all those hourly rated leaders included in the bargaining unit who failed to respond to a company request to return to work during the 1947 strike.

"2. This decision makes no finding as to any individual case. The matter is referred back to the parties for further negotiation at step 3 with the provision that, if any unresolved issues remain 30 days after the date of this decision (or longer if the parties agree to an extension of time), these unresolved issues may be referred back to the umpire for determination.

"3. The finding made in (1) above carries with it a corollary finding that damages may be assessed against the company arising out of such violations as may subsequently be determined in any individual case. The extent and amount of such damages, if any, in any individual case cannot, of course, be determined apart from the facts of that case.

"4. Under the circumstances of this case, the company objections to general grievance No. 1964 are dismissed. However, if the union intends to present any additional individual claims under this grievance, it must do so not later than 20 days after the date of this decision."

Subsequent to receipt of that decision and in connection with item 4 above, the union filed complaints covering 38 individuals, thus completing its claims under grievance No. 1964. The other individual grievance had listed 36 individuals. The total number of claimants involved in these proceedings is therefore 74 named persons.

After the full coverage of the cases had been determined by including the grievance No. 1964 employees, the parties met on May 20, 1948, in an attempt to resolve the differences between them. No agreement was reached at that meeting. The company offered to pay monetary damages to some of the claimants in amounts not disclosed to the umpire but refused to reinstate any of the claimants to leader jobs or to make any provisions for the disposition of claims of continued discrimination after the proposed settlement. The union would not accept this company offer. On May 24, 1948, the union requested that the unresolved issues be referred back to the umpire.

On the first day of resumed hearings September 20, 1948, the umpire suggested to the parties that another attempt be made to resolve all or at least some of the individual cases. A recess was called, at which time the representatives of both parties conferred among themselves separately. At the conclusion of this recess, the company representatives reported that the company was not in a position to make any offers, even as to a single individual, and that any further direct negotiations between the parties would therefore be futile. In view of this position, it was obvious that the hearings must proceed for the purpose of taking testimony and evidence on the general positions of both parties and on the arguments and testimony with respect to each of the 74 claimants. This process required a total of 6 days of hearings (September 20, 21, 22, October 14, and November 15 and 16). At the conclusion of the hearings, permission to file briefs was granted both parties. The company brief was submitted to the umpire under date of November 29, 1948, and the union brief under date of December 2, 1948. Briefs were exchanged.

The individuals involved in this case and the grievance numbers are—

Name	Grievance No.	No.	Name	Grievance No.	No.
Vincent Elliott	1967	AJ-29.	Charles E. Bogy	1964-3	O-23.
Albert Eversmier	1968	AJ-58.	Henry C. Powers	1964-4	O-83.
Casmer A. Sablowski	1969	AJ-38.	Charles W. Seipp	1964-5	O-35.
Ward F. Chapman	1970	O-277.	Floyd K. Bennett	1964-6	O-104.
Herman Dohmer	1971	O-93.	John Johnson	1964-7	O-3.
James E. Seal	1972	O-374.	Eugene Marable	1964-8	O-31.
Edward Glodek	1974	O-183.	Joseph Sampson	1964-9	R-94.
John D. Nowak	1975	S-182.	L. H. Rieo	1964-10	R-49.
Robert S. Moton	1976	S-803.	Walter Gran	1964-11	R-142.
Harold L. Davis	1977	S-843.	Harry W. Eber	1964-12	R-210.
John Kasinski	1978	S-823.	Valentine Arras	1964-13	R-114.
George Booth	1979	S-806.	William Dowling	1964-14	X-111.
Brady Patriek	1980	S-34.	John Strubing	1964-15	R-154.
George H. Meyers	1981	S-828.	John Faust	1964-16	R-2.
Fred Fischbach	1982	S-814.	Joseph Gorski	1964-17	R-73.
Winston A. Johnston	1983	S-815.	L. H. Marsh	1964-18	S-495.
Sutton Knuckles	1984	S-812.	E. F. Broddy, Sr	1964-19	S-484.
Joseph P. Reinsfelder	1985	DB-6.	Harry W. Mohr	1964-20	S. 527.
Bert Paul	1986	S-568.	John J. Merzendorf	1964-21	S-494.
Francis McGuire	1987	BD-14.	William T. Morgan	1964-22	S-487.
George W. Henneman	1988	S-506.	Richard N. Arnold	1964-23	S-409.
Roy McGuire	1989	YB-22.	Benjamin H. Alder	1964-24	S-32.
Milton S. Miller	1990	TC-12.	F. C. Knofski	1964-25	S-560.
Casmir Gribbet	1991	P-52.	Henry Paskoski	1964-26	S-462.
William E. Welters	1992	Y-140.	Herman A. Kreafle	1964-27	S-452.
William Demchenke	1993	Y-27.	Joseph Gaydos	1964-28	S-192.
John W. Gibson	1994	Y-457.	James B. Cartright	1964-29	S-260.
Ralph W. Petty	1995	Y-534.	Lawrence B. Golden	1964-30	S-290.
Walter Kyle	1996	Y-121.	Marion Shalcosky	1964-31	N-74.
John E. Becker	1997	S-194.	Edwin Duvall	1964-32	JA-46.
Frank Maezka	1998	S-306.	Walter Wornell	1964-33	YB-24.
William F. Durkin	1,999	Q-35.	Vladimir E. Kolzow	1964-34	P-38.
Edward Buker	2001	O-474.	William H. Sunderland	1964-35	C-3.
Stanley Kotofski	2002	Y-185.	Thomas A. Webster	1964-36	B-6.
A. J. Tarsel	2004	Y-34.	Lawrence E. Dixon	1964-37	S-27.
Charles Cochell	1964-1	O-208.	Frank F. Kohlhoff	1964-38	R-113.
John Faust	1964-2	O-465.			

It will be noted that in item 1 of decision No. 19-A, I found the company guilty of a violation of paragraph 2 of the side letter of November 10, 1947, and of article III, section 5, of the main agreement of the same date by virtue of its wholesale refusal to reinstate to a loader job those loaders who had failed to respond to the company's request to return to work during the 1947 strike. In item 2 of the same decision, amplified by discussion in the opinion, I found that the general conclusion reached in item 1 was not a necessary conclusion in each and every individual case.

While the detailed testimony at the last 6 days of hearings amplified very materially the more limited and general nature of the testimony given on March

16, 1948, review of decision No. 19–A discloses only one important error in statement of facts in the text of that decision. At the March 16, 1948, hearing, the umpire assumed that the union testimony meant that no hourly rated loader as of June 25, 1947, who had not come back to work during the strike had yet been reinstated to a loader job. The company did not state otherwise, either at the hearing or in its brief. A full résumé of the facts in this connection (see company brief in the instant case, pp. 10 and 11) shows that between November 10, 1947, and March 15, 1948, a total of 55 salaried leaders had been made in the departments involved in this proceeding. Of this total 21 men had been hourly rated loaders as of June 25, 1947, and had not come back to work during the strike. Only 1 of those 21 men is a complainant in the instant cases. The remaining 34 salaried loaders made in these departments between November 10, 1947, and March 15, 1948, were not loaders (salaried or hourly rated) just prior to the strike.

By a letter mailed after receipt of the company brief, the union objects to the introduction in evidence of the lists of names and dates of salaried loaders made subsequent to November 20, 1947. (See company brief, pp. 10 and 11.) This union objection is made on the ground that this is new evidence, that an agreement had been made at the hearing not to introduce new evidence, that these facts were known during the hearing and that the introduction of the lists now, together with the agreement not to file reply briefs, precludes the union from raising questions as to the lists. Technically, the list objected to by the union is new evidence. However, the argument made by the company proceeding from that list was made by the company on numerous occasions during the hearing. Fragments of the list were also introduced during discussion of individual cases. The only realistic objection the union can have to introduction of the list now is that it did not have readily available at the hearing a complete list of salaried leaders appointed since November 10, 1947, and therefore did not have a full opportunity to "shoot at" the qualifications of the new appointees in contrast to the qualifications of the claimants. I am overruling the Union's objections to introduction of the list in the company brief for the following reasons, some of which have already been observed:

(1) The company's basic argument proceeding from the list was made on several occasions at the hearings.

(2) The totals from the lists are disclosed in another set of data supplied at the hearing by the company to the umpire and the union. (See company brief, p. 8).

(3) Fragments of the list are in the evidence as to individual cases, both as to names and dates.

Because some time between November 10, 1947, and March 15, 1948, in the departments involved it did make salaried leaders of 21 men who had been hourly rated leaders on June 25, 1947, and had not come back to work during the strike, and because between March 15, 1948, and September 15, 1948, it made leaders of an additional eight men (six of whom are claimants in these cases), the company holds that the basic promise as to facts which apparently prompted the umpire to write item I of decision No. 19–A has been removed and that no pattern of discrimination existed. The union holds otherwise. Consideration of this matter will be deferred to a later section of this decision. The subject is noted here because it is a part of the background which is necessary to an understanding of the position of the parties.

It is manifestly impossible to itemize all the contentions and arguments made by the parties during 6 days of hearings. This is particularly true with respect to the testimony in the 74 individual cases. I shall attempt to set forth below only the more important general arguments.

Position of the union.—(1) In each and every one of these cases there is evidenced a pattern of discrimination which goes back solely to the fact that these men did not respond to the company's requests to go back to work during the strike.

(2) Discrimination continues in each instance until such time as the company restores all the individuals to a leader's job.

(3) In view of the additional evidence in these cases, the umpire should reconsider those portions of the opinion in decision 19–A which indicated that he would not order reinstatement of individuals as salaried leaders and that he probably would not order reinstatement as hourly rated leaders.

(4) Reductions of the work force did not justify the company's failure to reinstate these men to leader jobs.

(5) The various claims now made by the company as to alleged incompetence of these men in their leader jobs prior to the strike should be ignored for the following reasons:

(*a*) In most cases the company allegations were never made to the men or to the union and appeared for the first time at these hearings.

(*b*) In any event most of the claims are either vague or immaterial or occurred long before the strike.

(*c*) The best evidence of the competency of these leaders is that they were voluntarily selected for the job by the company in the first place and in most instances served for an extended period of time in a leader capacity. Some of them were selected or reappointed only a few months before the strike.

(*d*) The company appears to have had no doubts about the competency of these men when it urged them to come back to work as leaders during the strike.

(*e*) The company witnesses who testified on these points were not competent to testify about these men because they had little or no direct contact with them. Quartermen who have real knowledge of their ability did not appear.

(*f*) The company has exhibited no such close scrutiny of the qualifications of these former hourly rated leaders who did come back to work during the strike at company request.

(6) In a number of instances discrimination has been carried to the point where these men have been requested to act as leaders and have in fact acted as leaders since the strike, but at mechanic's rate of pay.

(7) The union reiterates its original request that each claimant be ordered restored to a job as leader (hourly rated or salary) and that he be compensated in full for all loss of earnings beginning November 10, 1947, and continuing until such time as the leader job is restored.

(8) In the event that the umpire should persist in his fallacious preliminary conclusion that he is not empowered to order reinstatement as a salaried leader and that he should not order reinstatement as an hourly rated leader, then money damages should be awarded as follows:

(*a*) Back pay to each individual equal to the difference between the appropriate hourly rated leader rate and the rate actually earned, beginning November 10, 1947 and continuing until such time as the individual is restored to a leader job, plus

(*b*) An unspecified amount of compensation to each individual to compensate him for more intangible losses, such as:

(1) Easier working conditions on leader jobs.
(2) Loss of prestige because of the demotion.
(3) Loss of likely prospects for promotion to still higher paying supervisory jobs, plus

(*c*) An unspecified amount of punitive damages to each individual because of the company's persistent adherence to an untenable position even after decision No. 19-A, plus

(*d*) An award to the union in amount of $50,000 to compensate it for damage to union prestige arising from the company violations.

Position of the company.—(1) The alleged pattern of discrimination charged in this case never existed, as is evidenced by the fact that 29 men (including 7 claimants) who were leaders on June 25, 1947, have been reinstated to a salaried leader job between November 10, 1947 and September 15, 1948.

(2) In each individual case the qualifications of the claimant were considered equally with the qualifications of others available to be appointed whenever a vacancy as leader occurred after November 10, 1947. No discrimination was shown.

(3) The reduced work force after the strike obviously required fewer leaders. There are even more claimants than jobs available throughout the entire period beginning November 10, 1947, and ending September 15, 1948. In one extreme instance there are 4 claimants and no leaders at all in the department.

(4) Company witnesses were competent to testify as to the ability of those men as leaders before the strike. The factors which prevented their reappointment as salaried leaders after the strike developed at supervisory meetings where careful attention was given to the qualifications of all persons available for leader jobs.

(5) It is admitted that some of the supervisory testimony and opinions as to individuals were vague and intangible. However, qualifications of leadership are necessarily so and are not always subject to precise, objective language or analysis. It is primarily because of this fact that the company sought and obtained in paragraph 3 of the side letter of November 10, 1947, the sole right to select and

maintain the supervisory force. Evidence of the validity of management's opinions in this particular is found in the fact that yard operations have been performed more efficiently since the strike.

(6) Specific reasons for management's decision in each case were developed at the hearing and are summarized in the post-hearing brief (pp. 16 to 57).

(7) The union allegation that some of these claimants have been performing leader work at mechanic's rates of pay is without foundation in fact. In each case the claimant has not had the responsibilities of a leader.

(8) The company has presented its brief and argued its case in the belief that the umpire will adhere to his preliminary conclusions, namely, that he will not order restoration of any of these individuals to a job as a leader.

(9) Since there has been no discriminatory action, no money damages can be awarded. In any event, the umpire could not award the type of damages requested by the union.

(10) In appearing before the umpire in these proceedings the company has made it clear that it is not waiving its original position and that the umpire lacks jurisdiction in these cases.

Opinion.—It is both desirable and necessary first to appraise the general arguments of the parties in these cases rather than to attempt to analyze all the voluminous evidence in each individual case. Some repetition will be avoided and the issues will be more sharply focused.

Basic nature of discrimination in these cases.—During the course of these proceedings, a considerable amount of criticism, sarcasm, and some improper abuse was heaped by the union attorney on departmental foremen who testified for the company. The evidence does indicate that some foremen were more equitable than others in attempting to avoid discrimination against leaders who had not returned to work during the strike. There are some departments at this yard where the union has made no claims of discrimination. In some departments claims have been made but the evidence of real discrimination is weak. In other departments management's actions in some of these cases are indefensible by any standards.

On the surface this varying picture by departments would indicate that responsibility does lie with the foremen. But over-all review of these cases and the direct testimony of the yard manager convinces me beyond any reasonable doubt that the basic responsibility for the discrimination which may exist here must rest on top yard management. Basic policy in this matter was determined by top management. Individual foremen may have escaped discriminatory action by realistic handling of the situation, by some side-stepping of the logic of company policy, or by luck in not having to really face up to the problem because all or most of their leaders did return to work during the strike. But the policy itself was discriminatory despite top management's apparently sincere belief to the contrary.

The first act in this policy was the unilateral action of the company which occurred on September 24, 1947. On that date each and every leader who had not responded to the company's call to return to work was demoted to mechanic. On June 25, 1947, the company had a total force of 340 hourly rated leaders at the yard and 266 in the departments involved in these proceedings. The evidence is that during the strike (on or about September 8, 1947) every one of those hourly-rated leaders was offered a salaried leader job and was so reclassified on September 8, irrespective of his desires in the matter. Most of these offers were made by personal contact of a higher-rated supervisory employee. As noted in decision 19–A, that reclassification on September 8 was validated subsequently by paragraph 3 of the side letter of November 10. However, the subsequent demotion on September 24 of all those leaders who had not returned to work by that date was simple, unadulterated discrimination as a part of strike tactics. It is not over province to appraise the strike tactics of either party. Undoubtedly the union's strike tactics could be subject to a good deal of valid criticism if that were a part of this inquiry. All I am saying here is that as of November 10, 1947, when the strike was terminated by a signed agreement, including paragraph 2 of the side letter, each and every one of the former leaders who had been demoted on September 24 stood in the position of having been discriminated against by virtue of the nature of that demotion. Decision 19–A need not be repeated here. The core of that decision is that paragraph 3 of the side letter of November 10 did not validate the company's discriminatory act of wholesale demotions on September 24 and that paragraph 2 required that the company remove the discrimination if it persisted in any individual case.

When the agreement was signed on November 10, 1947, the question which should have been obvious to the company was:

"What steps should be taken with regard to the September 24 demotions in order to fulfill the company's obligations under paragraph 2 of the side-letter?"

The first and probably basic top-management violation of paragraph 2 occurred on November 10 when it apparently did not ask itself the above question. It wrongly assumed that the demotions of September 24 were valid accomplished acts and that all these former leaders were properly classified as mechanics.

On November 10, there were two possible ways by which management could have fulfilled its paragraph 2 obligations to these men:

(1) To offer immediate temporary restoration of all these men to a salaried leader job (or hourly rated at the company's option) with an explanation that after the post-strike work force had been determined, some adjustments probably would be necessary; or

(2) To place some or all of these men temporarily on mechanic's work with the tools with an explanation that just as soon as the work force had been readjusted, they would be given full consideration for available leader jobs on a par with leaders who had returned to work during the strike.

Neither of these two possible courses of action were taken. All these claimants and all others in like status who are not claimants were simply put to work with tools as mechanics. If any explanations were made at all, the men were told that they would be considered for leader vacancies when and if such vacancies should arise.

Some 200 former leaders had returned to work during the strike and were on a salary basis. On November 10 what the company really did was to conclude that these two hundred-odd men were assured of leader jobs more or less indefinitely because of their loyalty during the strike. The other one hundred and forty-odd men would be given consideration only for vacancies over and above the two hundred-odd jobs already filled. This action standing by itself perpetuated for an indefinite period two psychological groups of actual or potential leaders, the "loyal" and the "disloyal." This was not in accord with the spirit and intent of paragraph 2, which was to "let bygones be bygones."

I have indicated above that there were two possible ways by which the company could have fulfifiled its obligations under paragraph 2. The first of these (immediate offer of a salaried leader job or immediate restoration to an hourly rated leader job) would have had certain advantages for the sake of clarity of a real no-discrimination policy, but I am convinced that it could not have been made a mandatory action. Before the strike ended, some 65 percent of employees had already returned. Work was in progress under the direction of leaders who had returned. There was no assurance as to how many strikers would return or just when they would return. Some leader jobs had been eliminated entirely, as will be developed later. It was obvious that there would be somewhat fewer leader jobs in total because of reductions in work force. To have reinstated all former leaders to a leader job temporarily would have created very considerable confusion at least for a few days. As noted in decision B–19, paragraph 2 is not a guaranty that every employee would be returned to precisely the same job he held on June 25, 1947.

For the above reasons, I conclude that in fairness to the obvious problems faced by the company, it is only equitable to conclude that at least a 2-week period should have been allowed management in which time it could determine the size of its work force, the approximate number of leaders required and the identity of leaders who would be retained. A 2-week period (up to November 25) was allowed all hourly rated employees in which to return without loss of seniority. In short, I conclude that no damages should be assessed in any case for the period between November 10, 1947, and November 25, 1947. However, I also conclude that on or about November 25, the company should have made at least a basic preliminary line-up of its available leaders and that former leaders who had returned to work after the strike should have been considered for their merit and ability along with the two hundred-odd leaders who had returned during the strike, rather than to consider them as totally separate groups.

It is this top-management decision (which apparently still persists) to consider the two-hundred-odd leaders who returned during the strike as men in "untouchable" jobs for the sole reason of their loyalty during the strike which represents a part of the real discrimination in these cases. Most of these two-hundred-odd men would properly be entitled to their jobs in any event. But to make these jobs virtually "untouchable" was a discriminatory policy and contrary to the intent of paragraph 2. Moreover, it is contrary to management's principal objective in negotiating paragraph 3 of the side letter. What the company wanted was to have control of its supervisory force in order to obtain the best possible supervisors. With all due respect for the right kind of loyalty, I do not believe that any management would say that loyalty is the sole qualification for supervisory jobs and that a single act of loyalty overrides all other considerations such as experience, merit, and ability.

The next top-management policy which has inherent in it seeds of discrimination, relates to instructions to foremen and subsequent management action in the filling of leader vacancies after November 10, 1947. Mr. Reynolds testified that a part of this policy was that if a former leader was as good as other available men who had not been leaders, he was to be given preference. But along with these instructions to foremen, there was an admonition to make sure that all leaders selected would fit in with "the new system." Review of the detailed evidence in the individual cases makes it abundantly clear that some foremen understandably interpreted these instructions to exclude men from consideration if there was any suspicion that they might not be "loyal" supervisors. Let us look at the facts as to what happened under this policy.

From November 10, 1947, to September 15, 1948, a total of 77 leaders were made in the departments involved in these proceedings. Of these 29 (approximately 38 percent) were men who were leaders before the strike and who did not return to work during the strike. The remaining 48 (62 percent) were men who had not been leaders on June 25, 1947. No figures are available as to how many of the 48 new leaders returned to work during the strike as mechanics. However, most individual instances cited were such cases. For these 48 jobs, filled by new men, there were a total of 67 men available who are claimants in these cases and there may be others who have filed no claims. In short, less than one out of three former leaders who failed to report to work during the strike had been considered fit to again become a leader some 11 months after the strike had ended. In contrast to the figures only 21 of the 145 leaders who were working in these departments before the strike ended had left a leader job for any reason during the same 11-month period. Quits and promotions to higher supervisory jobs account for some of these 21 changes. The evidence indicates that discharge or demotion has occurred in only a handful of cases.

As the company points out, the fact that 29 former hourly rated leaders have been made salaried leaders is proof that there was no hard and fast discriminatory policy. But the over-all picture shows that "loyalty" remained the dominant factor and that these 29 men promoted only because the factors of superior experience, ability, and merit were so overwhelming that they could not be ignored.

At the risk of lengthening an unusually long opinion, I would like to make my position clear as to this factor of loyalty. There is nothing wrong with the company idea that close cooperation among all ranks of supervision, insistence on yard discipline, insistence on good quantity and quality of work and real loyalty to the company are necessary attributes of supervision in all ranks. If a leader cannot measure up to such attributes, he should not be a leader, salaried or hourly rated. But what the company has done is to say that leaders engaged in a legal strike at the expiration of a contract in which they were in the bargaining unit by agreement of the parties were disloyal to the company by remaining out on strike and refusing to help break it. These men were faced with a difficult decision when the September 24 deadline was fixed by the company. They failed to respond to the company request at a time when the much easier thing to do was to go back to work. At this yard, the backbone of the strike had already been broken by September 24, and most of these men were smart enough to recognize the fact. In several instances, the testimony of company foremen and the men themselves concerning their September discussions frankly discloses that the conversations were conducted in a spirit of mutual respect for each other's position, and the leader refused the request to return to work more in sorrow than in anger. Moreover, as those men testified, one by one, at the hearings in the instant cases, I think any impartial observer would conclude that there was remarkably little bitterness in their attitude. The occasions were rare where there was any reason to suspect any real underlying disloyalty to the company.

In about 10 years of arbitration I have had the occasion to listen to a good many employees and supervisors. Based on that experience, I am of the sincere opinion that the average attitude and demeanor of this group of claimants indicates strength of character, fairness, and intelligence which is above average. With a few possible exceptions, this group of men simply do not line up as the lower one-fourth of a post-strike leader force. Nor do they represent a group of men whose basic loyalty to the company can seriously be questioned. Continuous length of service at this yard (excluding some prior service canceled by seniority rules) varies from 5½ years to almost 42 years and averages 10 years and 8 months. Net length of service as leader, according to official employment records, varies from a few days to 19 years and 10 months, with an average of a little over 4 years. To that figure should be added a small indeterminate amount of time due to the fact that in many cases the official employment records do not show informal service as leader before reclassification. In short, these employees are a stable, responsible group of employees with a record of service to the company which belies any conclusion that they could be basically disloyal by any realistic use of the word.

Review of remedies available to the umpire.—The union has requested that I review and reconsider certain conclusions reached in decision B–19.

The first of these is that I have no authority to order reinstatement to a job as salaried leader. The reasons for that conclusion are stated fully in decision B–19 and need not be repeated here. The simple fact is that paragraph 3 of the side letter gives the company the right to have only salaried leaders if it so chooses, and by the clear terms of the November 10, 1947, agreement the umpire has no authority to order the promotion or reinstatement of any employee to a job which is outside the bargaining unit.

The second of these conclusions is that whereas the umpire does have the authority to order reinstatement to a job as hourly rated leader, I would probably not exercise that authority. The reasons for that conclusion were explored in part in decision B–19, and will be summarized here as follows:

(1) In paragraph 3 of the side letter, the company obtained the right to eliminate hourly rated leaders entirely if it should choose to do so. It has made that choice at this yard and reinstatement to a new realistically nonexistent classification might well be considered as running counter to a company contractual right.

(2) If reinstatement to hourly rated leader should be ordered, the company could comply with the order and then immediately transfer the employees to jobs as salaried leaders where they would be outside umpire jurisdiction and subject to demotion again without effective opportunity to challenge such action.

With some justification, the union has attacked the second of the above reasons by claiming that I am assuming company technical compliance with a decision and then reversion to discrimination as a real evasion of the order. The union is correct in its belief that I should not assume anything less than full and realistic compliance with an umpire decision. In some 4 years of arbitration at Bethlehem shipyards, I have yet to know of a case where either party has failed to realistically comply with a mandatory umpire award. Both sides have fought hard up to the end of umpire proceedings, but there has been full and realistic compliance when the award has been issued. This second reason crept into the first decision primarily because it could be a possible outgrowth of the first reason.

Another reason not previously discussed is of almost equal importance with the first. I have criticized the company for perpetuating what I have labeled the "loyal" group of former leaders and the "disloyal" group. As long as the company persists in its present position at this yard that it should have only salaried leaders, even full and ample compliance with any ordered reinstatement to jobs as hourly rated leader would likewise perpetuate the present distinction between the two groups. What this yard needs is a final conclusion to this controversy. It simply would not contribute to harmonious relations or to effective supervision if, as a result of this decision, there should be a large group of salaried leaders and a small group of hourly rated leaders created by an umpire award.

Certain aspects of this problem have some relation to the next topic to be discussed. However, the general conclusions reached in the first decision are hereby reaffirmed. I will not order reinstatement of any of these employees either to a salaried leader job or to a regular hourly rated leader job. The mandatory award will be confined to money damages in cases where discrimination has existed, still persists, or may persist in the future.

Union claims that claimants have been doing supervisory work at mechanics' rates.—In a number of instances, the union and the claimants in these proceedings have alleged that since the strike they have continuously or intermittently performed supervisory functions but at mechanics' rates of pay. Some of these claims have substantial support in the evidence. Others are weak.

In this matter, it is important to observe the prestrike use of the hourly rated leader classification at this yard. The evidence makes it abundantly clear that the distinction between a mechanic and an hourly rated leader was a fuzzy one and varied by departments. In the first place, it was a fairly common and apparently an accepted practice to gradually break in a mechanic for supervisory work by assigning him work with increasing supervisory responsibilities and then finally to reclassify him after he had proven his supervisory ability. Secondly, there was a varied pattern as to whether a leader did or did not also perform productive work. In some departments, a leader was but little more than a straw boss. He worked with his gang and also exercised certain supervisory responsibilities. In other departments, the leaders did no productive work of any consequence. In the third place, it was not uncommon in short periods of slack work to continue to classify and pay a man as a leader but by actual practice to put him back to work with the tools until work picked up again. Finally, there are a few instances where an employee may have been classified as a leader to give him a little more pay because of experience and ability when in fact he was still a mechanic, had few, if any, supervisory duties, and should have been classified as a specialist rather than as a leader.

This varied practice obviously makes it difficult for the umpire to appraise the union claims in these cases. Partially for this reason, I will not attempt to make a decision here as to the specific merit or lack of merit to the union claims where this allegation is a factor. In each case this argument is so intermixed with the claim of discrimination for other reasons that it would be difficult to separate. In general, these union claims are strongest in those departments where for a period of months after the strike (the so-called reorganization period in these departments), the ratio of leaders to mechanics shows an abnormally small number of leaders when compared either with the prestrike figures or the figures as of September 15, 1948.

The most important outgrowth of this part of the argument at the hearings is the conclusion that management has not yet realized all the implications of its decision to eliminate hourly rated leaders entirely. While there were hourly rated leaders, the fuzzy nature of the distinction between mechanic and leader was an accepted part of the relationship between the parties. Proof of that fact is that to my recollection there have been few, if any, umpire cases at this yard where reclassification to hourly rated leader has been requested because of the nature of the work performed.

But when top management decided to eliminate hourly rated leaders entirely, the necessary logic of that position was that there must be a clean-cut line drawn between supervisory and productive functions. All supervision now belongs to salaried employees who are to do no productive work. Hourly rated mechanics cannot be expected to exercise supervisory functions. This last statement does not mean that a mechanic may not give instructions to employees of lower classification, such as helpers and handymen who work in his gang. The typical relationship between a mechanic and a helper is traditional and accepted in any supervisory set-up. But if there are two or more mechanics in a gang working on the same job, the logic of the company's new supervisory set-up requires that one mechanic have no more supervisory responsibility than the other mechanics in the same gang.

The testimony at the hearing made it very clear that at least in some departments, the company has proceeded on the assumption that it "can eat its cake and have it too." It has sought to retain the fluid and fuzzy distinction between mechanic and hourly rated leader which is probably a generally beneficial set-up for the company and at the same time take all supervisors out of the bargaining unit by concentrating supervision in the salaried leaders. Foreman Kunkle's testimony was the most apt illustration of this position, but it also appeared to a greater or lesser degree in testimony of other foremen.

If the company persists in its decision not to have any regular hourly rated leaders, it must either correct its practices in these respects or face the obligation of payment of hourly rated leader rates on at least a "while engaged" basis when any real supervisory duties are performed. The hourly rate for leader is still in the contract and it would be applicable whenever a mechanic performs any real supervisory duties under the company's revised supervisory set-up.

Factors advanced by the company as reasons why discrimination has not existed in individual cases.—In decision B-19 I indicated that despite some obvious discrimination which existed in these cases that decision was a general one and would not necessarily apply to all individual cases. Moreover, in some instances, discrimination may have existed for a period of time but could not be found to be a realistic charge against the company for all the period of time since November 10, 1947. In individual cases are there good and sufficient reasons why the company should not have offered a leader job to a claimant after the strike? If a leader job should have been offered to a claimant, on what date should the offer have been made? And if the offer had been accepted do the facts indicate that the employee could legitimately have been demoted to mechanic on some subsequent date?

The union has objected vigorously to this line of approach to the problem. Its basic contention is that discrimination has existed continuously and will exist until such time as the company offers a leader job to each claimant and keeps him on that job at least long enough to prove that discrimination has ceased to exist. There is an aura of simplicity to this contention which is attractive to the umpire. Moreover, if punitive damages were required in these cases that would be an easy answer to the grievances. However, the facts in these cases simply do not support that sort of a decision. The individual cases vary all the way from cases where the union has no realistic claim at all to cases where there is no possible sensible defense for the company action. The difficult job confronting the umpire, in fairness to the union, the claimants, and to the company, is to attempt to appraise the merits of each case and determine it accordingly.

I have analyzed the reasons advanced by the company in the several cases and find that they may be listed as follows. In each individual case some one or a combination of these reasons has been advanced.

List of company reasons for failure to offer leader jobs to claimants:

(1) Leader job eliminated.

(2) Number of leader jobs in a department reduced due to smaller work force.

(3) More claimants than promotions after the strike.

(4) Problems of assigning leaders by shifts.

(5) Failure to return to work after the strike.

(6) Employee quit some time subsequent to return to work after strike.

(7) Alleged refusal of claimant to accept salaried leader job offered to him after the strike.

(8) Alleged discriminatory attitude shown by claimant against nonstrikers after the strike.

(9) Alleged specific factors in claimant's prestrike leader record which are claimed to disqualify him for a job as a salaried leader:

(*a*) Limited supervisory experience.

(*b*) Alleged poor quality or quantity of work performed by crews working under claimant.

(*c*) Alleged inability to get along with men.

(*d*) Alleged friction or lack of cooperation between leader and higher ranks of supervision.

(*e*) Alleged inability to plan work.

(*f*) Alleged favoritism in assignment of work, etc.

(*g*) Alleged inability to perform supervisory work due to age or physical condition.

(*h*) Alleged drinking during working hours.

(*i*) Alleged language difficulty.

(*j*) Prestrike leader job was temporary replacement for leader who was in military service.

(*k*) Alleged superior supervisory experience obtained by new leaders at other yards.

(*l*) Wouldn't work Sundays.

(*m*) Alleged "know it all" attitude.

(*n*) Alleged to be poor disciplinarian.

Complete elimination of leader jobs (hourly rated and salary) in a department exists in only one instance. Since the strike, no leader jobs have existed in AJ (fire) department. Examination of evidence justifies the management action of eliminating all leaders in this department. In substance this department has reverted to its prewar supervisory set-up. There were no leaders (then known as inspectors) until sometime in 1941 when the work force began to increase sharply. The present work force is comparable to the 1940 work force when there were no leaders. Moreover, the union claim that the three claimants are still performing supervisory work is weak. The claims of Elliott, Sablowski, and Eversmier are dismissed.

In a substantial number of other departments, the company has shown that the working force has declined and that the number of leaders has likewise declined. The general picture is that immediate poststrike employment in most departments was substantially less than on June 25, 1947, and that it continued to drop over the next 11 months. The number of leaders shows a somewhat different pattern. There was an even more abrupt decline in number of leaders when comparing the prestrike and immediate poststrike figures. However, from that point on, the general trend of leader employment has been upward, both absolutely and more markedly in relation to the general trend of employment. The following table shows these trends.

Employees below leader rank and leaders in all departments involved in this case

Date	Number of employees below rank leader	Number of leaders	Ratio (leaders to men supervised)
June 25, 1947	4,266	266	1 to 16.
Nov. 21, 1947	3,417	[1] 150	1 to 22.8.
Mar. 1, 1948	3,089	189	1 to 16.3.
May 10, 1948	2,667	206	1 to 12.9.
Sept. 15, 1948	2,401	201	1 to 11.9.

[1] Includes 145 leaders who came back to work during strike, plus 3 former leaders who had been given salaried leader jobs after strike, plus 2 new leaders.

The union has contended that the company should be required to reinstate each and every claimant to a leader job. This is equivalent to holding that once a man becomes a leader, he should remain on that job if his work is satisfactory, irrespective of yard employment. That position cannot possibly be sustained. It is obvious that the company did not need as many leaders to supervise 3,417 employees as it needed for 4,266 employees. If there had been no discrimination of any sort, a necessary shake-down of the yard-work force after the strike had terminated would have meant some demotions. No supervisory ratio is sacred, but if the same ratio existing as of June 25, 1947, had been maintained, about 214 leaders would have been required right after the strike in contrast to 266 before the strike. As the work force declines, there is a usual relative increase in the amount of supervision required. This is indicated at this yard by a prestrike ratio of 1 to 16 when 4,266 men were supervised and a 1 to 12 ratio on September 15, 1948, almost a year after the strike, but when only 2,401 employees were supervised. Without attempting to fix any precise number, it is quite obvious that in the absence of any type of discrimination, the total number of leaders would have been less after the strike and some of the claimants in this case would have been among those demoted. It would be unrealistic and unfair to the company to hold that all of these claimants are entitled to damage because each and every one of them did not become a leader after the strike. The company clearly has a right to determine the total size of its working force, including the right to determine the total size of its supervisory force. That right can be challenged successfully only to the extent that some other right of employees is involved or to the extent that some other contract provision is violated, or in this case on a showing that discriminatory practices existed in this connection.

One of the other principal points made by the union in respect to size of the leader force is its claim that in some departments, the company deliberately held down the number of leaders to require claimants and others in like position to work for a considerable period of time at mechanic's wages as punishment for not having returned during the strike. The over-all ratio of leaders and men supervised which have been noted above gives some substance to this claim. If the total are broken down by departments, the supervisory ratio remains relatively constant in a number of departments. Leaders have been added and demoted as the work force has increased or decreased. However, in some departments, the picture is even more exaggerated than the over-all totals. O and S departments are illustrative.

Supervisory ratio (leaders to men supervised)

Date	Department	
	O (burning and (welding)	S (outside hull)
June 25, 1947	1 to 20.6	1 to 12.3.
Nov. 21, 1947	1 to 35.8	1 to 24.4.
Mar. 1, 1948	1 to 24.5	1 to 12.8.
May 10, 1948	1 to 14.6	1 to 10.4.
Sept. 15, 1948	1 to 14.7	1 to 8.4.

In each instance, the department winds up on September 15, 1948, with about 50 percent more supervision relatively than before the strike. But during the immediate poststrike period, the departments were operating about with half as much supervision as before the strike. The company attempts to explain this picture in these and a few other departments by pointing out that a reorganization had begun in these departments early in 1947 but that it could not be effectuated fully until after the strike. This explanation may have something to do with the picture, but it is not very convincing. The picture in these departments would seem to cast very substantial doubts on the advisability of the company decision to eliminate hourly rated leaders. If 50 percent more supervision is required after the reorganization has been completed, it is quite obvious that the productive employees in these departments will have to be substantially more efficient just to offset this increase in supervisory overhead cost. It may also be noted that some of the strongest union claims that former leaders have been doing supervisory work at mechanic's wages occur in these reorganized departments. It is also not just a coincidence that these claims are strongest during the period of a few months after the strike when the number of supervisors was abnormally low in these departments.

Discussion of this phase of the case is summarized by concluding that wherever there appears to be any reasonably logical relationship between the number of leaders and the number of men supervised, management's general right to determine the size of the work force will not be questioned, and I will appraise the claims with the full realization.that a reduction in the leader force was both logical and necessary. However, in those departments where the supervisory ratio just does not logically make sense, I will give consideration to the union contentions that claimants and others in like status were discriminated against by forcing them to work at mechanic's rate as punishment for not returning to work during the strike and that claimants did supervisory work at mechanic's rate of pay.

In some departments there are more claimants than men promoted to leader jobs after the strike. It is the company position that there can be no case at all for discrimination on the part of the surplus number of claimants when this is the fact. It is obvious that this situation can exist because of the decline in the size of the work force. If the total number of leaders has declined, there can be more claimants than promotions, even when new leaders have been made since the strike. Earlier in this decision, I concluded that full compliance with the no-discrimination obligations of paragraph 2 might well have required the post-strike demotion of a leader who had returned to work if a claimant had superior qualifications in all other respects. This conclusion means that the company could be incorrect in its position on this phase of the case. However, in most instances, the total decline in the leader force is so substantial that the number of valid claims would not often exceed the number of promotions since the strike.

The evidence indicates that there have been varying practices both before and after the strike as to shift assignments of leaders. Leaders have been transferred from one shift to another. However, in some departments, such transfers have happened infrequently, if at all. Individual shift preference is a factor in some cases as well as some indication of a natural desire to keep a leader with men he knows. In some instances, it appears that leaders who returned to work during the strike transferred to shifts they preferred and that management has considered these transfers as final and as a bar to restoring claimants to leader jobs either on their prestrike shift or to any leader job.

Individual cases which include the shift assignment problem must be appraised on the facts of the particular case. Space does not permit discussion of these individual cases here. Moreover, in many instances, this phase of the problem cannot well be segregated from other aspects.

The following claimants have not worked at the yard since the strike: McGuire, Francis, DB—pipe and plumbing; McGuire, Ray, YB—maintenance; Wernel, Walter, YB—maintenance.

Francis McGuire refused a mechanic job immediately after the strike and quit.

Ray McGuire worked during the strike up until September 7, 1947, the union having raised no objection up to that point to the continuance of yard maintenance work. When salaried jobs were offered to all hourly rated leaders who could be reached as of about September 8, 1947, and hourly rated leaders were eliminated, Ray McGuire refused the salaried job on the ground that it represented a loss of take-home pay. Simultaneously, the union withdrew its permission to continue maintenance work with the union approval and McGuire did not work after September 7, 1947. After the strike he refused a mechanic's job. Wernel did not work during the strike and did not return to work after the strike.

In these cases, the union claims that the discriminatory act of demotion was the sole reason the employees did not return to work and that they are entitled to reinstatement and damages. With the probable exception of Wernel, it is clear that these men refused employment at mechanics' jobs after the strike because they did feel they had been discriminated against and because they did not want to accept the lower-rated jobs. However, their claims for damages must be denied. It is an important part of grievance procedure that an employee does not quit work when dissatisfied but files a grievance which will be processed to a fair conclusion. When those employees elected to quit, they forfeited their claims even if discrimination did exist.

The following employees returned to work after the strike but quit at some subsequent date: Duval, Edwin, JA—joiner; date quit, March 12, 1948; Henneman, George W., S—hull (shipfitter): date quit, January 5, 1948. These employees have no claim after the date they quit their employment for the reason discussed in the preceding section.

Duvall was first made a leader on March 10, 1947. On the same date, another employee (Church) was made leader. Duvall had longer yard service than Church, but Church had been a leader and assistant foreman at Fairfield for 4 years. A reduction in the leader force in this department from eight to seven was justified after the strike. Employment had dropped from 93 on June 25, 1947, to 76 on November 21, 1947, and to 61 on March 1, 1948, which is about the date Duvall quit. In view of these facts, the union claim of discrimination is dismissed.

Henneman also had very short leader experience prior to the strike. He was first made leader on January 27, 1947. This is not a strong case for discrimination. It is dismissed.

The next group of employees to be considered includes those claimants in whose cases there is a company claim that the employee was offered a salaried job after the strike and refused it. These employees are Sunderland, William H. D—dock; Reinfelder, Jos. P., DP—pipe and plumbing; Faust, John Vincent, O—burning and welding; Golden, Lawrence B., S—hull (chipper and caulker).

As general proposition, a bona fide offer of a salaried leader job would remove any basis for discrimination after the date of the offer. The principal question in these cases relates to whether the company did make a real offer and whether the terms of the offer were discriminatory.

Sunderland was visited by his foreman in September 1947, at which time he frankly admits stating that he did not want a salaried job. Up until the time his grievance was filed on May 5, 1948, it is clear that he did not specifically ask for restoration to a leader job. Nor did the company at any time offer him such a job. Sunderland was 56 years old as of November 10, 1947, is somewhat hard of hearing, and has another physical disability. He had almost 27 years of service at the end of the strike, of which about the last 20 years were continuous service as a leader. The company advances the refusal of a salaried job in September 1947 and his physical disabilities as the reasons for its action in his case. A new leader was promoted on March 29, 1948. The evidence indicates that Sunderland's refusal of a salaried job in September 1947 may well have given his foreman the impression that it was a final answer to any such company offer. However, it is equally obvious that an answer to this question given during the strike should not have been accepted by the company as a final answer. All of the claimants and some in like status who were promoted to leader after the strike refused a salaried leader job during the strike. The only difference may have been in the manner of refusal and the specific nature of a discussion, if any, with a foreman at that time. Sunderland's long unbroken experience as leader should have entitled him to every consideration. His physical disabilities are not adequate reason for the action taken. They have existed for at least 5 years and did not prevent him from holding the top leader job in the department throughout the war. Department employment dropped somewhat after the strike, and I will give the company the benefit of the doubt in this case for the period of time up to March 29, 1948, when a new leader was appointed. In spite of the discussion during the strike, the company had a clear obligation to discuss the subject again with Sunderland at that time. And any possible question as to his position was removed shortly thereafter when he filed grievance.

Reinsfelder was a leader on the second shift. In the latter part of January he was offered a salaried leader job on the day shift on which he was then working. He refused that offer but said he would accept a salaried leader job on the second shift. However, employment on that shift had then dropped to a point where only one leader was required and the other leader on that shift has about 40 years' service. There was a substantial decline in employment in this department, justifying fewer leaders after the strike. No other promotions were made in the department until after the offer had been made to Reinsfelder. At the hearing Reinsfelder admitted freely that he had not been the victim of discrimination. In effect, he withdrew his own grievance. This claim is therefore dismissed.

Faust has over 14 years' service, but had a fairly short period of service as a leader prior to the strike. He had been working day shift for about 5 years and was a day-shift leader when the strike began. On November 27, 1947, the company offered him a salaried leader job on second or third shift. He told his foreman that he probably would not be able to work nights and confirmed the statement the next day. He was not again offered a leader job although a number of promotions on day shift were made later. In this case, the evidence is clear that the November 27, 1947, refusal was not a refusal of a salaried leader job as such, but only because it was not on the shift on which the employee had worked for some time and the shift on which he had been a leader. This sort of refusal does not justify forgetting about him for all times. Because he has relatively short service as a leader, and because there was justification for some decline in number of leaders in O department, further consideration of his case will be deferred until other cases in this department are examined.

About 1 week before the hearing of his case, a quarterman offered Golden a salaried leader job. He gave no definite answer, stating that he would want to discuss the matter with the union. He said that if he had to give an immediate answer, it would have to be in the negative. He asked for time to think it over and it is not too clear whether that request was or was not granted. At the hearing he said that he would accept a salaried leader job. The late offer of a salaried job (November 1948) certainly does not remove any otherwise justifiable claim of discrimination up to the date of the offer. Moreover, under the circumstances of this case, Golden's vacillation for a few days in giving an answer should not deprive him of a renewal of that offer, unless the job had been filled in the meantime. The evidence indicates that the job had not been filled as of the date of the hearing, when Golden did answer definitely in the affirmative. His claim on other grounds will be considered later in this opinion.

At the hearing, the company asked a few claimants a hypothetical question along the following lines:

"Would you accept a salaried leader job now if it were offered to you?"

The answers ranged from a positive "Yes" to a flat "No." Since these questions were only presumptive and it was made clear that a job was not actually being offered, it is clear that these answers should be substantially disregarded in deciding these cases.

Another general question which fits in logically at this point is the union request for damages for claimants who were offered salaried jobs and accepted them at various dates after November 10, 1947. These individuals and the dates of promotion to salaried leader jobs are—

	Department	Date of promotion
Kotofski, Stanley	O—Burning and welding	Apr. 19, 1948
Seal, James E	do	Do.
Gorski, Joseph	R—Rigging	Apr. 26, 1948
Strubing, John	do	Do.
Patrick, Brady	S—Hull (erectors)	Apr. 1, 1948
Alder, Benjamin H	S—Hull (shipfitters)	Mar. 15, 1948
Dixon, Lawrence E	S—Hull (chippers and caulkers)	Jan. 13, 1948

Except for a special question regarding Gorski and Strubing, it is clear that the acceptance of a salaried leader job eliminated any claim for damages after the date of promotion. Questions as to whether discrimination existed prior to the date, and, if so, for how long, will be deferred for consideration along with other claimants in the same department.

Gorski and Strubing were first-class hourly rated leaders before the strike. Gorski had been first made a leader on August 11, 1941, had been demoted to rigger on September 10, 1945, and had been remade as a leader on December 2, 1946. Strubing was a leader continuously from January 25, 1943, and had been a leader, first class, since June 4, 1943. Both men were offered second-class salaried leader jobs on April 26, 1948, and accepted, filing their grievances shortly thereafter under the general grievance (No. 1964). The union claims that the company's salaried offer of a lower hourly rate equivalent was a form of discrimination, that both men should be paid damages not only for the period prior to their promotion but also after their promotion in an amount equal to the difference between first- and second-class rate. The company holds that their promotion disproves discrimination at any time, that the union has no right to represent these men now that they are salaried leaders, and that the umpire has no authority to decide the dispute about a salaried leader's rate of pay.

There is no question but that I have the jurisdiction to decide whether these two men were discriminated against prior to April 26, 1949, when they became salaried leaders. The jurisdiction question after that date ties in with another problem which will be discussed later, namely, whether a possible company offer of a salaried leader job to a claimant after the date of this decison will eliminate all discrimination unless the offer is to a job fully comparable to the one held prior to the strike. I conclude that I do have the authority to decide whether an offer of a salaried job which is lower rated than the claimant's prestrike job does or does not remove discrimination after that date. Specific disposition of the Gorski and Strubing cases will be deferred until examination is made of the relative position of those two men among other claimants in the department involved.

In one case (Harry W. Mohr, S—Department—shipfitters), the company claims that the claimant refused to talk to and work cooperatively with nonstrikers after the strike and otherwise showed plainly that he could not then be trusted to impartially supervise men. The company frankly concedes that Mohr did a satisfactory job before the strike, although his length of service as a leader was short. Mohr's own testimony at the hearing indicates that whereas he is intellectually fully conscious of his own and the union's no-discrimination pledge under paragraph 2, he has not yet reached the point of really forgetting the strike experiences enough to be a salaried leader. This conclusion impels me to dismiss his grievance. This is one of very few cases where there is any real indication from the evidence that the strike experience temporarily made an employee unfit for salaried leader work.

Up to this point in the opinion, most of the discussion has been directed to post-strike factors or events which have been advanced by the company as reasons for its refusal to offer leader jobs to those men. The next general category of reasons advanced by the company relate to the claimants' pre-strike leader records. On page 19 under item 9, I have listed reasons *a* to *n*, inclusive, one or more of which were advanced by the company in various individual cases.

With all due regard to the large amount of truth in the company assertion that good qualities required in a leader are hard to describe and that negative qualities are equally difficult to sustain, about 75 percent of foremen testimony on these assertions was a rather sorry performance. The major weakness in much of this testimony was not that it was vague and intangible, although that was true in many instances. I would expect any foreman's judgment of an individual leader to be somewhat general. Even more serious weaknesses in this category of testimony, some of which are not the fault of the company witnesses, were—

(1) It is very obvious that the prostrike leader record of most men who came back to work during the strike and who are now salaried leaders has never been subjected to this sort of analysis.

(2) When these foremen and their quartermen and higher ranks in management were making leaders to fill vacancies after the strike, and if there was no discrimination in this regard as the company insists, it is clear that in at least some cases they were discarding men because of minor demonstrated weaknesses as leaders in favor of men who had never been leaders and where there was no real assurance that the new men would be any better, if as good.

(3) The minor nature of the prestrike weaknesses in many of these men is made evident from the fact that many of them heard the nature of the charges against them for the first time at the hearings in their cases. If a leader had a really serious prestrike weakness, it is extremely unlikely that he would not have heard about it while he was on the job. I am sure that Bethlehem supervision was not so spineless that a serious fault of a leader would not have been called to his attention.

(4) In at least a few cases, claimants were made or remade as leaders only a short time before the strike by the same foremen who now hold them unfit to act in that capacity. Even before the strike, a review of my earlier decision will show that the inclusion of hourly rated leaders in the bargaining unit did not interfere with management's right to select leaders. Recognizing that even the best of foremen will make a mistake on occasion, it is just not logical to assume that these foremen would make so many mistakes before the strike and then have an almost perfect record in this respect as to their post-strike selections.

Despite these limitations to the company's testimony, I indicated in decision No. 19–A and hereby reaffirm the conclusion that if there were factors in a leader's prestrike record which represented real and substantial cause for failure to reinstate after the strike, they should be given full weight. An even more tangible evidence of my position in that respect is decision No. 5–A (Boston yard) where I upheld the company in the only other case of this general character which was even appealed to arbitration at any of the Bethlehem Atlantic-Coast yards.

Among the reasons given by management, at least a few require some general comment.

Among the claimants, there are a number of men who had had very limited leader experience before the strike. There are also a number whose employment records show that they were the ones who had been demoted on earlier occasions when the work force had declined drastically and then had been remade later. As a general proposition their claims are necessarily somewhat weaker than the claims of men who had a long continuous record as leader since I have already concluded that some restriction in size of leader force after the strike was both logical and necessary.

Alleged friction or lack of cooperation between leaders and higher ranks of supervision is an important factor. As I noted in decision 5–A (Boston yard) and have already observed earlier in this opinion, efficient supervision cannot be achieved if there is real disunity in the supervisory ranks. Management testimony in this respect was directed primarly to claimants Seipp, Glodek, Maczka, and Merzendorf. As respects Glodek, management added the observation that he had exhibited a "know-it-all" attitude on occasion.

While Seipp's case is not too strong on other phases of his prestrike record, the company assertions on this particular point were not very convincing. Maczka exhibited some bitterness over his treatment after the strike, but the company evidence as to his prestrike record in this particular was not strong. Nor was there any appreciable evidence of a real prestrike uncooperative attitude on the part of Merzendorf. As to Glodek, there is some indication that he may exhibit a "know-it-all" attitude at times. I can imagine that there were occasions when he was a bit irritating. However, the indications are that this is something of a mannerism and not a basic lack of cooperation. In my judgment, this fault needs correction but is not serious enough to override his obvious qualifications and good record in other respects. In passing, and without mentioning any names, it may be observed that one or more company witnesses exhibited a much more pronounced "know-it-all" attitude at the hearings than is even indicated by Glodeck's record or attitude.

Age or physical condition represent one of the more difficult phases of this case. It is obvious that advanced age or serious physical disability decreases a leader's efficiency. And I have no doubt whatever but that two or three of the claimants in these cases are less efficient now than they were a few years ago. Over the period of time during which I have acted as umpire at Bethlehem yards, it has been my general observation that Bethlehem has an above-average record of a fair and even indulgent policy in its handling of employees who have passed the peak of efficiency due to age or physical disability. It would be unfair to the company to penalize it in this case because of this excellent record. However, I cannot feel otherwise but to believe that the company use of the failure of these long service men to return to work during the strike as an occasion for demoting them was a discriminatory act. In none of these cases is there any indication that before the strike these men had been warned that their days as leaders were numbered. All of them had served faithfully through the war period. There is no indication that the company has demoted other leaders in comparable positions who did come back to work during the strike. And with one possible exception, the evidence is that as mechanics these men are now performing more strenuous work than is required of a leader.

Drinking during working hours is a serious charge. If proven, it is a good cause for even more severe disciplinary action than demotion. In two cases (Buker and Bready), the company alleges that before the strike these men were found guilty of drinking during working hours. There are differences in the testimony as to Buker but it is evident to me that he was warned about drinking on three different occasions before the strike by quarterman Kerr, including a warning on the last occasion that he would be taken off the job if the offense was repeated. Moreover, Buker finally admitted that he had been warned on one occasion about 1 month after the strike. In addition, Buker's prestrike record is weak on other counts. As to Bready, there is no disagreement over the fact that he was warned on two occasions. In the first instance, there is a difference of opinion as to whether he was guilty. On the second occasion, Bready frankly admits that he had been drinking during lunch period. This is the only real charge against Bready. He had been a leader continuously for over 7 years and the company frankly admits that he is a good leader. In this case, it is quite obvious that Bready's good qualities as a leader were sufficiently satisfactory to more than offset the offenses cited. Since these incidents occurred some time before the strike and nothing but a verbal warning resulted from discussion of them, and in view of Bready's otherwise good record, there was no sound basis in this case for having denied him a leader job after the strike.

In one case (Webster), the claimant had been appointed as a leader upon the induction into the Army of the regular leader. This leader returned from military service shortly before the strike, and Webster frankly admits that he went back to his regular mechanic's job at that time and did no leader work thereafter. This is not a case of discrimination. Necessary demotion after the regular leader had returned simply did not "catch up" with Webster before the strike started.

One or more of the new leaders promoted since the strike had had extensive supervisory experience at other yards before transfer to the Baltimore yard. In cases where these men are compared with claimants who had only a few months of leader experience before the strike and might have been demoted in any event due to reduction in the work force, some recognition of this prior experience elsewhere is justified. In some earlier cases, I have supported the union in its position that experience at Fairfield, and so forth, is a factor which should be given some consideration in classification of an employee.

The fact of an opinion which is already unduly long does not permit detailed analysis of the various other prestrike reasons advanced by the company in individual cases. Omission of further specific reference to these company claims and the union answers to them does not mean that they are disregarded entirely. They will be given such weight as they deserve in appraising the situation in each department and in each case.

Except for those individual cases which have already been decided in whole or in part in the opinion up to this point, it is necessary for me to appraise all the various arguments of the parties and to weigh them, arriving at a specific decision in each case. Since I have already written general comments on most of the major factors advanced by either party, I will make no attempt to set forth the reasons for the specific application of those comments to each of the remaining individual cases. The decision in each of these cases will be my best estimate of all the factors involved.

Union demands.—Although the union sought to convince me that my preliminary decision as to ordered reinstatements should be reconsidered, its other specific requests were all expressed in terms of money damages.

The first of these claims is that money damages should be paid each claimant in an amount equal to the difference between wages actually received and the appropriate leader rate for a period beginning as of November 10, 1947, and continuing until the claimant is restored to a leader job. The measure of damages suggested (difference in hourly rates) is an appropriate measure. I have already indicated that if damages are due, the beginning date in any case will not be earlier than November 25, 1947. I have also indicated that in individual cases the duration of discrimination if any, may vary both as to beginning and ending dates. In my opinion, where discrimination still exists, the union's request for continuing liability is not a desirable answer. After all the time that has already elapsed, the parties need a final conclusion to these cases. However, the union is correct in its general position that in cases of continuing discrimination, the cutting off of company liability as of the chance date of an umpire award would not be equitable to these employees. In such cases, I will not order reinstatement to a leader job but I will give the company a period approximately 2 weeks after the date of this decision to determine whether it will offer a leader job to the individual. My jurisdiction cannot extend beyond June 23, 1949, in any event, that being the terminal date of the current agreement. If in any case the company does not offer a comparable leader job to these named individuals, I will award a lump sum additional payment which will approximately equal loss of wages up to June 23, 1949, plus a somewhat smaller amount of punitive damages in such cases. The sum which is determined for such possible use is a flat figure of $300 per individual. Of course, the company can avoid payment of such an additional sum to any or all the named individuals by making a bonafide offer of a comparable salaried or hourly rated leader job. If the claimant should refuse to accept such an offer, the company's liability to that individual is terminated as of the date of the offer.

The union has also requested punitive damages to the individuals for the reasons outlined in the review of the union position (items 8-B and 8-C). Except for that part of the potential $300 per individual award which has just been mentioned, which is over and above actual loss of wages, I find no basis for granting these union requests.

The union has also requested damages to the union itself in the amount of $50,000. While I have found that the company has been in error in a number of important respects in these cases, I find no basis for awarding damages in excess of those required to "make whole" those individuals who have been discriminated against. This union request is denied.

Decision.—(1) The claims of discrimination in the various individual cases covered by this award are determined as noted below for the period beginning as of November 10, 1947, and ending as of February 26, 1949. In all cases except those where the claim is dismissed, money damages are due and payable for the period of time specified in that case in an amount equal to the difference between wages actually earned and the wages which would have been earned if the employee had continued to be classified and paid at the same hourly rated leader job which he occupied as of June 25, 1947.

Grade No.	Employee No.	Department	Name	Disposition of case or period of time during which damages are payable
1964-26	S-462		Paskeski, Henry	Nov. 25, 1947, to Mar. 1, 1948.
1964-19	S-484		Bready, E. F., Sr	Nov. 25, 1947, to Feb. 26, 1949.
1964-22	S-497		Morgan, Wm. T	Do.
1964-18	S-495		Marsh, L. H	Claim dismissed.
1968	S-506		Heinnman, Geo. W	Do.
1964-20	S-527		Mohr, Harry W	Do.
1964-25	S-560		Knofski, F. C	Do.
1964-21	S-494		Merzendorf, John J	Nov. 25, 1947, to Feb. 26, 1949.
1986	S-3003		Paul, Bert	Nov. 25, 1947, to Sept. 15, 1948.
1964-28	S-192	Hull (drillers)	Gaydes, Joseph	Jan. 3, 1948, to Sept. 15, 1948.
1975	S-3402		Nowak, John D	Nov. 25, 1917, to Feb. 26, 1949.
1997	S-3409		Beeker, John E	Claim dismissed, except as noted in item 2 below.
1964-37	S-27	Hull (chippers and caulkers).	Dixon, Lawrence E	Claim dismissed.
1964-30	S-290		Golden, Lawrence B	Nov. 16, 1948, to Feb. 26, 1949.

Grade No.	Employee No.	Department	Name	Disposition of case or period of time during which damages are payabie
1964-29	S-1905	Hull (chippers and caulkers).	Cartwright, James B	Nov. 25, 1947. to Feb. 26, 1949,
1990	TC-4	Plate and shape	Miller, Milton S	Claim dismissed.
1993	Y-27	General labor	Domchenko, Wm	Do.
2001	Y-34		Tersel, A. J	Do.
1996	Y-121		Kyle, Walter	Do.
1992	Y-140		Wetters, Wm	Nov. 25, 1947, to Sept. 15, 1948.
1994	Y-457		Gibson, John W	Do.
1995	Y-534		Petty, Ralph W	Claim dismissed.
1989	YB-22	Maintenance	McGuire, Ray	Do.
1964-33	YB-24		Wernel, Walter	Do.
1964-34	P-38	Paint	Kolzow, Vladimir	Nov. 25, 1947, to Feb. 26, 1949.
1991	P-52		Gribbet, Casmir	Nov. 25, 1917, to June 1, 1948.
1999	Q-35	Outside machinist	Durkin, Wm. F	Claim dismissed.
1964-16	R-2	Rigging	Faust, John	Nov. 25, 1947, to Feb. 26, 1949.
1964-10	R-49		Rico, L. H	Claim dismissed.
1964-17	R-73		Gorski, Joseph	Nov. 25, 1947, to Apr. 26, 1948.
1964- 9	R-94		Sampson, Joseph	Nov. 25, 1947, to Feb. 26, 1949.
1964-38	R-113		Kohlhoff, Frank F	Nov. 25, 1947, to June 1, 1948.
1964-13	R-114		Arras, Valentin	Do.
1964-11	R-142		Gran, Walter	Claim dismissed.
1964-15	R-154		Strubing, John	Nov. 25, 1947, to Apr. 26, 1948.
1964-12	R-120		Eber, Harry W	Claim dismissed.
1964-14	X-111		Dowling, William	Do.
1976	S-2415	Hull (erectors)	Maton, Robert S	Nov. 25, 1947, to Feb. 26, 1949.
1980	S-2503		Patrick, Brady	Nov. 25, 1947, to Apr. 1, 1948.
1979	S-2509		Booth, George	Claim dismissed.
1934	S-2524		Knuckles, Sutton	Nov. 25, 1947, to Feb. 26, 1949.
1978	S-2528		Kosinski, John	Do.
1982	S-2558	Hull (erectors)	Fishbach, Fred	Nov. 25, 1947, to June 1, 1948.
1981	S-2561		Meyers, George H	Do.
1977	S-2588		Davis, Harold L	Do.
1933	S-2634		Johnston, Winston A	Nov. 25, 1947, to Feb. 26, 1949.
1998	S-306	Hull (shipfitters)	Maczka, Frank	Do.
1964-23	S-409		Arnold, Richard N	Claim dismissed.
1964-24	S-444		Alder, Benjamin H	Do.
1964-27	S-452		Kreafle, Herman A	Nov. 25, 1947, to Mar. 1, 1948.
1967	AJ-29	Fire	Elliott, Vincent	Claim dismissed.
1969	AJ-38		Sablowski, Casmer A	Do.
1968	AJ-58		Eversmier, Albert	Do.
1964-36	B-6	Blacksmith	Webster, Thos. A	Do.
1964-35	C-3	Dock	Sunderland, Wm. H	Mar. 29, 1948, to Mar. 26, 1949.
1985	DB-6	Pipe and plumbing	Remsfelder, Jos. P	Claimed dismissed.
1987	DB-14		McGuire, Francis	Do.
1964-32	JA-46	Joiner	Duval, Edwin	. Do.
1964-31	N-74	Boiler shop	Shalcosky, Marion	Dec. 1, 1947, to Feb. 26, 1949.
1966-7	O-3	Burning and welding	Johnston, John	Nov. 25, 1947, to Feb. 26, 1949.
1964-3	O-23		Bogy, Chas. E	Do.
1964-8	O-31		Marable, Eugene	Claim withdrawn.
1964-5	O-35		Seipp, Chas. W	Nov. 25, 1947, to Mar. 1, 1948.
1964-4	O-83		Powers, Henry C	Nov. 25, 1947, to Feb. 26, 1949.
1971	O-93		Dohmar, Herman	Claim dismissed.
1964-6	O-104		Bennett, Floyd K	Nov. 25, 1947, to Feb. 26, 1949.
1974	O-183	Burning and welding	Glodek, Edward	Do.
02	O-185		Kotofski, Stanley	Claim dismissed.
1964-1	O-208		Coebell. Chas	Nov. 25, 1947, to July 1, 1948.
1970	O-277		Chapman, Ward F	Nov. 25, 1947, to Feb. 26, 1919.
1972	O-309		Jones, Simon R	Do.
1973	O-374		Deal, Jas. E	Nov. 25, 1947, to Apr. 19, 1948.
1964-2	O-465		Faust, John Vincent	Claim dismissed.
2001	O-474		Buker, Edward	Do.

(2) The claim of John E. Becker (S-3409) that he was discriminated against because he was not reappointed as leader has been denied in (1) above. However, he was discriminated against by demotion to driller, third class. If the company has not already done so, Becker shall be reclassified as driller, first class and he is entitled to retroactive pay equal to the difference between first class driller rate and third class driller rate for all time worked after Nov. 10, 1947.

(3) With respect to Strubing (R-154) and Gorski (R-73), the decision in (1) above covers only the period up to April 26, 1948. Beginning April 26, 1948 and continuing up to February 26, 1949, they shall also be paid an amount of damages equal to the difference between first class hourly leader rate and second class hourly leader rate or the difference between first class salaried leader rate and second class salaried leader rate, whichever is lesser. If on or before February 26, 1949, the company does not promote these two men to first class salaried leaders, an additional lump sum amount of damages shall be paid to them equal to the

rate of pay difference noted above multiplied by 40 hours per week and calculated to continue to June 23, 1949.

(4) As to the terminal dates of all damage payment calculated noted in (1), (2), and (3) above, if since the date of the last hearing, the company has corrected the discrimination found by offer of a leader job comparable to the one held prior to the strike, the damages due will be reduced accordingly by substituting the date of the job offer.

(5) With the respect to the following-named employees, reinstatement to leader jobs (hourly rated or salaried) is not ordered. However, in the event that on or before February 26, 1949 the company does not make a bona fide offer to those named individuals of a leader job (salaried or hourly-rated at company option) which is comparable to the job held before the strike as to classification, an additional lump-sum damage payment of three hundred dollars ($300) shall be paid to any such named individual to whom such an offer is not made.

Sunderland, Wm. H	C–3.
Shalcosky, Marion	N–74.
Johnston, John	O–3.
Bogy, Charles E	O–23.
Powers, Henry C	O–83.
Bennett, Floyd K	O–104.
Glodok, Edward	O–183.
Chapman, Ward F	O–277.
Jones, Simon R	O–309.
Kolzow, Vladimir	P–38.
Faust, John	R–2.
Sampson, Joseph	R–94.
Maton, Robert S	S–2415.
Knuckles, Sutton	S–2524.
Kosinski, John	S–2528.
Johnston, Winston A	S–2634.
Maczka, Frank	S–306.
Broady, E. F., Sr	S–484.
Morgan, William T	S–487.
Morzendorf, John T	S–494.
Nowak, John D	S–3402.
Golden, Lawrence B	S–290.
Cartwright, Jas. B	S–1905.

(6) If any of the individuals named in (5) above should refuse to accept a bona fide company offer made between the date of receipt of this decision and February 26, 1949 of a comparable leader job (salaried or hourly rated at company option), such refusal will remove any obligation on the part of the company to pay the $300 damage sum noted in (5) above. However, any such refusal will not affect the damages awarded to that individual under (1) above.

William E. Simkin, *Umpire.*

Statement of Jacob S. Potofsky, General President, Amalgamated Clothing Workers of America, CIO, on H. R. 2032

My name is Jacob S. Potofsky and my address is 15 Union Square, New York, N. Y. I am general president of the Amalgamated Clothing Workers of America.

I desire to express my appreciation to the committee for this opportunity to appear before it and to present the views of the Amalgamated Clothing Workers of America.

I wish at the outset to make clear to the committee that we of the Amalgamated Clothing Workers of America are unalterably opposed to the continuation of the Taft-Hartley Act. We request its immediate repeal and the immendiate enactment of H. R. 2032 with the minor technical and perfecting amendments referred to by CIO General Counsel Arthur Goldberg in his testimony before the Senate Labor and Public Welfare Committee on S. 249 on February 3, 1949. This would constitute a reenactment of the Wagner Act.

The past 21 months have made it absolutely clear to all enlightened Americans that the Taft-Hartley Act was not as its proponents represent, an attempt to equalize the relationship between management and labor. In its origins and in practice it represents a serious attempt to weaken the entire trade-union movement.

The grave fears which we expressed concerning the Taft-Hartley Act at the time of its passage have been confirmed in countless decisions by the NLRB and its coordinate general counsel. The Taft-Hartley Act has to an extent hitherto unheard of in our history injected the Government into the field of labor relations. As a consequence, we have already gone a long way toward replacing free collective bargaining with Government intervention on the side of the employer.

As the eminent labor-relations authority, William M. Leiserson, a former member of the National Labor Relations Board and former Chairman of the National Mediation Board, observed in an article which appeared in the New

York Times magazine section on February 6, 1949, the Taft-Hartley Act "did decide by congressional fiat vital issues of rules and working conditions involved in labor contracts under the guise of determining legitimate rights. In doing this it purported to further the policy of collective bargaining, but its concern that 'strikes and other forms of industrial unrest or concerted activities [shall not] impair the interest of the public' led it to prescribe 'hights' which had the effect of determining disputed issues and removing them from the field of collective bargaining."

The Taft-Hartley Act placed the Government squarely on the side of management and thereby placed in management's hands various weapons for use against labor in the event management saw fit to utilize them. That management in the industries in which we operate has in the main seen fit not to take advantage of these antiunion devices thus provided is to their credit.

But let us not be deluded into thinking that all of management which has seen fit to abstain from recourse to the Taft-Hartley Act was motivated by enilghtened considerations. Employers, particularly some of the giants of industry, have refrained from exploiting the antiunion provisions of the act because they were fearful of the effects upon the public mind which full exposure would have brought about. Further, industry was enjoying unprecedented prosperity during this period and had been unwilling to precipitate any struggle with labor. Finally, the committee should understand that many of the antiunion provisions can be put to their most effective usage only during a period of decline in our economy.

Further, the full impact of the law cannot be weighed solely by reference to the decisions of the NLRB and its general counsel. As was to be expected, the law has created a climate which has seriously hampered organization of the unorganized workers in American industry and has lent encouragement to the antiunion employer in his efforts to defeat the just demands and aspirations of the labor organization already representing his employees. In addition we find that various State and local governments have been encouraged by this Federal example to enact repressive antiunion legislation. Indeed, in several States the legislatures have enacted into law measures which have gone beyond the Taft-Hartley Act.

As was predicted by the President in his historic veto message of the Taft-Hartley Act, the act has resulted in confusion and chaos. Differences of opinion as to the meaning of the statute arose almost immediately after its passage between the NLRB and its general counsel. Members of the joint legislative committee created by the statute, the so-called legislative committee created by the statute, the so-called watch-dog committee, found themselves in disagreement with each other and with the NLRB regarding interpretations of particular provisions of the statute. The statute also engendered conflict between State labor-relation agencies and the NLRB. These chaotic conditions were in marked contrast to the conditions which obtained during the era of the Wagner Act. The Wagner Act, a statute limited in scope and carefully drawn in its inception, had after some 12 years of administrative and judicial interpretation a well-defined meaning. Employers and unions were well acquainted with its scope and application.

The Wagner Act puts its faith in collective bargaining, in representatives of management and workers resolving their differences and hammering out a collective agreement around the bargaining table. While the Taft-Hartley Act paid lip service to collective bargaining it actually relied on governmental dictation of the terms of the bargain. Thus the Taft-Hartley Act sought to remove from the area of collective bargaining various terms and conditions concerning which management and labor had previously been free to determine for themselves. Specifically, it denies the parties the right to bargain collectively with reference to union security. In fact, it all but destroys union security. It achieves this result (1) by barring the closed shop and other forms of preferential hiring outright, (2) by permitting only an extremely limited form of union security, and (3) by not permitting even this weakened type of union security to be effectively implemented. Union security is rendered meaningless by confining it only to discharges for failure to pay dues. The effect of this provision has been to deny unions the power to procure the discharge of spies, contract breakers, and stool pigeons.

Thus, the Taft-Hartley Act has in the name of creating "responsibility" in labor organizations deprived unions of the only means of enforcing conformity with agreements. As Father Jerome L. Toner, formerly of Catholic University, observed in a study of the operations of the closed shop: (1) Labor relations are considerably smoother as a result of the closed shop; (2) trade-unions have demonstrated genuine responsibility under closed-shop contracts, and have contributed substantially to the improvement of production; (3) the closed shop will probably be the rule rather than the exception within the next decade.

The soundness of these conclusions is borne out by our experience in the clothing industry. As a matter of fact, representatives of the clothing industry in testifying before the Senate committee while the Taft-Hartley Act was under consideration declared that the closed shop had been an effective aid to creating responsible unionism.

It is plain from our experience that the opposition to union security does not stem from any genuine concern over the rights of individuals. The opposition to the closed shop is merely but one facet of the basic antiunionism of certain employers.

The Taft-Hartley Act further interfered with free collective bargaining by imposing technical and rigid restrictions upon bargaining with reference to health and welfare funds and pensions.

As was to be expected, these efforts to restrict collective bargaining ended in failure. It is a truism in labor relations that collective bargaining, if it is truly to reflect the needs of the parties, must be unhampered. It cannot, hampered and restricted as it has been under the Taft-Hartley Act, operate successfully. Collective bargaining, if it is to serve as a socially useful process, cannot be circumscribed by legislative obstructions.

The Taft-Hartley Act further interfered with the functioning of free collective bargaining by imposing impractical and unworkable restraints on the right to strike, and, in certain circumstances, entirely outlawing strikes. Thus, unions have been seriously weakened in their relationship with employers.

The right to strike must remain unfettered if collective bargaining is to operate successfully. It is the existence of the strike power which creates the conditions necessary for the give and take which characterizes good-faith collective bargaining.

As we have seen on numerous occasions since the passage of the Taft-Hartley Act, employers free of the fear of strike action have remained stiff-necked and obdurate throughout negotiations with their employee representatives.

Collective bargaining presupposes and requires equality of the parties. Such equality is wholly absent where unions must negotiate under the restraints imposed upon them by the Taft-Hartley Act.

The most serious limitation upon the right to strike is not, however, expressly spelled out in the act. As with reference to many of the restraints which inhere in the Taft-Hartley Act several provisions must be read in conjunction with each other before the full implications of the act are understood. The National Labor Relations Board has by thus harmonizing several provisions of the act concluded that employees who strike for economic reasons are subject to replacement and, in the event of their replacement by strikebreakers, only the strikebreakers are entitled to vote in any subsequent bargaining election. Thus, employees, even where the specific strike restraints contained in the act do not apply, are effectively restrained from taking strike action. That strikes must be conducted at the risk of loss of their jobs and destruction of their union constitutes a powerful deterrent. An employer able to secure sufficient replacements is given an easy method of ousting a union from the plant. It requires no elaborate argument to show how this interpretation of the Taft-Hartley provisions will operate in time of increasing unemployment when replacements are readily available. Employers thus fortified may with little risk deny out of hand legitimate union demands.

The statute in the guise of granting freedom of speech to employers has sanctioned all-out employer attacks upon employee unionization. The decisional and administrative interpretations of the Board and general counsel have thus gutted the concept of employee freedom to join unions of their own choosing. Yet, at the same time, the Board has applied the act to employees in such a manner as to render employee recourse to speech coercive and thus deny workers their constitutional liberties. The application of this double standard is but one more illustration of the many inequities rampant in the Taft-Hartley Act.

Finally, the Taft-Hartley Act has marked the return of government by injunction. In the period which preceded the passage of the Norris-LaGuardia Act the courts by their indiscriminate and unwarranted usage of the Norris-LaGuardia Act effectively throttled employee organization and activity. Now, as then, the courts are being utilized to interfere with employee freedom to organize and to deny unions an opportunity to improve employee standards. Injunctive restraints upon employee activity have no proper place in our industrial society.

I have sought in this brief time to bring to the committee's attention only a few of the glaring inequities contained in the Taft-Hartley Act. As I have demonstrated, that statute both in its design and operation is a partisan and dangerous piece of legislation. Each day that it remains in operation gives further evidence of its antiunion character.

In behalf of the 375,000 members of the Amalgamated Clothing Workers of America I ask this committee favorably to report out H. R. 2032 and thereby once more restore free collective bargaining and the democratic right of employees to join unions of their own choosing.

The passage of H. R. 2032 will represent a return to the guiding principles of our free economy and society—an implementation, not a denial of, the basic guaranties contained in our Constitution—freedom of speech, freedom of press, and fredom of assembly. The democratic principles and safeguards provided by our Constitution for application in the political sphere will once again apply in the economic sphere.

The power and control over industrial relations which the Taft-Hartley Act shifted to Government for use by employers will be returned to where it rightfully belongs—the bipartisan industrial government composed of representatives of the employers and representatives of the workers.

We seek a return to that code of industrial relations consistent with our democratic traditions, that code under which free collective bargaining flourished and democratic trade-unionism grew.

These views which I have expressed before you today in behalf of our membership are, as I have already pointed out, shared by nearly all scholars in the field of labor relations. In addition, many employers now recognize that the law was narrowly partisan and punitive.

Business week, an influential publication in the business community, conceded in its December 18, 1948, issue that the law is unsound. It stated:

"What was wrong was that the Taft-Hartley Act went too far. It crossed the narrow line separating a law which aims only to regulate from one which could destroy.

"Given a few million unemployed in America, given an administration in Washington which was not prounion--and the Taft-Hartley Act conceivably could wreck the labor movement.

"Any time there is a surplus labor pool from which an employer can hire at least token strike replacements, these four provisions, linked together, presumably can destroy a union."

But, most significantly, the people spoke with unmistakable clarity in our last election. It was their collective wisdom that the Taft-Hartley Act should be repealed and the Wagner Act restored. Their decision cannot and certainly should not be ignored. Your campaign pledge to them must be redeemed.

Let us demonstrate to our own people and to a watching world the vitality of our democratic process. Let us conclusively establish that our representative form of government is truly government by consent of the governed; that our representative form of government accurately reflects the desires of the people and translates their desires, without temporizing, into action. Only in this way can we give tangible substance to our democratic forms. Only in this way can we perpetuate our democratic ideals at home and establish them abroad.

Statement of Germain Bulcke, Vice President, International Longshoremen's and Warehousemen's Union, CIO

EFFECT OF NONCOMMUNIST AFFIDAVITS IN STULTIFYING COLLECTIVE BARGAINING

The experience of the International Longshoremen's and Warehousemen's Union in the west coast maritime strike last fall shows how the Taft-Hartley non-Communist affidavits can be used to stultify collective bargaining. The ILWU is a noncomplying union. Its officers stand instructed by the membership not to sign the affidavits.

The union's reason for not signing the affidavits is set forth in a policy statement adopted by its executive board on December 17, 1947: "Compliance needs to be accompanied by concessions to the employers which spells loss of gains to the workers. Moreover, the purpose of the non-Communist affidavits has now emerged crystal clear—they were meant to create a false issue and smoke screen behind which the workers could be and are being robbed."

How accurate this analysis turned out to be appears from the story of the west coast maritime strike. The strike took place on September 2, after negotiations which had been going on ever since February. Up to the last minute the Waterfront Employers Association and the union bargained back and forth on the economic matters at issue. These included the union demands for a wage increase, an 8-hour work shift, Sunday off, improved safety rules, and a number of other issues.

Meanwhile, the employers carried on a vigorous publicity campaign directed at the individual longshoremen, urging them to accept the employers' offers, while their news releases breathed optimism that a settlement was near. At no time throughout the months of negotiations was there any mention of the non-Communist affidavits. The record is clear that, had the men accepted the employers' last offer, this issue would not have been raised.

The day the men struck, however, the Waterfront Employers Association met and adopted the following resolution:

"Fourteen years of strikes, disruption, and chaos in the maritime industry on this coast caused directly by union leadership following the Communist Party line have culminated in the strike announced by Harry Bridges Thursday, September 2.

"The Waterfront Employers Association of the Pacific Coast and the Pacific American Shipowners Association and their members are now convinced that survival of the industry and the public welfare demand adoption of the policy hereby declared:

"That these associations and their members cease to bargain or contract with any labor organization unless each of its officers file with the National Labor Relations Board, in pursuance of law, his affidavit he is not a member of the Communist Party or affiliated with such party, that he does not believe in and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by force or by an illegal or unconstitutional method."

This position was implemented by a series of newspaper advertisements signed by WEA and the Pacific American Shipowners Association.

On September 16 there was an ad with the caption "Which flag do we fly?" showing two flags—one of the United States and the other of the U. S. S. R. "You can't do business with communism because communism wants chaos and not agreement," the text stated. "Nothing stands in the way of reasonable progress in our labor relations except the Communist ideology governing certain labor leaders."

Another ad, published on October 4, announced that "We cannot have peace with irresponsible Communist Party-line leadership" and showed a photograph of Harry Bridges drinking cocktails with V. Molotov. What the ad neglected to point out was that the occasion when the picture was taken was a reception during the United Nations Conference on May 7, 1945. Present at that reception were many outstanding businessmen, including Adrien Falk and Henry F. Grady.

Then, on October 15, the employers ran an ad showing a facsimile of the non-Communist affidavit form and pointing out that "as one guaranty of responsible union leadership, we have asked that officers of the International Longshoremen's and Warehousemen's Union and the Marine Cooks and Stewards Union sign this non-Communist affidavit." "Are we asking too much?" the ad was headed.

They were. They were asking that the union membersihp reverse its position on the affidavit issue. But this the membership refused to do. In a special referendum vote, conducted immediately after the employers announced what the Coos Bay (Oreg.) Times called editorially their sit-down position, the membership of the International Longshoremen's and Warehousemen's Union reiterated their support of the officers in their refusal to sign the affidavits by a vote of 10,740 to 376. At the same time the members turned down the employers' last offer by a vote of 10,780 to 236. Following this vote the union offered to reopen negotiations. The WEA refused.

So there was a complete stalemate. The employers even carried their "sit-down" to the point of refusing to honor their contracts with the United States Army to handle Army cargo, despite the union's announced willingness to supply men. On September 10, the San Francisco News ran a strike story headed "Employers block cargo movement for Army." The WEA issued a statement which read in part:

"This industry has made a decision with respect to Army cargoes. It will not continue to handle them if it requires dealing with Communist party-line labor leaders, self-sworn to the destruction of the American merchant marine."

The Army, under the necessity of moving its cargo, canceled its contracts with WEA members and signed new ones with independent stevedore contractors who were not averse to doing business with the union.

Similarly, the WEA refused to permit ships to operate to Alaska. Governor Gruening, of Alaska, wired the WEA that the longshoremen were "ready and willing to load all Alaska ships." The WEA replied that there could be no compromise "with Communist party-line union leaders" and called upon the Governor:

"Let us, therefore, stand fast together and purge this scourge from the maritime industry and thereby effect a water-front peace based on integrity and responsibility, one which will insure lasting peace and uninterrupted shipping service in the Alaska trade."

On October 16, Bridges wrote the WEA that the officers would step out of the picture and the union would elect a strictly rank-and-file bargaining committee. This proposition was likewise rejected, and the employers' "sit-down" continued.

About this same time, the national CIO, at the request of the ILWU, sent Vice President Allan Haywood out to the coast to seek a basis for reopening negotiations. "Haywood," according to the New York Times for October 16, "has asked that the employers drop their demands for union non-Communist affidavits in return for a national CIO guaranty of future contracts with the maritime unions."

This proposal, too, was turned down. Frank Foisie, then president of WEA, told a press conference (New York Times, October 16): "Our subcommittee made it plain to Mr. Haywood that we demand non-Communist affidavits. Our position is unchanged."

On the basis of Mr. Haywood's report to national CIO of his failure to budge the WEA from their position, Philip Murray made public the following letter (New York Times, October 21):

"The unions have repeatedly offered to resume negotiations or accept the good offices of a neutral third party. * * * The employer associations have adamantly rejected every such offer.

"The shipowners have announced instead that they will not deal with the elected negotiating committees of the unions. The direct challenge by these employers of the right of workers to select negotiating committees of their own choosing is a threat to every labor union in the country. It represents an attempt to establish a new pattern of company unionism."

Ultimately—a month later, on November 7—a formula was worked out with the assistance of national CIO and Almon E. Roth, president of the San Francisco Employers' Council, under which the WEA dropped its demand that the union officers sign affidavits. Under this formula, designed as a face saver for the WEA, the CIO agreed to renew an earlier understanding by which the CIO gave the WEA certain guaranties of contract performance.

Negotiations, resumed on the basis of this formula, took place in a wholly new atmosphere. Frank Foisie, for years president of WEA, and the lawyers who had spoken for him were all absent.

On November 25 a joint statement was issued by the parties which read in part as follows:

"Negotiating committees for the International Longshoremen's and Warehousemen's Union and the Waterfront Employers Association agreed today to settlement terms which they will recommend to their respective memberships.

"Terming the new pact one based on complete good faith, union and employer spokesmen joined in the prediction this contract and this new spirit can mean a new era for west-coast shipping.

"Operation under the long-range peace plan, a 3-year contract to 1951, CIO contract underwriting, improved grievance machinery, plus the new spirit of friendly cooperation which pervaded all meetings, formed the basis for predictions of water-front peace in the years ahead.

"The agreement is conditioned only on ratification by memberships."

The union won many of its basic demands, including a 15-cents-per-hour wage increase, 1 day off each week, a 9-hour shift, and a much improved grievance machinery designed to minimize the resort to arbitration.

In the 2 years 1947 and 1948, there were 55 arbitrations. In the 3 months since work was resumed on December 6, not a single dispute has gone to arbitration. The "new look," as it is called on the coast, appears to be working. The old arbitrary attitudes are gone or going, and disputes are being settled on the job.

On March 3 and 4, a joint conference was held by WEA and ILWU to consider ways of building up Pacific coast shipping and providing more jobs for longshoremen. John E. Cushing, president of Matson Navigation Co., opening the conference for the WEA, said:

"The fact that we are at this table keynotes the meeting better than words. Out of this meeting and others which we hope will follow can come more jobs for our ships and men."

And Kenneth H. Finnessey, of States Steamship Co., in summing up the achievements of the conference, said:

"The contract and spirit has served us well for the full quarter of a year since December 6. We have settled all of our disputes without a single arbitration. We have had no delays to cargoes since we went back to work. We have a new spirit, and we know that if we supplement it with the right kind of action we can turn it into new jobs for all hands.

"In the past 2 days we have found areas of mutual interest in which we can work jointly, and to translate these areas into more longshore and ship jobs we have agreed to the appointment of working committees who will develop these identities of interest and turn opportunities into jobs and pay checks."

Meanwhile, the WEA has announced a complete reorganization. O. W. Pearson, executive vice president of the Marine Terminals Corp., of Los Angeles, will be president. Frank Foisie, former president, according to the WEA news release (March 7) "is abroad on an industry study of cargo-handling operations."

The reorganization symbolizes a basic change in policy. The old policy of get tough with the unions has been replaced by one of mutual respect and cooperation. Had this policy been adopted earlier instead of the policy of demanding the signing of the affidavits, the strike would probably not have occurred.

SINCE THE WEST COAST LONGSHORE STRIKE—HOW TAFT-HARTLEY IS DESTROYING PEACE ON THE WATERFRONT

In this statement the International Longshoremen's and Warehousemen's Union wishes to discuss the current collective-bargaining relations between the union and the Waterfront Employers Association; and the manner in which the Taft-Hartley Act, and more specifically the general counsel of the NLRB is actively operating to destroy the existing collective-bargaining agreement and bring chaos to the waterfront.

The problem we face is immediate and critical.

All of the hard and honest work of both parties to this agreement, all of the efforts to rehabilitate shipping on the west coast, will be thrown into the ashcan if the general counsel is successful in his objective—to prove that our contract is illegal and invalid. Even as the employers and the union are working to make this new contract work, the general counsel is bending every effort to bring about its end.

The current collective-bargaining agreement was reached only after every possible obstacle of the Taft-Hartley Act was overcome. Later in this statement, under the subheading "The west coast longshore strike—how the Taft-Hartley Act created a prolonged labor dispute," the ILWU discloses the manner in which the act impeded collective bargaining and forced strike action.

Since the settlement of the strike and the return to work under the new agreement on December 7, a new atmosphere has developed on the water front. With a change in the leadership of the employers' association, the efforts of both parties to live under the new agreement have already borne some fruit.

In the 2 years 1947 and 1948, there were 55 arbitrations. In the 3 months since work was resumed on December 6, not a single dispute has gone to arbitration. Disputes are being settled on the job.

Both parties are trying to live with each other under the new agreement, and we have been getting along. Jointly, employer and union are trying to persuade shippers in other parts of the country that stability has been restored to the water front on the west coast.

This new agreement was reached only after the most prolonged and bitter struggle. It was reached despite the Taft-Hartley Act. And now we see the general counsel of the National Labor Relations Board, himself the instrument and embodiment of the Taft-Hartley approach to collective bargaining, setting out to destroy the contract.

We have an agreement both parties want to keep. We have an agreement that the industry is trying to sell to shippers as a stable, long-running arrangement. And then along comes the NLRB's Mr. Denham to announce publicly that our agreement is not worth the paper it is printed on.

These are the facts.

On June 10 the Waterfront Employers Association filed unfair labor charges against the ILWU and other maritime unions on the west coast. The charges were that the union, in insisting on certain hiring practices which WEA alleged were unlawful, was committing an unfair labor practice. This was part of the harassment to which the union was being subjected in those days.

The Board issued a complaint based on these charges on August 20, immediately after the WEA made its first wage offer and while the NLRB was conducting its ballot on the offer.

Hearings began on September 1, the day negotiations broke down and the day before the injunction was due to expire. They continued during September and early October at a time when the WEA itself was clearly in violation of the act by refusing to bargain with the ILWU. The general counsel's office on several different occasions refused to withdraw its complaint despite the employers' open violation of the act. The case lay dormant after this.

Subsequently negotiations between the parties were resumed in mid-November. The men returned to work on December 6, and final agreement was reached on new contract terms on December 17.

Soon thereafter the general counsel's office decided to amend the complaint against the ILWU and reopen the record to include the newly negotiated agreement. The general counsel was saying in effect that he considered our contract illegal. A hearing was ordered for April 5, 1949.

To the members of the ILWU, to the employers, to the shipping industry on the west coast, Mr. Denham was announcing that the new contract would have a short life if he had his way.

Mr. Denham is out to end our hiring hall. But he knows, and everyone else familiar with the west-coast maritime industry knows, that the longshoremen are simply not going to lose their hiring hall and return to the jungle of the shape-up that continues on the east coast. The longshoremen had to strike in 1934 to get the hiring hall; in 1948 they were again on strike, from September 2 to December 6, to keep the hiring hall. We know, the employers know, the industry knows, that the only rational and efficient method of operation in the industry is through central dispatching and rotary hiring from the hall.

As far as the NLRB cases are concerned, the position is as follows: We are convinced that neither the complaints in this case nor the evidence adduced in support of them justify any action by the Board under the Taft-Hartley Act. We simply do not think that Mr. Denham has any case against us.

However, in view of the review being made of the Taft-Hartley Act by this Congress, both the employers and the union asked Mr. Denham, as a minimum, to permit the cases to lie dormant until we could see how the Taft-Hartley Act was amended. This seemed a proper and reasonable request, in view of the legislative situation, and especially in view of the anxiety of the employers, who originally filed the charges, and the union to live with the new agreement.

Mr. Denham refused our joint request.

Representatives of both the Waterfront Employers Association and the ILWU met with Mr. Denham again at some length last Thursday, March 17, 1949. At that time the WEA formally asked that the proceedings be dismissed and the charges withdrawn.

This, then, is the situation facing Mr. Denham. The employers, who originally made the charges last June, now appear and ask that the charges be withdrawn and the proceedings end. They and we want the contract to continue. Neither party wants the contract disturbed.

But Mr. Denham says "No." Emphatically not; he is out to invalidate this contract.

The regulations of the Board provide, of course, that charges can be withdrawn at any stage in the proceedings. The ILWU and the WEA were informed that, when the request for withdrawal was formally submitted to the trial examiner, the general counsel would object strenuously. We were told by Mr. Denham that it was quite unlikely that the trial examiner would agree to dismiss the proceedings unless the general counsel would concur in the request of the employers. He told us unequivocally that he would not concur.

This, then, is the situation we and the entire west coast maritime industry face. The general counsel, the instrument of Taft-Hartley, is riding off determinedly to destroy the west coast longshore contract despite every possible representation from the parties themselves.

Can the members of the ILWU be criticized for questioning the motives behind all this? Frankly, we are convinced that behind this fever to destroy our contract lies a diabolical desire by some people in this country to stimulate unrest on the water front. Wreck our contract; destroy our budding healthy relations with the employers; drag out the old red herring; and what do you have but the ideal climate in which hysteria can be whipped up in the Halls of Congress and Taft-Hartley kept on the books.

Perhaps even the general counsel might be able to keep his job if the situation were blown up high enough.

We are not going to stand for this kind of treatment. We want this case against the ILWU quashed. We want this Congress to wipe the Taft-Hartley Act off the books. So long as we have this monstrosity to plague us, situations such as this one will be repeated over and over again.

THE WEST-COAST LONGSHORE STRIKE—HOW THE TAFT-HARTLEY ACT CREATED AND PROLONGED A LABOR DISPUTE

The experiences of the International Longshoremen's and Warehousemen's Union in the Pacific coast longshore industry demonstrate that the Taft-Hartley law has impeded collective bargaining and forced strike action. The Waterfront Employers Association of the Pacific Coast, with a long record of antiunion policy, seized upon the act as a weapon to weaken or if possible destroy the union and to obtain from it concessions which otherwise could not be hoped for. The national-emergency strike provisions served only to postpone a show-down. Because the union was strong, the employers' strategy failed and the outcome of the strike was not only a victory for the union but also a change of policy on the part of the employers' association.

The important facts in the chronology of the strike follow. It is necessary to summarize them to provide a background for the analysis of the effects of the act.

Beginning in February 1948, informal meetings were held with the WEA at their request to discuss changes in the longshore agreement (which was due to expire on June 15) "necessary to bring our agreement into line with the law"—meaning the Taft-Hartley law. The changes they proposed related to the hiring halls and to hiring procedures.

These discussions proved futile, apparently because of differing interpretations of the law but actually because the WEA was seizing upon the law as a means for eliminating union security. They insisted that certain changes were necessary in the agreement in order to bring it into conformance with the law, but they were unwilling to accept alternative union-security provisions suggested by the United which were clearly legal.

Thereupon, the union sent official notice on April 5 that it wished to open the contract for amendment. At the same time the United submitted its economic demands.

A number of negotiating sessions were held in April and May but proved similarly futile. The union took a strike referendum in May which resulted in an 89-percent vote in favor of striking on June 15 if no satisfactory agreement had been reached by that time. On May 11, the United States Mediation and Conciliation Service entered the picture, and its representatives were present at all subsequent negotiations during May.

These negotiations likewise were entirely futile. Agreement was reached on nothing. It was obvious that the WEA anticipated an injunction under the national-emergencies provisions of the act and were consequently unwilling to bargain in good faith, despite the overwhelming strike vote. There were indications, indeed, that the WEA actively sought an injunction.

On June 3, President Truman appointed a board of inquiry. The board conducted hearings on June 7 and 8 and reported its findings to the President on June 11.

On the same day, the Attorney General sought an injunction prohibiting the strike, and on June 14 the Federal district court in San Francisco issued a temporary order against the ILWU and the WEA restraining them from strike action. On July 2, the court, with apparent reluctance, issued an 80-day injunction, following hearings on June 21, 22, and 23.

On June 16, the union submitted additional demands to the WEA, and further negotiations were held during the last days of June. The Federal conciliator, present at all these sessions, stated at their conclusion on July 1 that the employers had not changed their position throughout negotiations. Similarly futile sessions were held later in July and early in August.

The board of inquiry met again on August 10, just before the expiration of the statutory 60-day period. The WEA submitted the so-called last offer, which, in fact, was the first offer they had made. The union submitted a statement on the issues and on the futile negotiations which had taken place (exhibit 1). The board reported to the President on August 13.

Thereupon, in accordance with the law, the National Labor Relations Board conducted a vote among the longshoremen, car and dock workers, and ships' clerks to ascertain whether or not they wished to accept the employers' last offer. Meanwhile, negotiations were taking place and the employers had sweetened their wage offer, raising the proposed increase from 5 cents per hour to 10 cents per hour, and attempted to have the Board's ballot contain the new offer. The Board, however, following the statute, submitted the last offer.

On September 1, the Board certified that out of 26,965 employees eligible to vote, not a single man had voted "yes" or "no." The ballot had been completely boycotted. A copy of the NLRB certification is attached as exhibit 2.

Likewise, on September 1, negotiations which had been taking place day and night broke down. While substantial agreement had been reached on the hiring-hall issue, the parties were quite far apart on basic issues of wages and working conditions, and the employers had refused to back down on certain union-busting demands.

On September 2, Judge Harris declared that the injunction had expired. The strike was on.

The very next day, on September 3, the WEA announced through the press that they would not deal with the ILWU until and unless all its international, district, and local officials had complied with Taft-Hartley by signing the Taft-Hartley non-Communist affidavits. This issue had not been raised in negotiations.

Thereafter, throughout the first 2 months of the strike, the employers carried on a public campaign of vilification against the union's officials. It was obvious that they hoped by raising the issue of Taft-Tartley compliance to split the union and force a change in leadership.

The union's response to this was a referendum ballot on two issues: acceptance of the employers' final offer which the union negotiating committee had repected on September 1, and the question of compliance with Taft-Hartley. The men voted 10,837 to 235 against the employers' offer and 10,795 to 376 against compliance.

On September 25 Mayor Elmer Robinson offered to mediate the strike. The union accepted but WEA refused. They stood pat on their refusal to meet with the United until it complied with Taft-Hartley.

They took the same position in exploratory sessions with Allan Haywood and R. J. Thomas sent out by President Philip Murray at the request of ILWU to see if they could get negotiations going again.

Finally, when it became apparent to certain of the large shipping companies that the union was becoming stronger, not weaker, and that the men were solidly behind the union officials, negotiations were resumed under the terms of a formula worked out by Almon Roth of the San Francisco Employers' Council. The agreement to negotiate was signed on November 17.

Work was resumed on December 6 and final agreement reached on new contrat terms on December 17. The union won a 15-cents-per-hour wage increase, a scheduled day off each week, a reduction in the daily work shift, continuance of the existing hiring machinery pending final court action, and many other benefits.

Meanwhile, the union was subjected to the additional harassment of prolonged proceedings before the NLRB. On June 10 the WEA filed unfair-labor-practice charges against ILWU, charging that the union was insisting on certain hiring practices which they alleged were unlawful under Taft-Hartley.

The Board issued a complaint, based on these charges, on August 20, immediately after the WEA had made its first wage offer and while the NLRB was conducting its ballot on the offer.

Hearings began on September 1, the day negotiations broke down and the day before the injunction was due to expire. They continued during September and early October at a time when the WEA was in clear violation of the act by refusing to bargain with ILWU. The general counsel's office on several different occations refused to withdraw its complaint despite the employers' open violation of the act. The case is still in the hands of the trial examiner.

THE "NATIONAL EMERGENCIES" PROVISIONS OF TAFT-HARTLEY

The cooling-off period.—It is apparent from the foregoing summary review of the events of the Pacific coast longshore strike that the "national emergencies" provisions of the act were wholly ineffective from the standpoint of preventing a tie-up. They simply postponed a show-down that under the circumstances was inevitable. All the facts making a maritime strike a national emergency on June 15, which were brought out by the parade of Government witnesses at the injunction hearings, were just as much facts on September 2 when the injunction was dissolved.

While the emergency provisions of the act proved entirely ineffective in preventing a strike, they were effective in a way unintended by the framers of the law. The employers' complete refusal to bargain because they were sure an injunction would be obtained, topped by the Government's intervention obviously at the behest of the employers, together so outraged the union membership that instead of "cooling off" they "warmed up."

The union's original position was that it would not move to open the contract if satisfactory agreement could be reached on the hiring-hall issue in preliminary sessions. When agreement proved impossible because the WEA was simply using the issue of conformity with the law to secure long-sought disruption of union security, the union opened the contract and submitted economic demands. The membership recognized that the employers were seeking to take something away and give nothing in return, using the excuse of Taft-Hartley.

That this was the employers' tactic is admitted even by Senator Ball's committee in its recent report, Labor-Management Relations, West Coast Maritime Industry. The report stated on page 43:

"The position taken by the employers consistently through the past 14 years clearly demonstrates, however, that the Taft Act did not create the issue which gave rise to the strike; it merely gave legal support to certain of the proposals repeatedly advanced in the past by the employers."

When it became apparent, in May, that the WEA was angling for an injunction and in consequence unwilling to bargain in good faith, the membership overwhelmingly voted to authorize a strike. Such a vote would have been impossible earlier.

Then, after the issuance of the restraining order, the union submitted additional demands. Moreover, throughout the injunction period, when the contract grievance machinery was in abeyance, the men obtained a variety of improvements in their conditions by local action by militant action on the job. For example, in San Francisco, the men won the Sunday closing of the port, which was one of the union's additional demands. The employers tried to push the Department of Justice into bringing contempt proceedings but not action was brought, presumably because it was clear even to the Justice Department that a satisfactory adjustment of issues between the union and employers could not be obtained by legal action and in the absence of willingness by the employers to bargain in good faith.

The results of the utilization of the "national emergencies" provisions were the postponement of the strike, the toughening up of the union position, and an ultimate settlement with union gains in excess of original demands. The basic factor causing the strike was the intransigent position of the employers. The cooling-off process did nothing to change this; a strike was necessary.

The futility of the whole procedure was recognized by Judge Harris during the proceedings leading up to the issuance of the injunction. The union was demanding at that time (in June) that, except for the union-preference clause which it was willing to drop, the sections of the collective-bargaining agreement dealing with hiring and the hiring hall were legal and should be retained subject, however, to renegotiation if the Supreme Court should hold them unlawful. The WEA said that several sections were unlawful and must be eliminated. Judge Harris remarked (transcript, vol. 3, pp. 324–325):

"Apart from my duty resting upon this court, as indicated under the terms of the act. I feel that there is a duty on the part of the litigants—that is, the defendants and the employers' counsel—and when I speak of litigants I do so in the over-all sense—to compose their differences.

"As pointed out yesterday afternoon in my colloquy with counsel, the nub of the controversy seemed to hinge, as indicated by the report, upon the hiring-hall problem, as well as preferential hiring. I cannot conceive of either side taking an adamant position with respect to the legal problems there involved. And I speak somewhat gratuitously now. No doubt a formula may be adopted in the light of experience in connection with the Fair Labor Standards Act wherein agreements were entered into subject to the ultimate disposition by courts of last resort, or a court of competent jurisdiction.

"I, of course, cannot enforce or compel counsel to enter into a collective-bargaining agreement, but at the same time I feel that a duty rests upon the employers as well as the employees.

"I shall not undertake to ask Mr. Plant [the WEA attorney] again what his attitude is, but I trust it will not be an adamant one."

And further (transcript, vol. 3, pp. 346–347):

"My point is this, and it may appear inferentially or expressly in the record: That the employers are represented by lawyers, the employees are represented by lawyers, the respective views of those lawyers are equally entitled to merit from their respective viewpoints. Now if it appears, as pointed out by Mr. Gladstein [the union's attorney] during the course of his remarks, that those counsel for the respective sides maintain that position with equanimity and with completeness during the period of 80 days, what would be served? What could be served? Would that be a cooling-off process? * * * In the final analysis, legal propositions are passed on by the court. If in the experience of the employers and the employees in the past they have had comparable problems, no doubt under the Fair Labor Standards Act, the same pattern may be adopted."

It is quite apparent from these statements by Judge Harris that he thought the 80-day "cooling off" period would be ineffective and that he granted the injunction with reluctance.

Retroactivity.—Another feature of the operation of these provisions is that the workers are compelled by law to work at a wage rate which they believe to be unfair and are seeking to adjust. This both outrages their sense of justice, because the Government is in effect intervening on the employers' side, and inevitably raises the issue of retroactivity. In this case the union offered on September 1, just before the strike, to settle the wage issue on the basis of 15 cents per hour without retroactivity or 13 cents per hour retroactive to June 16. The final settlement was 15 cents without retroactivity. Thus the postponement of the settlement, caused by the act, has resulted in a net gain of 2 cents per hour in the base rate.

The board of inquiry.—The board of inquiry was entirely ineffectual if its supposed function was intended to be anything more than the formal one of informing the President of the positions of the parties.

The board was, of course, prevented by the explicit provisions of the Taft-Hartley Act from making any recommendations. The act provides (sec. 206): "Such report [by a board of inquiry] shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations."

Nevertheless, the board of inquiry is supposed to "ascertain the facts with respect to the causes and circumstances of the dispute." In this instance, the board was given just a week (it was appointed on June 3 and reported on June 11) to investigate the causes and circumstances of a dispute which involved not only the west coast, but the east coast, the Gulf, and the Great Lakes; which involved not only the ILWU but all the CIO maritime unions; and which had its roots in years of controversy. A real investigation would have required several weeks if not months. There was clearly no intention even of finding the facts, let alone trying to be of assistance in reaching a settlement.

When reconvened at the end of the 60-day period, the board's only function was to receive the employers' final offer and to pass it along to the NLRB. The perfunctory character of the whole business was demonstrated by the fact that only one board member attended this second hearing.

The NLRB ballot on the employers' "last offer".—The purpose behind the inclusion of this procedure in the Taft-Hartley Act is presumably to insure that the union's members are fully informed of the employers' position and consequently cannot be led into a strike which they would disapprove on the basis of all the facts. The procedure is based on the assumption that union leadership, for some unexplained reason, derives a benefit from leading the union into an unnecessary strike.

What the ILWU membership thought of the solicitude of Congress for their welfare is clear from the 100-percent boycott of the ballot. The ballot was a complete farce.

As already indicated, by the time the ballot was taken the employers had already sweetened their offer.

Moreover, as soon as the employers made an offer which the union's negotiating committee thought might conceivably be good enough to weaken the effectiveness of a strike, the offer was put to a referendum vote of the membership, by the union.

Collective-bargaining issues raised by the law—(1) *The hiring hall.*—The award of the three-man National Longshoremen's Board, appointed by President Roosevelt and headed by Archbishop Hanna, which was the basis for the settlement of the 1934 strike, provided that longshoremen in all the major Pacific coast ports were to be dispatched through hiring halls jointly maintained and jointly operated. Any man who had worked 12 months as a longshoreman during the previous 3 years was entitled to be put upon a list of "registered" longshoremen, such lists likewise to be maintained and administered by a joint committee. All registered longshoremen were entitled to dispatch through the joint hiring hall on such a basis as to insure an equal division of work opportunities. Actual dispatching of the men, in accordance with orders from the individual employer and following dispatching rules laid down by the joint labor relations committees, was put in the hands of a union-selected dispatcher.

The joint hiring hall was designed to eliminate on the one hand the well-recognized evils of the shape-up which prevailed in San Francisco and, on the other hand, the more subtle evils of the employer controlled hiring halls which were in effect in Seattle, Portland, and Los Angeles. No reputable student of labor relations supports the shape-up with its inevitable results of discrimination, speed-up, and casual work. But the evils of the employer-controlled hiring halls are less obvious. The longshoremen knew well enough, however, that while the ostensible purpose of these halls was decasualization, they were antiunion in intent and effect. They were characterized as follows by the Maritime Labor Board (Report to the President and to the Congress March 1, 1940, footnote 19, p. 144): "Both the early decasualization schemes in Seattle, Portland, and Los Angeles and the Longshoremen's Association of San Francisco succeeded in breaking the regular longshore unions on the Pacific coast in the years from 1922 to 1934." (The Longshoremen's Association of San Francisco was the notorious Blue Book union, a company union inspired and dominated by the WEA.)

The joint hiring halls as established in 1934, therefore, were necessary to protect the men in their right to bargain collectively without interference or coercion by the employers.

One further protection proved necessary. In 1937, again following a major coast tie-up, the union won a contract clause providing for preference for union members. This was interpreted by the arbitrator to cover preference both in registration and in dispatching.

That in 1937 the union had still to protect itself from the antiunion attacks of the employers has been very clearly demonstrated by the analysis of the WEA made by the La Follette committee. The committee's studies showed that the WEA was attempting to undermine and discredit the union's elected leadership and was engaging in a program designed to weaken and disrupt the union. Without going into the substance of the committee's findings it is sufficient to quote the headings of sections of the report (Employers' Associations and Collective Bargaining in California; part VII. A study of Labor Policies of Employers' Associations in the San Francisco Bay area, 1935–39):

"Collaboration of water-front employers in the opposition to the growth of unionism.

"Efforts of water-front employers to divide and disrupt unions.

"Attacks on union leadership."

A few excerpts from the report are attached as exhibit 3.

Since the adoption of the preference clause in 1937, there has been no change in the basic procedures for registration and dispatching of longshoremen. But the passage of the Taft-Hartley law gave the employers an opportunity to challenge these procedures. In February 1948 the WEA informed the union that their lawyers advised them that the following changes were needed in order to bring the longshore agreement into conformance with Taft-Hartley:

(1) The preference-of-employment clause must be dropped.

(2) An "impartial" dispatcher must replace the union-selected dispatcher.

(3) Joint control over registration of new men must give way to unilateral employer selection.

The union proposed in reply that preference for registered men replace preference for union men, and that in adding men to the registration lists, preference be given to men formerly employed in the industry. With regard to the other two items, the union replied that its lawyers said that they were not contrary to the provisions of the Taft-Hartley law. The union also made some proposals for substitute union-security language to replace the security provided by the preference clause.

The unwillingness of the employers to give any serious consideration to the union's position made it clear to the union's negotiators that the WEA was simply seizing upon the Taft-Hartley law as an excuse for weakening the union. Very piously the employers insisted they didn't want to make the suggested contract changes but that they were forced to do so by the law.

During the later negotiations just prior to the issuance of the injunction, the union had modified its position to propose that the union-preference clause be dropped, and that the other provisions in dispute be continued pending final determination of their legality by the United States Supreme Court.

A similar provision had been in the longshore contract for several years on the question of overtime. While maintaining that the longshore method of paying so-called overtime rates during certain night hours satisfied the requirements of the Fair Labor Standards Act, the employers nevertheless feared that an ultimate court decision might hold the contrary—as in fact it did, in the Huron Stevedoring Co. case. To protect themselves against this eventuality, the employers demanded, and won, a contract provision giving them the right to open the entire contract for renegotiation in the event of an adverse court decision.

The union's proposal with respect to the hiring provisions was precisely similar. The WEA refused to accept this, though as indicated above, Judge Harris, who reluctantly granted the 80-day injunction which postponed the strike, quite strongly urged such a solution upon the parties.

By the end of August, when the injunction was about to expire, the employers had come around to the union's position on this point and were willing to continue existing hiring procedures subject to renegotiation in the event of an adverse court ruling.

At the very time, however, that they were taking this position in negotiations, they were pressing unfair-labor-practice charges against the union before the NLRB, holding that it was violating Taft-Hartley in insisting on retaining existing hiring and registration provisions and practices. Hearings before the Board began on September 1, the day that negotiations broke off. The union felt that the employers' good faith in offering something in negotiations which they were seeking to take away in proceedings before the Board was at least subject to doubt.

On September 3, as noted earlier, the day after the strike began, the WEA announced through the press that they would not meet with the ILWU until brought into compliance with the Taft-Hartley law by its officers signing the so-called non-Communist affidavits. Union counsel sought to have the Board dismiss its complaint against the union on the obvious ground that the charging parties were themselves in violation of the law by refusing to bargain with the elected representatives of a majority of the men.

The subservience of the general counsel of the NLRB to the employers is evident from the fact that he was unwilling to withdraw the complaint.

Hearings growing out of the unfair-labor-practice charges continued for the better part of a month. The matter is now in the hands of the trial examiner.

Meanwhile the strike was concluded. The new agreement between ILWU and WEA retains the old registration, preference, and dispatching provisions. An addendum provides for alternative provisions in the event of an adverse court decision. A copy of this addendum is attached as exhibit 4.

(2) *The question of supervisory employees.*—Another issue precipitated by the passage of the Taft-Hartley law concerns supervisory personnel. In the longshore industry the supervisors are known as walking bosses. They direct the work of the several gangs working on a ship.

The walking bosses are all former longshoremen and almost all of them are members of ILWU. For years the union has been seeking collective-bargaining rights on their behalf, but the employers have been unwilling to concede the right of the bosses to self-organization.

While this has been the predominent position, the Waterfront Employers of Washington, which bargains on a State basis with longshore and ship clerks unions in the State of Washington, has long had a contract with the walking bosses in that State, who are members of the International Longshoremen's Association, AFL. Likewise, in Portland, Oreg., the bosses (who there are member of ILWU) have for many years had a memorandum of agreement concerning wages, hours, and working conditions signed by individual employers, not by the association. But nowhere have the employers been willing to deal with ILWU on behalf of the bosses.

The employers took the position that they would not bargain with ILWU because they had no evidense that the union represented the bosses. So the union instituted representation proceedings under the Wagner Act, as election was ultimately held by the Board, and ILWU was certified as bargaining agent for all the bosses on the Pacific coast except those in Washington. The certification was dated May 13, 1947 (case No. 20-F-1615).

The next month the Taft-Hartley law declared that employers had no obligation to bargain with their supervisors. So the WEA took the position that the certification was without force and effect. The bosses struck for recognition, first against one company in San Francisco and then against another company in Los Angeles. The employers in Los Angeles closed the port in retaliation. The arbitrator under the contract ruled that the employers' lock-out violated the contract and that the longshoremen were likewise in violation for respecting the bosses' picket lines. So the whole thing was called off.

Again, the employers' hand was strengthened by the Taft-Hartley law and again a strike was precipitated which otherwise would not have occurred.

As part of the settlement of the recent Pacific coast strike, the WEA agreed that a committee of employers of walking bosses in each port would sign a contract with representatives of bosses so long as the bosses were not members of the longshoremen's locals. Such contracts are now being negotiated. The bosses have thus finally won substantially the recognition they have long sought. The bosses have set up their own ILWU locals.

The Taft-Hartley law created a similar problem in connection with certain supervisory workers among the ship clerks, an occupational group closely related to the longshoremen. Even since 1934 these supervisory clerks have been members of the union, covered by contract. However, in the recent negotiations the employers said they would no longer deal with the union for these men. Their decision not to do so, they indicated, arose out of the fact that they no longer are obligated to do so. The demand to exclude these supervisors from coverage under the clerks' contracts was finally dropped in negotiation. The new contracts include them.

EXHIBIT 1

In the matter of a proceeding by Presidential Board of Inquiry appointed pursuant to Executive Order No. 9964 to Report on Certain Labor Disputes Affecting the Maritime Industry of the United States, Involving Controversies Between and Among Waterfront Employers Association of the Pacific Coast; Pacific American Shipowners Association; Shipowners Association of the Pacific; International Longshoremen's and Warehousemen's Union; National Marine Engineers Beneficial Association; National Union of Marine Cooks and Stewards; American Radio Association; Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association

AUGUST 10, 1948.

STATEMENT OF THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

On August 6, 1948, the ILWU received a wire from Harry Shulman, Chairman of the President's Board of Inquiry on Labor Disputes in the Maritime Industry, requesting submission of a written statement of this union's position in current negotiation for new agreements, such statement to be submitted to the reconvened Presidential Board of Inquiry on August 10, 1948.

We submit the following statement:

During the hearings of June 7 and 8 before this Presidential Board of Inquiry, the ILWU related the complete lack of progress which had been made in negotiations for new agreements up to that date. We stated that the primary reason for the lack of progress was the employers' assurance that this Board would be established and that an injunction would follow its report. The union argued that an 80-day Taft-Hartley injunction would only postpone real negotiations for 80 days, and consequently postpone settlement of the union's just demands for the same period.

Events occurring since that time have completely justified this position. It is, at least, helpful that in issuing its report to the president of June 11, 1948, the board of inquiry has recognized its role in these proceedings. "The appointment of the board of inquiry has, of course, increased the possibility of an application for an issuance of an injunction. And that has alleviated for the time being the pressure for settlement which a threatened strike would otherwise impose." (Report to the president, June 11, 1948, pp. 12–13.)

A temporary restraining order followed by a temporary injunction were dutifully issued by the court. In issuing the temporary injunction, the court ordered the parties to engage in collective bargaining in good faith, although the union's request that the court appoint a master to supervise such negotiations, enforce the order, and report back to the court, was denied.

Since the date of the court order a series of meetings have been held for the purpose of collective bargaining. The discussions which took place during these meetings are summarized in exhibit 1–A attached. Also attached as exhibit 1–B is a list of the union's demands as of this date with regard to the various contracts involved.

Now this board reconvenes for purposes of reporting to the president the current position of the parties, the efforts which have been made for settlement, and the employer's last offer. There has been no change in the employer's position since the board first reported to the president. In fact, there has been no change in the employer's position since negotiations first began early this year. They have made no efforts to reach a settlement. They have made no offer for settlement—"last" or otherwise. On the contrary, they have made only demands of their own—demands which, if accepted, would deteriorate wages, hours, and working conditions. The union, on the other hand, has consistently attempted to meet employer proposals with reasonable counterproposals—to meet the employers' "no" to union demands with reasonable suggestions for settlement.

We can state that we have worked hard and long toward a settlement—and that we have neither caused nor desired the complete lack of progress.

EXHIBIT 1–A

SUMMARY OF NEGOTIATIONS BETWEEN INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION AND WATERFRONT EMPLOYERS' ASSOCIATION OF THE PACIFIC COAST, JUNE 28–AUGUST 6, 1948

In accordance with the court's temporary injunction and in the hope that further negotiations might be more fruitful than earlier sessions, the union participated in negotiations with the Water Front Employers' Association, under the auspices of the Federal Mediation and Conciliation Service, on June 28, 29, and 30, July 1, and July 19. A negotiations meeting was scheduled for August 6, but the employers on that date refused to proceed with negotiations until a local grievance had been settled.

No progress was made toward reaching a settlement of any of the demands of either party, though the union exerted every possible effort to make the negotiations effective. The union made counterproposals to all the employers' demands. The association, on the other hand, advanced counterproposals to only two of the union's demands, both of them involving substantial wage cuts. They were obviously not made in the expectation that they would be seriously considered. And, with respect to its own demands on the hiring hall, the association was unwilling to state whether it would lock the men out in order to secure their demands in the event the restraining order was lifted.

At the close of the July 1 meeting Mr. Bridges asked Conciliator Lewis whether he could see any change in the association's position since the start of negotiations. Mr. Lewis replied that he could not. At the July 19 meeting counsel for the employers suggested adjournment on the basis of "no progress." Nevertheless the union continued the session and made additional counterproposals.

The influence of the court order in preventing or postponing bona fide negotiations by the association was apparent throughout. This experience confirms the union's prior experience that the association is willing to negotiate only when it is under pressure to conclude an agreement as of a specified time.

The influence of the Federal Mediation and Conciliation Service was nil. Their concern was never in negotiation but simply in "clarifying the issues." However, clarification never proceeded to the point of appraisal. The Service made no attempt, either in joint sessions or in separate sessions with the union, to ascertain what issues the union considers paramount or how far it would be willing to go in compromising any of its demands. The Service made no recommendations whatsoever. Its only function was, by requiring the parties to meet, to force the employers to go through the motions of negotiating. A summary of the discussions follows:

Discussion of certain preliminary issues.—At the union's insistence several issues were discussed as a preliminary to negotiating upon the parties' demands.

There were, first, two matters of back pay due to longshoremen and clerks under earlier agreements. Winch drivers were entitled to some $100,000 in retroactive pay under agreements reached in 1946. The clerks were entitled to some $50,000 in retroactive pay under an agreement dating back to 1945. Neither group had been able to collect because the association took the position that they could not pay the men until the employers were themselves reimbursed by the Army and Navy. The union said it would not conclude any new agreement until the association had honored its old ones. Under this pressure the payments are now being made.

The union asked for assurance that whatever agreement may subsequently be reached on the union's money demands, be retroactive to June 16. Neither party has had a happy experience with retroactivity as the preceding paragraph shows and there has been, in fact, determination by both parties to avoid retroactivity. However, the Government restraining order in this instance, which prevented the union from taking action to secure its demands, makes necessary a departure from this policy. The union pointed out that each day of work under the terms of the old agreement is money in the employers' pockets and a loss to the men.

Another group of preliminary issues involved the coverage of the contract. The union's position was that it was necessary to know who is to be covered by a contract, before negotiating its contents. The union insisted on an official statement of the association's attitude toward continuing contracts for supervisory clerks, walking bosses in Portland, and watchmen. All these groups, members of ILWU, have had contracts for years with one or more of the associations or with employers who are members of the associations. The association stated that it demanded exclusion of supervisory clerks from coverage; that it would not renew the contract with the Portland bosses; and that it would not sign a contract with the watchmen as long as they remain members of ILWU.

The union said that this is a strike issue; there will be a strike unless agreements are reached for all ILWU groups who have previously been covered by contracts. The union stated further that it is unwilling to negotiate some of its members out from contract coverage. The president of the union charged the proposal was a union-busting proposal designed to weaken the union.

The union asked the Conciliation Service to recommend exclusion of these groups from the court order. It argued that under present circumstances these groups are helpless. The order to bargain is meaningless because the association says it will not sign contracts which include them, while at the same time their hands are tied so they cannot take action to maintain the collective bargaining rights they have enjoyed for years. No question of representation had arisen, nor is there any allegation by the employers that their position is dictated by the necessity of observing the law.

Again, it is apparent that Government intervention is in part responsible for the present impasse.

On another issue of coverage, the association stated that it refused to negotiate with ILWU walking bosses in California. These workers have never been able to secure a contract, though certified by the NLRB.

With regard to the clerks, the union insisted as a preliminary to negotiations, upon agreement that when a contract is signed it shall be coastwide (for California and Oregon) rather than on a port basis. The association was unwilling to agree. The union said this was a strike issue.

Finally, the union insisted on its right to know with whom it is negotiating and what employers will be covered by a contract when reached. This, too, the union said, is a proper preliminary to negotiations.

The union states it wished to negotiate a separate contract for foreign flag vessels, and that decision on this point was a prerequisite to negotiating the contents of the longshore agreements. The demand for a separate contract for foreign vessels arises principally out of the need for particularly stringent safety conditions on these vessels, as the union pointed out. Secondly, because many foreign ships operate under laws or union contracts more favorable in their provisions regarding hours of work than is true of American vessels, the union wants different hours provisions. For example, agreement might be reached to eliminate Sunday work or greatly to reduce overtime work. Thirdly, the union stated it would like different holiday provisions on foreign ships.

The association tried to allege that these proposals were intended as devices to injure the competitive position of foreign flag vessels. The union stated that there was no intention to influence the competitive relationship between American and foreign ships in any way whatsoever. Nor, is the demand intended to split the association since the contract would be signed by the association on behalf of foreign companies.

Most of these preliminary issues are, therefore, still unresolved. On all of them the association refused to move from its original position. And on each of them the union asked for a recommendation from the conciliators. The conciliators refused to make any recommendations.

The individual issues—Retroactivity.—Immediately after the issuance of the temporary restraining order on June 14 the union submitted a demand that wage increases and any other money matters which might be agreed upon in the future be retroactive to June 15, 1948. This same demand was discussed on the first day of the current negotiations meetings with the Conciliation Service. The employers refused to enter into such an agreement for retroactivity stating that the proper time to discuss possible retroactivity is when agreement is reached on wages or other money matters. To quote the employer representative in those sessions: "If the union wishes a blanket answer now on the question of retroactivity, the answer is 'No'."

The union asked the conciliators for a recommendation on this point and the conciliators stated that they would not make any recommendations at that time.

Wages and hours.—The union has requested an 18 cents per hour increase in the basic rate of pay and outlined the basis on which this request is being made. The employers have taken the position that any consideration of wages is dependent upon an agreement with regard to the hours section of the contract because of the recent Supreme Court decision with regard to proper determination of overtime. The union continually reiterated that it is the employers' responsibility to bring the contract into conformance with the decision and that the contract would have been in conformance long ago if it had not been for the resistance of the employers. However, the employers refused to consider a basic wage increase apart from the question of overtime.

The employers submitted a proposal which would constitute substantial wage decreases. That proposal was as follows: (*a*) That the first 40 hours in any week be paid at an agreed upon rate which the parties would negotiate starting from the present basic rate of pay; (*b*) that this agreed upon rate would be paid for the first 40 hours of night work and also on holidays, Saturdays, and Sundays. At the present time hours of work in excess of 6 hours between 8 a. m. and 5 p. m., and hours from 5 p. m. to 8 a. m. and holidays, Saturdays, and Sundays are worked at time and a half of the basic rate of pay. Therefore a good faith employer proposal on the basis which the employers are suggesting would have started from a basic wage rate of over $2 per hour rather than the present $1.67 rate from which the employers propose to start negotiations.

The employer proposal as it stands constitutes a substantial wage decrease and therefore cannot be interpreted as anything other than a provocative offer designed to make agreement impossible.

At the July 19 meeting the employers stated that they would bring in a proposal on hours and scheduled days off at the next meeting. However, they refused to produce the proposal at the August 6 meeting, using local grievance as an excuse.

Vacations.—The union has proposed that the vacation provisions in the various contracts be amended so that a substantial majority of the workers will receive vacations and the present provisions for vacations will become meaningful. The employers refused to consider such a proposal and instead suggested their oft-repeated proposition—an increase of 5 cents on the basic wage rate in lieu of vacations. Since practically all of the men who now qualify for vacations receive 2 weeks consisting of 80 hours' pay at the basic rate, or approximately $130, the employer proposal would mean a 50 percent decrease in vacation pay. This would have the practical result of eliminating vacations altogether for the majority of men since most men could not afford to take time off on such a basis.

The union submitted a counterproposal, namely, that the money in lieu of vacations proposed by employers be paid into a central fund from which all men would receive vacation pay. The employers refused to consider this counterproposal.

Steam schooners.—The union has submitted several demands with regard to the steam schooner agreement. One of these demands is that a definition of the term steam schooner be written into the agreement. Despite the fact that both parties to the agreement are fully aware of the meaning of this term, they were unable to agree on the definiton of a steam schooner. Conciliator Lewis suggested that the parties were in agreement at least on one question, i. e., that a definition of steam schooners be written into the contract. The employers said they would not go that far. They would only agree that the definiton of which they approved be written into the agreement.

The remaining demands of the union with regard to the steam schooner agreement were discussed in the briefest possible manner for "clarification."

Nonmembers of the Waterfront Employers Association.—The employers have submitted a very interesting demand to the effect that nonmembers of their association shall not receive longshoremen from the hiring halls unless the association gives prior approval. This proposal really means that the association can use the joint hiring hall to force recalcitrant employers into the association if they are to obtain workers. The union suggested that the WEA is asking for preference of employment for itself and is asking the union to join in the lockout of nonmembers of the association. The union agreed that nonmembers obtaining men from the hiring hall should pay their pro rata share of the upkeep of the hall. These arguments made no impression upon the employers who repeated that men are not to be dispatched to nonmembers through the hiring hall without the consent of the WEA.

They further stated that any empolyer who joins the WEA during the term of the agreement shall automatically become a party to the agreement and therefore entitled to preference in obtaining men from the hiring hall. The union suggested that the counterpart of that proposal was that men who joined the union during the term of the agreement automatically become registered longshoremen and therefore entitled to preference of employment. The employers replied that this was not acceptable.

The union then asked for an understanding that the agreement is to cover only members of the WEA at the time of signing the agreement and that employers who joined the WEA during the term of the agreement shall become party to it only by mutual consent. This was unacceptable to the employers.

Other union demands.—The remaining demands of the union with respect to all groups of workers were discussed very briefly for "clarification" only with no counterproposals forthcoming from the employers and no suggestions or recommendations from the Conciliation Service.

The hiring hall and related issues.—The union has repeatedly pointed out that it has no demands with regard to the hiring hall and related issues which have been raised by the employers. The union has repeatedly proposed that any disagreement on such matters should be referred to final decision by the courts. The soundness of this position was reflected by the statements of the court on June 23, 1948, in the restraining order and injunction proceedings. Some of these statements follow:

Excerpts from reporter's transcript No. 28, 123–H, volume 3, in the *Matter of United States* v. *ILWU*, in the District Court of the United States for the Northern District of California, southern division, before Judge Harris, June 23, 1948:

Judge Harris, in agreeing to extend the temporary restraining order, says:

"Apart from my duty resting upon this court, as indicated under the terms of the act, I feel that there is a duty on the part of the litigants—that is the defendants and the employers' council—and when I speak of litigants I do so in the over-all sense—to compose their differences.

"As pointed out yesterday afternoon in my colloquy with counsel, the nub of the controversy seemed to hinge, as indicated by the report, upon the hiring-hall problem, as well as preferential hiring. I cannot conceive of either side taking an adamant position with respect to the legal problems there involved. And I speak somewhat gratuitously now: No doubt a formula may be adopted in the light of experience in connection with the Fair Labor Standards Act wherein agreements were entered into subject to the ultimate disposition by courts of last resort, or a court of competent jurisdiction.

"I, of course, cannot enforce or compel counsel to enter into a collective-bargaining agreement, but at the same time I feel that a duty rests upon the employers as well as the employees.

"I shall not undertake to ask Mr. Plant again what his attitude is, but I trust it will not be an adamant one" (tr., vol. 3, pp. 324–325).

Judge Harris, in agreeing to extend the temporary restraining order, further said:

"My point is this, and it may appear inferentially or expressly in the record: That the employers are represented by lawyers, the employees are represented by lawyers, the respective views of those lawyers are equally entitled to merit from their respective viewpoints. Now, if it appears, as pointed out by Mr. Gladstein during the course of his remarks, that those counsel for the respective sides maintain that position with equanimity and with completeness during the period of 80 days, what would be served? What could be served? Would that be a cooling-off process? * * * In the final analysis, legal propositions are passed on by the court. If in the experience of the employers and the employees in the past they have had comparable problems, no doubt under the Fair Labor Standards Act, the same pattern may be adopted" (tr., vol. 3, pp. 346–347).

"The Court. It seems to me, gentlemen, a pity somewhat when as you are, without committing one or the other, more or less in substantial accord with regard to give and take on the problems that may be regarded as major or minor, yet you find yourselves stymied, so to speak, on a proposition of law. As I indicated, if that is the situation, all of the cooling-off process in the world isn't going to modify or otherwise give any comfort to either party on that score in 80 or 120 days or 6 months, until a court of review speaks with authority, and that is the Supreme Court of the United States, or some circuit court, so I can't see any stultification on the part of either when there is a controversy in which each one's views are set forth wholeheartedly and strenuously on both sides with respect to the application or nonapplication of certain provisions of the Taft-Hartley law, or that any stultification results in entering into a collective-bargaining agreement based upon provisions that have endured over a period since 1936; is that correct?

"Mr. Gladstein. 1934, Your Honor.

"The Court. 1934. The Taft-Hartley law has not been reviewed on many occasions by our Supreme Court. No doubt it will go before them in varied forms" (tr. vol. 3, pp. 361–462).

The employers, however, have refused to consider the union's counterproposal to employer demands with regard to the hiring hall, namely, that the present practices be continued unless or until an ultimately binding court decision holds them to be illegal, in which event the agreement would be subject to termination and renegotiation upon 5 days' notice by either party. This is the same solution which the employers insisted upon placing in the contract with regard to the Fair Labor Standards Act (referred to by Judge Harris above), at a time when the parties were in disagreement as to the proper interpretation of that act.

In summary, the union has no demands with regard to the hiring hall and related issues, and there will be no tie-up over these issues, unless the association plans to lock out to obtain their demands. In negotiations, the association refused to state what actions they would take if they were free to move, in the absence of an agreement. The conciliators made no attempt whatever to ascertain the association's intentions in this regard.

Exhibit 1–B

August 9, 1948.

ILWU Demands

Longshore.—These demands are also made on behalf of other ILWU groups were applicable.

(1) Amend present contract vacation provision to provide that all longshoremen will receive an annual vacation with pay.

(2) Elimination of present disciplinary and penality provisions of the contract, plus a new provision to the effect that any cessation of work by longshoremen either as individuals or groups of individuals is not to be considered a violation of the contract.

(3) Elimination of the present practice of requiring longshoremen to be on call 168 hours a week by guaranteeing at least one free day a week and 4-hour minimum pay when ordered to report to the hall for dispatch and 4-hour minimum pay when ordered to work and less than 4 hours or no work is provided.

(4) Reduction of the present work shift to a maximum of 8 hours with a corresponding wage increase to retain adequate take-home pay.

(5) Recommendations of the longshore safety commission to be written into the basic longshore contract.

(6) Contract to run for 2-year period with semiannual wage reviews and June 15 termination date.

(7) Penalty payments to be added to the following cargoes: all bones, radioactive materials, treated or untreated nitrate, when working on ships loading or carrying explosive or ammunition.

(8) Coastwise uniform skill differentials.

(9) Longshore health insurance plan.

(10) Longshore pension plan.

(11) A weekly or monthly guarantee of a minimum number of hours work opportunity for registered longshoremen.

(12) Increased subsistence from $5 to $6 per day. Also payment for meals.

(13) Travel time at straight or overtime, as the case may be.

(14) Hourly wages shall be increased 18 cents to take effect immediately (June 15, 1948), or an agreement that any wage increases agreed upon at some future date shall be retroactive to June 15, 1948.

(15) Separate contract covering foreign steamship lines or their agents.

(16) Foreign flag ships to be bonded to protect an employee's right to sue if injured while working such ships.

(17) No past arbitration awards to be made part of contract except by mutual agreement.

(18) Revise present contract provisions concerning appointment of arbitrator and arbitrator's agents.

(19) The new contract shall conform insofar as its wage provisions are concerned with the recent Supreme Court decision relative to overtime after 40 hours.

(20) The union shall be guaranteed the right to refuse to work vessels which have been loaded by strikebreakers or manned by strikebreakers when such vessels have been officially declared unfair by the World Federation of Trade Unions.

Steam schooner.—(1) Definition of a steam schooner shall be written into the contract.

(2) Steam schooner gangs shall consist of eight hold men, two deck men, and two hook-on men, plus a gang boss.

(3) Coffee time shall be granted at 10 a. m., 3 p. m., 9 p. m., and 3 a. m.

(4) Twelve months' contract.

(5) Expiration date shall be April 30.

Ship clerks.—(1) Vacations with pay for all clerks, supervisors, and supercargoes—qualifying hours for vacations to be 1,200 hours per year or 80 percent of the port hours, whichever is lower.

(2) Reestablish the 10-percent differential over longshore basic wage.

(3) Uniform wage and differentials of 10 and 20 percent over the basic wage for clerks and for all supervisors, supercargoes, and chief clerks.

(4) Inclusion in the agreement of all classifications of work enumerated in NLRB Case No. 20–R–1690.

(5) Eight-hour minimum reporting time for all members of the union when dispatched to a specific assignment.

(6) Double time for work on holidays specified in the agreement.

(7) Eight hours straight time pay for holidays not worked if clerks are required to work on both the day preceding and following the holiday.

(8) Double time for work in excess of 12 hours in any one shift (making uniform the present San Francisco provision).

(9) Uniform subsistence rate of $10 per day when clerks remain overnight in a port other than their home port in connection with a work assignment.

(10) Increase of meal money allowance presently payable to a uniform minimum of $2 per meal.

(11) Adoption of a standard formula for comuputing travel time allowance based upon current public transportation schedules and including reasonable time allowance for traveling from hiring hall or point of dispatch to public transportation terminal, and from public transportation terminal to the place of work and vice versa. Included in the above proposal is the establishment of travel time and transportation expense for San Francisco clerks dispatched to the East Bay area; Oakland clerks dispatched to the San Francisco area; and local 63 Wilmington clerks dispatched to the Long Beach area.

(12) Adoption of the principle of equitable treatment for monthly clerks with other steady employees of the employing company, i. e., including monthly clerks in retirement plans, medical plans or other benefits when such are provided for other monthly employees of the company.

(13) Equal pay for equal work for monthly clerks by provision that salaries of monthly clerks shall not be less than the total hours worked times the prevailing rates of pay.

(14) Single port supplements for monthly and daily clerks where such groups are now segregated by separate agreements (Portland area).

(15) Vacations with pay for all probationary clerks who work the necessary qualifying hours.

(16) In addition to the foregoing demands it is understood that applicable demands made for the longshore group were automatically served by the ILWU as demands for clerks as well as for longshoremen. This includes the issue of a wage increase effective June 15 (with 10 percent differential over the longshore rate); minimum guaranties of work opportunity; a health insurance plan; a pension plan; reduction of present length of work shift; a scheduled day of rest each week; and incorporation into the clerks coast agreement of the recommendations of the Pacific Coast Longshore Safety Commission.

Exhibit 2

United States of America

The National Labor Relations Board

In the matter of Waterfront Employers Association et al. and International Longshoremen's and Warehousemen's Union, CIO, et al. Case No. 20-X-1

CERTIFICATION

Following submission of the Final Report to the President of the United States by the Board of Inquiry (created pursuant to sec. 206 of the Labor-Management Relations Act of 1947, by Executive Order 9964, dated June 3, 1948).

It is hereby certified that:

1. Pursuant to section 209 (b) of the Labor-Management Relations Act of 1947, the National Labor Relations Board on August 30 and 31 conducted a "final offer" ballot among the employees members of Waterfront Employers Association et al., in each of the 12 groups set forth in the above-mentioned Final Report of the Board of Inquiry (pp. 29 to 58, inclusive). The results of said ballot are as follows:

Number of eligible employees (in all 12 groups)	26,965
Ballots marked "Yes"	0
Ballots marked "No"	0
Ballots challenged	0
Total ballots cast	0

2. Pursuant to section 209 (b) of the Labor-Management Relations Act of 1947, the National Labor Relations Board, on August 31, 1948, commenced the conduct of a "final offer" ballot among the employees of the members of Pacific American Shipowners Association et al. Said ballot is being conducted by mail and cannot be completed until October 1, 1948, because the eligible employees are on board ships which are on the high seas and touch port only infrequently.

3. Inasmuch as the National Labor Relations Board has been informed by the parties to the dispute involving the employees of the Alaska Steamship Co., Northland Transportation Co., and Alaska Transportation Co. that said disputes have been settled, no "final offer" ballot has been conducted among said employees pursuant to section 209 (b) of the Labor-Management Relations Act of 1947.

Dated at Washington, D. C., this first day of September, 1948.

By direction of the Board:

Frank M. Kleiler, *Executive Secretary.*

Exhibit 3

November 1, 1948.

What the LaFollette Committee Said About the WEA

Based on evidence obtained in hearings held in San Francisco in January 1940, and on extensive investigations conducted by its staff, Senator LaFollette's subcommittee of the Senate Committee on Education and Labor issued a report in 1943 entitled "A Study of Labor Policies of Employers' Associations in the San Francisco Bay Area, 1935-39." Quoted below are excerpts from this report.

(*a*) The following excerpts throw light on the work stoppages occasioned by the "hot cargo" issue in 1935 and 1936. Judge Sloss, acting as arbitrator under the longshore contract, decided in the Santa Cruz Packing Co. case that the union had no right to refuse to handle hot cargo. The LaFollette report comments:

"Regardless of the technical merits of this ruling of the arbitrator, it would appear that the existence of a strongly entrenched, organized 'antiunionism' which was resisting the solidification of unionism in industries related to the waterfront, was a leading factor in the series of disputes involving the 'hot cargo' issue. So long as this organized antiunionism existed and employers to a collective agreement lent their support or allegiance to it, the committee is of the opinion that employers seeking to enforce a contract against work stoppages did not come into court 'with clean hand.' "

And further:

"In any event, the collaboration of the waterfront employers in the opposition to the growth of unionism in industries allied to the waterfront, coupled with their continued participation in the Industrial Association, was sufficient to discolor their relationships with the waterfront unions and to invite a failure of the collective agreement concluded after the general strike in 1934" (pp. 1051 and p. 1052.)

"Ironically, organized antiunionism was able to place the responsibility for its own guilty acts upon the unions and upon collective bargaining as an institutional device." (Statement following a discussion of hot cargo disputes in 1935 p. 1952).

"The activities of employers organized into 'negotiatory' associations were not confined to cooperation with organized antiunionism to prevent the development of collective bargaining in allied trades and industries. They acted through their 'negotiatory' association to weaken the union organizations with which they had contracted. An outstanding example of this practice is revealed in the conduct of the employers' associations on the San Francisco waterfront" (p. 1053).

(*b*) The next excerpts show that the WEA, then as now, was trying to tell the unions who its leaders should be. On July 15, 1935, according to the minutes of the WEA—

"Mr. Plant (the president of the association) agreed that the radical leadership was the present issue * * *

"This position was confirmed at a meeting [of WEA] on July 18 when the following resolution was adopted:

" 'That this association approve in principle the cooperation of the conservative leaders and that a committee be appointed to work out a plan to be presented to the association and make the necessary contacts.' "

The "conservative" leadership referred to was Joe Ryan, whom the employers were in touch with.

And the report continues:

"This decision not to take direct action to settle the so-called 'hot-cargo' issue, but, rather to maneuver it in such a way as to eliminate a local union leadership deemed undesirable, stand out in a statement made at an early meeting advocating a different course by Roger Lapham."

His statement reads:

"Signing the May 31 agreement has brought about a situation that is intolerable for lack of united action, but we decided when the agreement was made that it was to force a crisis and we did it with full knowledge of the risks to drive a wedge between the conservatives and the radicals, as it was known that as long as Bridges was in control we could get nowhere. We finally reversed ourselves in order not to embarrass Ryan, but agreed to pursue aggressive tactics afterward" (p. 1056).

"Even representatives of the Waterfront Employers' Association, a unit with extended experience in San Francisco as a negotiatory group, did not wholly accept the proposition that it is the right of employees to select their own bargaining representatives. In his Report on Programing for Negotiations filed on May 11, 1939, with the Waterfront Employers' Associations of the Pacific Coast, John Cushing, who was in charge of that responsible function, stated:

" 'I may hold views contrary to the majority of you here but I firmly believe that there will be no relief from what we are now enduring as long as the present union leadership with its policies is in the saddle. To me that and that alone is the key to the problem.

" 'As long as that leadership continues I think any hope of restoring efficiency or doing more than resisting daily job-action, is close to impossible. I would not vote against spending money for programs of enforcement on the job but I would feel that it was money wasted. It is treating for symptoms without coming anywhere near the root of the disease.'

"In that spirit the report continued with specific recommendations for action. They are worth noting because they are reflective of psychological attitudes that breed drawn-out labor struggles in which the leadership of the employer group has for its objective the destruction of the leadership of the employee group. They read:

" 'Concretely then, I believe (1) we should consider sharpening our most effective weapon. On some real issue we should invoke coast suspension for a local dispute. Frankly I know we could not maintain it long enough to accomplish any main purpose but as a test to ourselves of our own strength and as a warning to the opposing leadership I believe it would be worth its cost. Concretely, I would like to see this meeting appoint a committee to work with our officers in exploring the feasibility of such a program' (p. 1126).

* * * * * * *

" '(6) Finally, we should prepare our own minds and the minds of those to whom we are responsible so that if a strike is forced on us we will go through with it and steadfastly refuse under any conditions whatsoever to make our peace again with the present union leadership and the philosophy it represents.

" 'That leadership today is fighting for its life. We haven't begun to fight as yet.'

"The following cryptic minutes should, in the years that are to come, give pause to any public opinion which assesses an unmixed blame on the unions for strikes or the failure to settle strikes quickly and peaceably:

" 'Upon motion of Mr. McGowen, seconded by Mr. Winkler, the following resolution was unanimously adopted:

" '*Be it resolved*, That Mr. Cushing's Report on Programing for Negotiations Ahead be adopted' " (p. 1127).

(*c*) Here is a summary statement of the employers' program:

"Three examples of 'indirect pressures' have been selected. They are—

"(*a*) An attempt to divide the organized unions which confronted the employers at the bargaining table and, thereby weaken their bargaining power or replace a leadership that was repugnant to the employers.

"(*b*) The development of a so-called suspension program, which was designed either to destroy the collective-bargaining arrangement, or provide an opportunity for isolating and circumventing a militant segment of the unions with which the employers had collective agreements.

"(*c*) Collaboration in personal attacks upon the leadership of an outstanding union, designed to intimidate the leaders or damage the prestige of the union before the public" (p. 1053).

EXHIBIT 4

ADDENDUM TO COAST LONGSHORE AGREEMENT

Hiring hall.—If registration, hiring, dispatching, or preference provisions of this agreement are suspended in any way as a result of legal action or injunction proceedings, then such provisions shall be opened for negotiations for substitute provisions complying with the law, and the substitute provision hereinafter set forth shall apply for the period of negotiations:

(*a*) Working preference to registered men.

(*b*) In making additions to the registered list preference shall be given to men with previous registration in the industry and who were not dropped from the list for cause.

(*c*) In reducing the number of men registered in keeping with the requirements of the industry men last registered shall be the first removed.

(*d*) Nonunion men being dispatched through the hiring hall shall pay to the union an equal share of the cost of maintenance of the hiring hall and the procurement, administration, and enforcement of the contract, which sum shall not exceed that being then currently paid by members of the union in the form of dues and general assessments. Such nonunion men shall be liable for said amounts only prospectively from and after the date this provision becomes effective, and only while such provision is effective.

Negotiations shall be carried on for a period of 120 days or until agreement is reached whichever is sooner. If agreement is not reached by the end of the 120-day period the above substitute provisions shall continue in effect.

In the event that any outside authority acts to nullify in whole or in part the above substitute provisions if invoked or any substitute provisions which may have been agreed to in negotiations the parties agree to resist such action. If nevertheless the provisions are nullified in whole or in part there shall be further negotiations for a period of not less than 120 days in an effort to agree upon new subsitute provisions which comply with the law. In the event no agreement is reached within the 120-day period or in the event any agreement which may be reached is nullified in whole or in part either party hereto may cancel this agreement upon 5 days' written notice.

(*c*) In the event the above substitute provisions are invoked as herein provided the first two paragraphs of subsection E of section 11 of the agreement may be renegotiated and the third paragraph thereof shall be amended by adding thereto the following:

It is also understood that either party may cite before the labor relations committee any union or nonunion longshoreman whose conduct on the job or in the hiring hall causes disruption of normal harmony in the relationship of the parties hereto and by action of the joint committee longshoremen found guilty of such conduct may be suspended or dropped from the registration list. The standards of conduct imposed hereunder shall be the same for all longshoremen.

(Initialed by parties.)

NOVEMBER 24, 1948.

STATEMENT OF ALBERT J. FITZGERALD, GENERAL PRESIDENT, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, CIO, RELATIVE TO NECESSITY FOR REPEAL OF THE TAFT-HARTLEY ACT

We appear here on behalf of the United Electrical, Radio & Machine Workers of America to speak for repeal of the Taft-Hartley Act. Although innumerable instances can be cited of injustice and hardship the specific provisions of the Taft-Hartley Act have inflicted upon working people, we do not intend to address ourselves in our necessarily brief appearance here to a catalog of complaints against the various provisions of the law.

The Taft-Hartley Act operates as a whole against our membership and against the people. It operates as an important factor in the economy of the United States. Because it operates against the interests of the people, it exerts a malignant influence upon the economy.

This judgment of the act is the one expressed by the people at the polls last November. It is certainly appropriate to remind Congress that the decision as to whether the Taft-Hartley law should or should not be repealed has already been made by the people. In doing so the people expressed their final decision as to whether or not the Taft-Hartley Act is an antilabor law.

It is obviously an antilabor law and was intended to be so. The people have voted that an antilabor law has no proper place on the statute books of the United States.

Corporation spokesmen appearing before the Labor Committees of the Eighty-first Congress have attempted to persuade Congress to ignore the people's clear mandate to repeal the Taft-Hartley Act by arguing that the Taft-Hartley Act is not an antilabor law. They have sought to bolster this specious argument by avoiding the basic issues that underlie the law as a whole and the consequences to the lives and welfare of the people that arise from its operation. Big business spokesmen seek to bury these basic issues by insisting that the law must be fought only on a piecemeal basis. They would like the debate on whether or not the Taft-Hartley Act is an antilabor law to be prolonged forever and the Taft-Hartley Act retained for the duration of the debate.

In our opinion, that question is settled.

The real Taft-Hartley issue between the corporations and the people is that the corporations enjoy an antilabor law and want to keep it and the people suffer under the Taft-Hartley Act and want to get rid of it.

The corporation spokesmen anxious to keep the Taft-Hartley Act argue that the unions of American working people have grown into monster organizations which are constantly threatening the country with national paralysis.

A moment's common-sense reflection exposes the nonsensical nature of their chief point of pressure in favor of an antilabor law.

It is an obvious fact that the whole economic life of America is dominated by the great corporations. They determine what prices the whole American people shall pay for the necessities of life; their policies determine the American cost of living and the American standard of living; their policies determine whether the American people shall be employed or shall be forced to endure mass unemployment. They have the power to profiteer, the power to deny work to the people, the power to impose mass hunger and misery upon America, and they have shown from generation to generation that they are fully aware of this power and use it ruthlessly for the accumulation of profit.

The Temporary National Economic Committee had the following to say about big-business control of the economy several years ago:

"Speaking bluntly, the Government and the public are 'over a barrel' when it comes to dealing with business in time of war *or other crisis.* [Italics ours.] Business refuses to work, except on terms which it dictates. It controls the natural resources, the liquid assets, the strategic position of the country's economic structure, and its technical equipment and knowledge of processes. The experience of the World War, now apparently being repeated, indicates that business will use this control only if it is 'paid properly.' In effect, this is blackmail, not too fully disguised." (TNEC Monograph No. 26, Economic Power and Political Pressures, pp. 172–73.)

We point this out to show the absurdity of the claim that the union organizations of American workers constitute a monopoly against which the corporations and the country need legislative protection. Taking wealth as the simplest measure of economic power, the comparative position of labor and the corporations can be indicated by a simple illustration from our own industry. One single corporation in our industry possesses at least twice as much wealth as the combined total possessions of every member of this union, which covers the employees of practically the entire electrical industry.

The big business spokesmen demanding retention of their Taft-Hartley Act are in no position to plead "national paralysis" as a reason for repressive legislation against unions. The many experiences of economic paralysis this country has suffered have none of them been due to unions, but to corporation agreed for profits regardless of consequences.

The Taft-Hartley Act was passed in a spirit of hysterical vindictiveness against labor because, for a few weeks in early 1946, American workers struck to regain a portion of the losses in their buying power that they had lost from corporation price increases. At the highest point of the 1946 strikes, 1,700,000 workers were on the picket lines and the average duration of their fight was a few weeks. Contrast this with the genuine economic paralysis caused by the corporations in the 1930's. Fifteen millions were jobless, and the period of mass unemployment lasted for almost a decade.

This very day, as demonstrated by a recent study of unemployment figures prepared by this union, almost 5,000,000 people are unemployed in the United States, while the period of their unemployment is already far beyond the period of the 1946 strikes and has no forseeable end. No figures in government or industry today are screaming "economic paralysis" at the corporations. The advocates of the Taft-Hartley law who raise this bugaboo against unions are being very quiet about the real situation and its causes.

The Wagner Act was framed in the worst period of economic paralysis ever endured by this country. Its framers were close to the big business crash of 1929 and were forced by the immensity and scope of the crisis to take an honest look at the situation when they wrote the country's basic labor law.

In the Wagner Act itself the framers of the law declared:

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, *and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry,* and by preventing the stabilization of competitive wage rates and working conditions within and between industries." [Italics ours.]

Fresh from the experience of the 1920's, when big business ran the country to suit itself and ran it into the crash of 1929, the framers of the Wagner Act perceived the obvious fact that the economic health of the country depends upon the ability of the great mass of the people to protect their earnings, their working conditions, and their living standards against the profit hunger of the corporations. As a majority of the people of the United States depend upon wages from corporations for their entire livelihood, it was equally obvious that collective bargaining through strong unions, independent of employer influence, was the method by which the people could combine for the protection of their own interests.

Therefore, as a measure for the advancement of the economic interests of the people as a whole, and as a necessary protection to the economic health of the Nation, the Wagner Act was passed to promote and protect collective bargaining.

It was a good law because it was passed to advance the interests of the majority. It was an honest law because its individual provisions were in harmony with and contributed to the advancement of its main purpose, the protection and strengthening of collective bargaining.

Someone might argue, "In this respect the Taft-Hartley Act is as good as the Wagner Act, for the very words you have quoted from the Wagner Act appear also in the Taft-Hartley Act."

No conclusion could be more false. The Taft-Hartley Act does hypocritically pretend to foster collective bargaining, but virtually every provision of the law is designed to tear down collective bargaining, to aid employers to frustrate it, and to weaken the organizations of working people formed to carry collective bargaining into effect.

This the Taft-Hartley Act does by its provisions for injunctions and law suits against unions by both employers and Government, by limitations on the right to strike, by direct strike breaking, by decertification proceedings, by splitting up bargaining units, by fostering employer interference in labor organizations under the phony disguise of "protecting free speech," by limiting the right of union members to choose their own leadership and policies under the politically discriminatory affidavit provision, and in many other ways.

In addition to the direct provisions of the Taft-Hartley Act which nullify the law's stated purpose of maintaining collective bargaining as a national labor policy, the administration of the law has brought out even more clearly its antilabor nature.

In practically every struggle of any consequence of the people to improve their wages or conditions or general welfare, the Government has been found intervening on the side of the employer to help him to defeat his employee's efforts to protect or to improve their standard of living. The Taft-Hartley law is constantly used as a direct instrument for strikebreaking, by bans on picketing, by wholesale firings of strikers, by refusal to reemploy strikers and strike leaders and by refusing to strikers the right to vote in NLRB strike-breaking elections.

The strike-breaking activities of the National Labor Relations Board and its general counsel cannot be shrugged off as bad administration of a good law. The fact is that the Taft-Hartley Act is of such a nature that it cannot be administered otherwise than as an instrument to aid employers to defeat the efforts of working people to protect and advance their standard of living. The framers of the Taft-Hartley Act took good care that that should be so when the law was written. As Senator Robert A. Taft declared shortly before the Taft-Hartley Act was adopted, the law "covers about three-quarters of the matters pressed upon us very strenuously by the corporations."

In addition to its direct economic intervention on behalf of the corporations to defeat the economic interests of the people, the Taft-Hartley Act contains a provision designed to aid employers to capture control of the unions, to turn them away from serving the interests of workers.

This is the anti-Communist affidavit provision.

It can be taken for granted that the union leadership and the union policies that best serve the interests of the membership will be least acceptable to the leaders of industry, and that the charge of communism will inevitably be raised by the corporations against those unions, leaders, and policies which they seek to capture or destroy.

Powerful industrialists sponsored the affidavit provision in the Taft-Hartley Act and are strenuously urging upon Congress that it be retained and extended. They have told Congress along what political lines union membership must be split and where and how to impose a veto over the right of American men and women to choose their own leadership. They regard this, and correctly so, as the first and most important step toward regaining corporation control over the organizations of their workers, the return to company unionism and the destruction of the independent labor movement in the United States.

The unqualified right of working people to organize and operate their unions without interference is an absolute essential if collective bargaining is to serve the interests of the people.

This very point was deemed so fundamental that it was expressly stated in the Supreme Court decision which upheld the constitutionality of the Wagner Act.

In his majority decision the then Chief Justice of the United States, Charles Evans Hughes, wrote:

"We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice."

In testimony before the Labor Committee of the Eightieth Congress, given on this question before the Taft-Hartley Act was adopted, the officers of the UE pointed out:

"The maintenance by our membership of the equal rights of every member, 'regardless of craft, age, sex, nationality, race, creed, or political beliefs' does not constitute adherence by the organization or of any individual member to any particular political philosophy, any more than it implies adherence to any particular creed, or membership in any race or sex.

"But it does most strongly affirm the right, not only of the individual member to hold any office or position in the union for which he may be chosen by his fellow members, but also the right of all members, collectively, to elect any member they may choose to any office or post in the UE.

"This is the strongest possible insurance that the membership will continue to control this union, and that no group—political, religious, fraternal, national, or any other—will ever be able to dominate the union."

It is this principle that the employers wish Congress to destroy, to take control of the unions away from the membership and destroy their power to protect and advance their interests.

Against the titanic economic power of the corporations, the working people of the United States have no other instrumentality than their unions to protect and advance their standard of living.

It should be obvious that the economic well-being of the country depends upon the economic well-being of the majority of its people. The economic health of the country requires an increasing standard of living for the people of the country—it cannot be maintained at present inadequate levels.

What are the consequences to the Nation of a fundamental national labor policy which places the power and influence of the Government squarely against the efforts of the people to improve their standard of living and which weakens and breaks down the unions, the only instrumentality through which the people can effectively protect and advance their economic interests?

The endlessly recurring series of depressions in past American history proves that the economic well-being of the country cannot safely be left in the hands of the corporations.

A recent example from the electrical industry will illustrate.

The 1920's were a golden period for our industry's corporations. General Electric Co. net profits increased from $26,000,000 in 1920 to $70,000,000 in 1929. Other companies increased their profits in like measure. But while industry was doubling and trebling its profits through merciless speed-up and exploitation of its employees, a National Industrial Conference Board survey reveals that the average wage in the industry rose 43 cents a week, and for a slightly longer workweek. In that golden decade, industry ran industrial relations as it chose, treated its employees as it chose and was blessed with an administration and Congress of which it wholeheartedly approved. Just as industry is doing today, the corporations piled up record-breaking profits.

Then industry, having everything its own way, ran the country into the greatest crash in its history. That was real economic paralysis, and it is from precisely the same source that real economic paralysis always threatens.

It was as a measure of counteraction against that threat that the Wagner Act was adopted, to place in the people's hand a measure of power to protect their own economic interests, and in doing so, to protect the economic interests of the country.

In the sharp business recession of 1938 the working people of the United States, through their unions, were able to prevent industry from driving through wage cuts and speed-up in the crisis. For the first time in the history of this country, the workers were able to moderate the effects of a sudden crisis and prevent their employers from deepening the crisis by wage cuts and speed-up and the exploitation of human misery.

Under the Taft-Hartley Act what economic situation faces our country?

Corporation profits are at the highest point in history, completely overshadowing the profit records before the crash of 1929. The profits after taxes of the two largest electrical corporations total more than $200,000,000 for 1948.

The workingman's share of the national income is falling.

Leon J. Keyserling, vice Chairman of the President's Council of Economic Advisers, last month told the Joint Committee on the Economic Report:

"Compensation of employees, which was 58.1 percent (of the national income) in 1929 and rose to 65.9 percent in 1939 declined * * * to 61.5 percent in 1948. It is thus approaching the 58.1-percent level of 1929 which most students of our economy now regard as too low and contributory to the depression which followed."

The employers are extracting tremendously increased production and profits per man-hour from their employees.

National Electrical Manufacturers Association figures, published January 29, 1949, in the Electrical World reveal that worker productivity for the electrical industry has increased 11 percent between 1947 and 1949.

In the same period productivity in the largest electrical manufacturing concern in the world, the General Electric Co. has increased 14 percent.

Annual profits per worker have increased enormously throughout industry, the rate of profit per worker now running from $1,000 to $2,000 a year. In the General Electric Co. profits per worker, figured on an annual basis, have increased 167 percent from the beginning of 1947 to the end of 1948. Westinghouse profits per worker, figured over the same period on the same basis, have increased 203 percent.

Already more than 80,000 members of our union have been laid off.

There are 5,000,000 unemployed today in the United States.

It is obvious that the most serious cracks have developed in the national economy, directly due to corporation profiteering, to inadequate purchasing power, and to corporation extraction of more production and profit per worker.

In this situation, to continue a law which hampers and thwarts the efforts of working people to protect their economic interests would be the most irresponsible folly.

This situation poses clearly the real issue between the advocates of the Taft-Hartley Act and the great majority of the American people who demand its repeal.

Those who support the law are taking the position, without admitting it, that the economic welfare of the United States and its people must be left completely at the mercy of the corporations.

The advocates of repeal believe that the economic well-being of the country depends upon the successful efforts of the people to protect and advance their standard of living.

In addition to the fundamental economic issue that divides the corporation spokesmen for Taft-Hartley and the people is a fundamental political issue involving the basic rights and liberties of Americans

We have already pointed out that the basic economic purpose of the Taft-Hartley affidavits is to take control of the unions away from their members. The political issue involved is equally grave and deep.

During the recent hearings on the repeal of the Taft-Hartley Act conducted by the Senate Committee on Education and Public Welfare, the heads of the two largest corporations in the electrical industry, Mr. Charles E. Wilson of General Electric Co. and Mr. Gyilym Price of the Westinghouse Electric Corp., appeared to urge that the Taft-Hartley Act be retained. Both laid the heaviest emphasis upon retaining the Taft-Hartley affidavits.

In a statement submitted to the Senate committee on this point, this union declared

"Most unfortunately for Americans, powerful forces in our country today have coerced and frightened so many of our countrymen into fearing that a war against the Soviet Union is necessary and inevitable, that almost any outrage against the rights and liberties of the people passes virtually without challenge if presented under a cloak of anticommunism.

"Many who in their hearts bitterly oppose and resent the whittling away of the traditional rights of American citizens to think, and speak, and vote as they please, to choose their own associates and to be judged on the basis of their acts and their acts alone, today fear to speak out in defense of those rights. They fear vituperation, slander, persecution, public and private, loss of reputation, and loss of livelihood.

"We consider it our duty to place ourselves among those who speak for liberty in America.

"We believe that the Congress of the United States is a forum where the rights of the American people should be defended zealously and fearlessly. It should be a tribunal to protect the people's liberties.

"It was not such under the Eightieth Congress.

"Then the Senate and the House of Representatives joined in telling the working people of America, 'You must divide your members according to their politics. There are men and women among you whom you must not choose as leaders, no matter what your judgment of their lives, their deeds or the program they offer for your approval. You must make them second-class members of your union, because, in our view and in the view of your employers, these members think forbidden thoughts, read forbidden books, speak forbidden words, advocate forbidden policies, choose forbidden associates, vote as it is forbidden to vote. If you refuse to degrade these members of your union, if you insist upon maintaining equal rights and privileges for all, we will do all we can to aid your enemies against you.'

"That is the essence of the Taft-Hartley affidavits. It is wrong, dead wrong, and no amount of argument will ever make it right.

"The bold assertion, 'It's a free country, isn't it?' is rooted deep in the American's pride in his democratic rights. What answer can an American working man give to that question when political discrimination, political prohibitions and penalties are written into the basic labor law of our country?

"Mr. Wilson of General Electric and Mr. Price of Westinghouse demand that the Eighty-first Congress perpetuate and aggravate that crime against the people's rights.

"What paltry benefits they offer in exchange!

"When asked what good the affidavits had done thus far, Mr. Wilson was able to cite only the fact that they had helped him to break a union contract with Government protection, and to gloat over a few instances of politically motivated disruption in the union. Mr. Price of Westinghouse cited no benefit at all.

"Yet the heads of the two most powerful electrical trusts in the world urgently demanded that the political discrimination embodied in the Taft-Hartley Act be continued and extended.

"Mr. Wilson of General Electric demands that all union leaders, from top national officers down to and including shop stewards plus all union employees be compelled to swear away the American right to choose their own brand of political thinking. Employers, he declares, should be expressly excused from dealing with representatives of unions that do not meet such requirements.

"Mr. Price of Westinghouse goes even further. He demands that the affidavits be kept. Further, he demands that the Government should prosecute union leaders with a view to their removal from office.

"Mr. Price says: 'If the Government has evidence to support charges that the leaders of any union are guilty of violating any existing laws and are unfit to continue in their positions of responsibility, this evidence should be produced and used by the Government to prosecute such leaders.'

"Mr. Price knows, of course, that union leaders are not exempt from prosecution and punishment for criminal acts * * * far less so, in fact, than the heads of great corporations. What he demands here is that a new and unconstitutional punishment be established for representatives of working people, the punishment of removal from union office.

"Continuing, Mr. Price demands, 'If present laws are inadequate, new legislation should be enacted. * * *'

"That is to say, in plain English, a new crime must be legislated into existence in America, the crime of 'unfitness,' political unfitness.

"That proposal come straight out of the labor laws of Nazi Germany under Hitler. Such a proposition cannot possibly be justified otherwise than by recourse to the basic political dogmas of fascism.

"In return for this subversion of American democracy, Mr. Wilson and Mr. Price offer to sign affidavits themselves.

"What an empty fraud. Mr. Wilson of General Electric and Mr. Price of Westinghouse, the one the head of the biggest electrical trust in the world, the other a Mellon banker, are willing to swear that they are not Communist! All they ask in return is that ideas be made a crime in America, and that they be allowed to choose which ideas shall be forbidden by law to American workers.

"Their offer to match oath for oath (although they place strings even on that) is not designed to improve the Taft-Hartley Act, or to make clear the issue here involved; it is to cover up the issue. The issue of the affidavits is not to determine which side can outswear the other; it is what kind of a country our America is going to be, a land where men are free to think as they please and can be punished only for proven acts against the law, or a country where ideas and words are crimes and to be accused is to be adjudged guilty.

"Upon this point Senator Wayne R. Morse, of Oregon, declared in a speech at the last CIO convention: 'The loyalty affidavits, which must be filed before the procedures of the Board can be used, are an insult to patriotic labor leaders and to the members they represent. It is no answer, in my opinion, to "equalize" the provision by making it applicable to employers as well. And it is no answer to say you ought to have required an affidavit to be signed by the employers that they are anti-Fascist. The point is not a point of equalization. The problem is to eliminate the section from the law because in my judgment you cannot square that section with sound American principles of civil rights in this country.' "

It is most significant that in the law by which the corporations seek to deprive the working people of the United States of effective power to resist corporate exploitation and to improve their economic welfare, it was found appropriate to include a provision striking at the fundamental liberties of the people.

It is not too much to say that the affidavit provision of the law is the most evil and vicious of all its provisions, for it is only by striking down the democratic rights of the people that the corporations can hope to maintain and perpetuate their power to impose unemployment, hunger, and misery upon the people by profiteering and speed-up.

We urge the Eighty-first Congress to repeal the Taft-Hartley Act.

It injures the people. It hampers their efforts to improve their standard of living.

It is a deadly danger to the national economy.

It is subversive of American democratic rights.

It has been judged and condemned by the people at the ballot box.

For the good of the country, the Taft-Hartley Act must be wiped out, and the Wagner Act restored in its place.

STATEMENT SUBMITTED BY HAROLD CAMMER, ATTORNEY, REPRESENTING INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, CIO

The International Union of Mine, Mill, and Smelter Workers, CIO, is taking the opportunity of submitting this statement principally to place before this committee a case history which demonstrates conclusively that, despite all the distortions and hypocrisies of the supporters of the Taft-Hartley Act, the act has generated industrial strife and is being utilized by antilabor employers to destroy labor organizations.

Before presenting this case history, however, this international union desires to reiterate its deep and determined opposition to the Taft-Hartley Act. Since the CIO and its representatives are presenting detailed analyses of the provisions of the act and how they have worked in practice, we have no desire to burden the record of this committee further on the general issue of Taft-Hartley except to point out that the opposition we expressed to the Taft-Hartley bill when it was before Congress has proved itself fully justified. Instead of a National Labor Relations Board protecting labor's right to organize, we now have a Labor Board dominated by an employer-minded majority and a viciously antilabor general counsel making full use of the opportunities afforded by Taft-Hartley to undermine the hard-won rights of labor. We have witnessed the full-scale return of the hated injunction which labor, after 50 years of agitation, believed had been forever eliminated. We have seen the steady deterioration of labor's most basic rights—the right to strike, the right to picket, the right to employ the peaceful weapon of the secondary boycott against its enemies, the right to bargain for union-security clauses and for welfare funds. We have seen the destruction of the most elementary political rights, the right of unions to participate freely in national elections and the right of the membership to choose their own officers free of dictation from Government and from employers. We have seen many more serious steps taken in the same direction of carrying out the basic purpose of the Taft-Hartley Act to weaken organized labor in America to the point where company unionism or worse will express the national labor policy.

These are some of the reasons why we believe that the Taft-Hartley Act should be repealed and the Wagner Act reenacted.

The case history in Taft-Hartley which we wish to present to the committee involves the American Zinc, Lead & Smelting Co. We select this history (although there are others) because it involves a current lengthy strike of our membership and because Howard I. Young, president of the company (and also president of the American Mining Congress, the national organization of the mining industry) testified at some length before the Senate committee on February 19 on this same legislation. We want to tell you something about this strike and about Mr. Young's testimony.

Although Mr. Young touched on other issues, his testimony dealt principally with section 9 (h) of Taft-Hartley, the non-Communist affidavit provision. Mr. Young would have you believe that he comes forward only as a patriotic, self-sacrificing American doing battle against the enemies of his country. "This strike was called by a Communist-dominated union," says Mr. Young, "after we had refused to recognize or deal with it until its officers would sign the non-Communist affidavits specified by the present labor law." We felt that soon or later we were going to have to face the issue of communism; and in view of the critical international situation in the spring of 1948, we became convinced that it was in the national interest for us to face the situation immediately. For this reason, in May 1948, we announced to the International Union of Mine, Mill, and Smelter Workers and to the local unions at our Fairmont City, Ill.; Hillsboro, Ill.; Columbus, Ohio; and Metaline Falls, Wash., plants, that we would not recognize this union nor negotiate with it, until its officers and the officers of the locals filed the non-Communist affidavits as specified by the law. Our contracts with all of these locals expired on June 30, 1948."

These statements do not correspond with the facts. What are the facts?

Mr. Young's company operates seven plants, and this international union has represented the employees at four of them for some years. These four plants are a mine at Metaline Falls, Wash.; a zinc smelted at Fairmont City, Ill.; and zinc oxide plants at Hillsboro, Ill., and Columbus, Ohio. Our last contracts covering these plants were due to expire on June 30, 1948, and since they contained the usual 60-day notice provision, we served notice of our demands before May 1.

It is obvious from these few facts that Mr. Young must have left something out when he testified that he announced in May that he would not negotiate unless the affidavits were filed. It would have been too late for Mr. Young to take this position after May 1 because if the union had also not given notice before May 1, the contracts would have renewed themselves.

What did Mr. Young omit? He omitted the fact that there were negotiations between the union and the company before the company announced its refusal to deal further and that therefore Mr. Young began to wave the flag so furiously only because he was determined to resist the union's economic demands.

The facts are that after the union gave its notice, the parties had their first negotiating session on May 5, at which time the union presented its demands for a wage increase, a health and welfare program, a pension plan, severance pay, sick leave, and holidays with pay. These demands were discussed and the company took them under advisement. On May 7, 2 days later, the company's personnel manager telephoned the executive board member of the international union who was participating in the negotiations and offered to renew the agreement without change if the union would drop its demands. Since the union refused this proposition, the parties met again on May 11, at which time details concerning the pension plan were furnished to the company pursuant to its previous telephonic request made to the executive board member by its personnel manager. The non-Communist affidavits were mentioned by the company for the first time at this meeting, but the company refused to say whether they intended to make this an issue. It was not until May 13 that the company announced that it would refuse to negotiate with the union unless the affidavits were filed.

These undeniable facts demonstrate that Mr. Young has taken to waving the flag—the last refuge of scoundrels—only because the affidavit issue gives him a convenient excuse for refusing to bargain in good faith. If this union was a "good" union, or to use Mr. Young's word, not a "militant" union, Mr. Young would not have the slightest interest in the affidavits. This is shown by his willingness in May to renew the agreement with this union if it dropped its economic demands and the fact that he raised the affidavit issue only when the union insisted that he negotiate in good faith on the demands of the membership.

We challenge Mr. Young to contradict these facts and particularly we challenge him to prove the following statement which he made in answer to a question by Senator Pepper:

"We had a provision in our contracts which we have had for years, that we must meet with them 60 days prior to the date of expiration of the contract, and open negotiations for a contract.

"We served notice on them prior to that date that we would not negotiate with them unless they signed these anticommunistic affidavits." (Hearings before Senate Committee on Labor and Public Welfare, typewritten transcript, Feb. 19, 1949, p. 4263.)

Since the 60-day notice had to be given in writing, of course, Mr. Young should have available a copy of the notice which he swore he sent to the union at least 60 days before the expiration of the agreement on June 30, 1948. We challenge him to produce a copy of any such notice.

Mr. Young's testimony also flatly contradicts the record insofar as his relationship to this union before the 1948 negotiations is concerned. Mr. Young, while attacking the leadership of the international union, was at pains to say that he believes that his employees are "good loyal Americans" but that they have been misled by the officers of the international union. Yet strangely enough, Mr. Young has had occasion in the past to call upon the international union to help him in his relations with our local unions. It is unfair and hypocritical for Mr. Young to turn the facts upside down, so to speak, when he has always found this international union prepared to cooperate in developing sound and stable labor relations at his plants. In view of his great show of patriotism, Mr. Young may recall the part the international union played during the war in seeing to it that its no-strike policy was obeyed by the local unions.

A further irony and inconsistency of Mr. Young's position is that in reviewing our past relationship at a recent mediation session before the Federal Conciliation Service, Mr. Young was particularly bitter about a person who was formerly our executive board member for the district which includes local 82 at Fairmont. Mr. Young reminded us then that he had complained to the international union on a number of occasions about this person's irresponsibility and lack of equipment for his task. Mr. Young did not tell this to the Senate committee nor did he tell the committee that this particular individual also cloaked his activities under the banner of anticommunism, and that in fact this individual was finally thrown out of the ranks of both the international and local union for his disruptive activities.

In view of this history, what can be said of Mr. Young's attack on this international union except that he seeks to exploit the prevailing anti-Communist hysteria and the non-Communist affidavit issue not for the good of the country or for the sake of the "good loyal Americans" who are presently engaged in a strike against him, but in order to smash the union which is leading the strike.

That this is so is also demonstrated by Mr. Young's position at the recent mediation session. At Columbus, Ohio, one of the four plants now engaged in the strike against Mr. Young's company, Mr. Young entered into an agreement with a rival union during the course of the strike despite the fact that by a vote of 3½ to 1 the employees had rejected that union in an NLRB election only a couple of weeks before the agreement was made. Mr. Young now takes the position that this agreement he has made with a union which does not represent his employees makes it impossible for him to deal with us in an effort to settle the strike at that plant. However, said Mr. Young at the mediation conference, he would be glad to deal with us for the other three plants if we would only forget about the Columbus plant.

Does Mr. Young really care then whether we file the affidavits—or is his real interest in splitting the ranks of our union and of his striking employees? The latter have already given Mr. Young his answer. Despite the severe hardships imposed on them as a result of this protracted strike, all four local unions have reiterated their determination to stick together and not permit Mr. Young's illegal activities and hypocritical propaganda to divide or confuse them.

In addition to the use of the affidavit smoke screen and his plain violation of the law in dealing at Columbus with a union which does not represent his employees, Mr. Young has resorted to the other methods used by employers who seek to break strikes. He has imported strikebreakers; he has made use of local law-enforcing machinery to have his employees charged with everything from disorderly conduct to kidnaping; he has secured sweeping injunctions which have interfered with peaceful picketing and under which he has sought to have strikers punished for contempt.

No, gentlemen, although Mr. Young seeks to pose as one whose only interest in the non-Communist affidavit is that of a patriotic American concerned with the welfare of his country, the record proves that Mr. Young is merely using the flag in a despicable effort to conceal his greed for profits and his determination to smash any union which impedes the full gratification of that greed.

The record of our relations with Mr. Young, particularly in connection with the strike and events leading up to it, is a record which demonstrates that the non-Communist affidavit provision of the Taft-Hartley Act is a provision which must be repealed. Its principal use thus far has been to furnish antiunion employers like Mr. Young with what they regard as a useful weapon against unions and against strikes. These gentlemen are not really concerned with the affidavits What they are concerned with is economics; they will deal with unions which act like company unions, even if they do not file the affidavits, and they will fight unions which truly represent their members, even if they do file the affidavits.

Another effect of the non-Communits affidavit provision is illustrated by our experience at Mr. Young's Columbus plant. The provision has stimulated the unprincipled and disastrous practice of "raiding," whereby a union which has purified itself by filing the affidavits interferes with the bargaining relationships of unions which have not done so. Our experience at Columbus shows how unscrupulous employers use certain unions as convenient strikebreaking agencies.

Our members resent being told by Mr. Young or any other employer who their leaders should be. Our membership also resents any such interference with their democratic rights by Congress and believes that the non-Communist affidavit provision is productive of nothing but harm. Our experience with Mr. Young's company shows that the provision generates industrial conflict instead of mitigating it. The provision should be repealed.

Aside from the affidavit issue, Mr. Young's statement and testimony before the Senate committee are completely self-revealing in exposing the kind of employer who appreciates Taft-Hartleyism. Thus, Mr. Young pines for the conditions which obtained after World War I when, according to him, we had "industrial democracy." The National Industrial Recovery Act and the Wagner Act guaranteeing labor's right to organize changed all that, but Taft-Hartley has now corrected the situation and that is why, according to Mr. Young, it should be retained. In plain language, what Mr. Young wants is a return to the days when his employees were unorganized, when he had "one happy family," and when, as the records of the La Follette Civil Liberties Committee reveal, his company was free to hire notorious thugs and strikebreakers like Pearl Bergoff, king of the strikebreakers, to smash any attempt by its employees to better their conditions by joining unions.

Mr. Young and other like-minded employers in the American Mining Congress who believe that this international union can be destroyed had better rely on some history rather than repressive legislation like the Taft-Hartley Act. The membership of this union has always demonstrated its courage and its understanding of the issues. Faced with some of the most vicious and Fascist-minded employers in America (Mr. Young admitted in his testimony before the Senate committee that some employers are fascist-minded), our membership has always demonstrated its ability and its willingness to fight for their basic rights. For decades, this union, in its efforts to do no more than establish the right to organize and bargain collectively, was faced with all the weapons which have been available to the Howard Youngs: the use of injunctions, of thugs, strikebreakers, and spies, even the use of martial law to drive hungry workers back to the job.

We believe that Howard Young and his colleagues should be reminded that this international union was formed and continued its existence over a period of several decades when it was next to impossible to maintain a union in America's basic industries. This was one of the few unions which was able to do so. And it did so in the face of the most determined and violent employer opposition.

The fact is—and it is a fact of which we are proud—that this union was first organized in a jail cell in Idaho in 1893 by a few men who had been imprisoned by local authorities working with the corporations because they had dared protest against intolerable conditions. In the half century since that time this union has engaged in some of the most bitter struggles in American labor history. Also in Idaho in the Coeur d 'Alene district in 1898, the same forces antedated Hitler by setting up concentration camps for the imprisonment of striking miners. In Colorado for many years our membership was compelled to engage in one pitched battle after another against company thugs, gangsters, and State police paid by the corporations. On another occasion, the leaders of the international union were kidnaped in Colorado and taken to Idaho to stand trial in one of the most notorious frame-ups in our history. In 1914 Pinkerton agents employed by the Anaconda Copper Mining Co. destroyed our union hall by bombing. Much of the hatred felt by organized labor in this country against the use of State militia stems from the use of such mercenaries on a large scale throughout the western mining camps for the purpose of attempting to destroy this union. The leaders of this union, like Frank Little, have been executed on false charges growing out of their activities on behalf of the membership. One of the most disgraceful episodes in our history took place in 1917 when the Phelps-Dodge Co. engineered the famous Bisbee deportations, in the course of which 1,500 miners and their families were herded into cattle cars without water and dumped in the middle of the New Mexico desert.

Despite these and many other similar episodes, this international has continued to survive and to fight for the interests of its members. We ask only that the Congress of the United States not throw its weight in support of the Howard Youngs. Congress did so with the Taft-Hartley Act. We have no doubt that the current strike against Mr. Young's company, now more than 8 months old at one of the plants and more than 7 months old at the other three, will be settled in a matter of hours as soon as Mr. Young realizes that he can no longer depend upon Taft-Hartley to do his dirty work for him.

STATEMENT BY BERNARD MOONEY, SECRETARY-TREASURER, UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, CIO, ON REPEAL OF THE TAFT-HARTLEY ACT

We speak as representatives of more than 50,000 organized office and professional workers in all major cities of the United States, employed in insurance, financial, commercial, publishing, motion-picture, radio, direct mail advertising, technical and industrial, social-service, and other allied white-collar fields.

Four months after the November elections we still face the problem of negotiating major contracts with the Taft-Hartley law hanging over our heads.

We are alarmed at the reports appearing almost daily in the press that the Eighty-first Congress is prepared to abandon its campaign commitment for outright repeal of the Taft-Hartley Act and to substitute in its stead a new labor-relations act which is nothing more than Taft-Hartley with its face lifted. We are alarmed at the delay in action on Taft-Hartley repeal.

Like millions of other Americans, we voted at the polls in November for outright repeal of this law, which has already repeatedly shown itself a union-busting instrument of employers and which is aimed at repression of the liberties of American working people.

In these days of rising unemployment and top-heavy profits, the continued existence of the Taft-Hartley law is clearly intended to paralyze the resistance of union members to speed-up and wage cuts, thus accelerating a depression of tremendous proportions, creating even greater misery and destitution than the last.

We, as white-collar workers, one of the lowest-paid groups of Americans, charge in particular that:

(1) The Taft-Hartley Act has held down white-collar living standards.

The facts show that white-collar workers have been one of the groups hardest hit by inflation. Since 1946 white-collar salaries have fallen another 13 percent behind the cost of living. The number of sales and clerical workers' families without liquid assets increased from 12 to 17 percent between early 1947 and 1948.

The average weekly earning of a bank worker in 1947 (and this average includes the pay of executives and supervisors) was $54.98. In that year the Heller committee of the University of California estimated that the least on which a white-collar family of four could live decently was $97 a week.

White-collar salaries have been low historically because white-collar workers were late in organizing. The establishment of our union, the UOPWA, in 1937, represents the first major effort in this country to bring collective bargaining to the white-collar fields. These historical inequities have grown relatively greater in the last few years. Taking 1939 as a base year, the Federal Reserve Bank of New York shows that by September 1948 the index of average weekly earnings of clerical and professional workers had reached 170, while those of workers in manufacturing had reached 228, those in public utilities 186, and those in trade and service 194. Consequently it can be seen that the economic status of white-collar workers is relatively even worse than those of other workers.

The Taft-Hartley Act, by hampering organization and encouraging employer resistance to bargaining, has left literally thousands of white-collar workers at the mercy of inflationary price rises, caught between low salaries and high-living costs, forced to use up their small savings accounts to meet current bills.

The National Industrial Conference Board gives the following figures on white-collar salaries:

Clerical average weekly salaries, October 1948

Boston	$36.50	Newark	$38.23
Chicago	41.61	New York	40.84
Pittsburgh	39.92	Philadelphia	36.38

Major cities, United States (13 office jobs combined), $40.21 average weekly.

The above statistics compared with minimum budget studies indicate that white-collar workers' salaries are below or barely meet subsistence levels.

Minimum budgets, 1948:

(*a*) Single workingwomen, living with family, New York City, $40.56 (New York State Department of Labor).

(*b*) Single workingwoman, living alone, San Francisco, $42.65 (Heller budget).

(*c*) White-collar family of four, $100.18 (Heller budget).

(2) The Taft-Hartley Act has increased employer resistance to the organization of white-collar workers.

Employers have always tried to deny white-collar workers the right to organize. White-collar workers need unions fully as much as industrial workers. They share neither the fruits nor functions of management. Offices are becoming increasingly mechanized and conditions more and more closely approximate those of factory workers.

Employers, however, are anxious to have a free hand to cut overhead when profits decline and to solve some of their problems at the expense of their white-collar workers. White-collar workers seeking to organize have always been faced with fierce opposition.

Under the old Wagner Act the organizing group had at least some measure of equality in meeting the situation, some recourse to an impartial agency. Today the old "cease and desist" order (under which the employer is ordered to stop interference with organization) is a hollow mockery. Today through the Taft-Hartley Act the employer is given so many powers of "free speech"—i. e., freedom to coerce, browbeat, and threaten workers with loss of their jobs if they join a union—so many ways to "prove" that a worker was not fired for union activity that the employees are left virtually defenseless and with no recourse except direct economic action to enforce their collective-bargaining rights.

Under the Taft-Hartley Act, as happened in the Brooklyn Trust Co. in New York, the employer can begin to act against the employees while they are in the process of organization—firing, demoting, and intimidating workers. As a result they are faced with the almost impossible dilemma of giving up the union and putting up with inadequate salaries and poor conditions or of taking action before they are solidly organized and in a position to command majority support.

Even where workers are ready to act unitedly to enforce their right to organize and bargain, as recently happened in an engineering design office in Newark, N. J., the Taft-Hartley law permits the employer without penalty simply to remove his business elsewhere and leave the workers not only without organization but without jobs.

(3) The Taft-Hartley Act gave the employers a go-ahead signal to attempt to destroy existing white-collar organization.

The main obstacle to the unlimited ability of employers to underpay and overwork white-collar workers has been the existence of organization in the white-collar fields.

The UOPWA, in the 12 years of its existence, had doubled salaries for its members in such large offices as Title Guarantee & Trust Co., International Harvester, Fort Wayne, Ind., the home offices of the New York motion-picture companies, the New York direct-mail houses, and many others. It has brought new security and many gains to over 30,000 industrial insurance agents employed by Metropolitan, Prudential, and John Hancock, to employees at Columbia Broadcasting System, Federal Telecommunications Laboratories, and Federal Radio & Telephone Corp. In 1 month—December 1948—it negotiated over a million dollars in new increases.

The high standards set by the union, often averaging $8 to $15 a week more than those in unorganized offices, have had an incalculable effect in raising standards for all white-collar workers. Salary gains and classifications made by the UOPWA often set the pattern for thousands of employees who had perhaps never heard of the union. The very existence of the UOPWA stands as a threat to employers who want a free hand to cut salaries and throw employees out of jobs in an arbitrary and ruthless fashion.

The employers now saw in the Taft-Hartley Act their opportunity. It gave them many weapons with which to help them try to destroy peaceful collective bargaining relationships of long standing.

Best of all, they could with impunity simply refuse to bargain with the union which represented their employees, forcing the workers to go through months of struggle to re-prove its right to represent the workers.

This became the established pattern in the white-collar fields. Employers who had been dealing for years with the UOPWA not only refused to bargain but took it upon themselves to try to get the workers out of the union by promoting raids, slandering its leaders, stirring up factional troubles, and internal disruption. The pattern varied but only in detail.

In the recent *Prudential case*, 2–RM–70 et al., both the AFL and an independent union filed petitions for certification alleging units inappropriate for bargaining. These petitions sought to displace the UOPWA as the collective-bargaining agent of some 14,000 insurance agents. The employer also filed a petition seeking in the alternative a State-wide unit and a system-wide unit—the latter being the UOPWA contract unit. In the absence of the employer's petition, the Board would have dismissed the various union petitions for the reasons indicated. Instead, relying upon the employer's petition, they directed an election in a collective-bargaining unit with respect to which no claim of representation had been made. The employer had, of course, used the filing of its own petition as well as the others as an excuse to stop collective bargaining.

In the Prudential case, the employer has issued literature attacking the leaders of the UOPWA in the most extreme and intemperate language. Charges have not been filed against the company for these publications in view of the present attitude of the Board in its interpretation of 8 (C) as it relates to employers.

Likewise, various motion-picture companies in the fall of 1948 issued leaflets attacking the UOPWA as an excuse for their failure to renegotiate collective agreements with the union. The union did not file unfair-labor-practice charges for the reasons already referred to.

The most serious offender is Metropolitan, which has a long record of unfair labor practices, which were the subject of many months of hearings before the State labor-relations board some years ago. This company has clearly written and distributed literature the unmistakable intent of which is to warn employees against union activities. Here again no charges have been filed, on the theory that it would be a waste of time in view of the Board decisions.

The length of time between filing petitions and Board orders has been much greater than under the Wagner Act.

In the insurance industry petitions were filed by the UOPWA with respect to agents in the following areas on the dates indicated: New Jersey, November 16, 1948; Massachusetts and Greater New York, November 30, 1948; Illinois, December 3, 1948; Michigan, December 17, 1948.

None of these cases have gone to hearing despite our repeated requests, the absence of any legal issues, and the fact that the UOPWA has for many years been the collective-bargaining agent of these employees. In the Prudential situation UOPWA's petition for a Nation-wide election filed on November 11, 1948, was withdrawn as herein indicated by reason of the Board's failure to process the petition and its disregard of it by its decision of December 30, 1948, in which it acted upon petitions filed by the company and two rival unions.

In the insurance and motion-picture fields the major employers have used the fact of nonfiling for the purpose of union busting. In none of these cases was there any question as to the continuance of the UOPWA as the collective-bargaining agent. The union in each of the cases has prior collective-bargaining agreements. Yet, the Prudential, Metropolitan, and the major motion-picture companies refused to deal with the union and issued literature attacking it. When these steps compelled the filing of materials referred to in section 9 of the act, both Prudential and Metropolitan continued to refuse to deal with the UOPWA.

The Board itself has, of course, taken an extreme position with respect to section 9 (h). On December 30, 1948, in the Prudential case, it issued a decision holding that the national union (UOPWA) could be on the ballot provided that any locals which engaged in collective bargaining with respect to the unit involved in the case also complied. UOPWA is the only international union of the three involved that engages in collective bargaining to the exclusion of local union bargaining. When it showed this to the Board's agents on January 17 and the morning of January 19, the Board on January 19 amended its decision to provide that locals must comply merely because of their existence.

The Conciliation Service has been ineffective as a means for settling labor disputes. It did have some value prior to the amendments to the act. However, at the present time all that an employer has to do is assert the existence of a representation dispute and a refusal to meet with the union. This was done by Metropolitan recently, and as a result the Conciliation Service failed to call any meeting although requested to do so by the union.

Prior to the amendment of the statute, the New York State Labor Relations Board handled various banking and title insurance cases. Since the amendment, the Board has been prevented by the general counsel of the National Board from doing so.

The handling of UOPWA work by the general counsel of the Board has been extremely unsatisfactory. We are satisfied that the union has not been treated fairly by the general counsel. The Metropolitan petitions have now been pending several months without any action taken by the general counsel's office. The Prudential petition filed by UOPWA was not acted upon during the 7 weeks it was pending. The Prudential case involving the very serious questions of unit was handled perfunctorily by the Board's agents and an election in inappropriate units was stopped only upon the protests of the UOPWA and CIO. The unfairness of the postdecision developments is already indicated. Board personnel generally, including the regional directors, have been far less cooperative with UOPWA than under the Wagner Act. Efforts to secure conferences with members of the Board, to take only one example, have proved unavailing, although it was admitted that AFL attorneys were able to secure this type of access.

Associated Tobacco Manufacturers,
Washington, D. C, March 21, 1949.

Hon. Augustine B. Kelley,
The House of Representatives, Washington 25, D. C.

Dear Mr. Kelley: The attached letter is respectfully forwarded to you at the request of Mr. S. R. Morrow, vice president, the Bloch Bros. Tobacco Co., Wheeling, W. Va., in order that you may learn at first hand what has been his company's experience under the Taft-Hartley law.

Your earnest consideration of Mr. Morrow's statements is requested.

Sincerely,

Edward F. Ragland, *Executive Secretary.*

The Bloch Bros. Tobacco Co.,
Wheeling, W. Va., March 18, 1949.

Mr. Edward F. Ragland,
Executive Secretary, Associated Tobacco Manufacturers,
Washington, D. C.

Dear Ed: Referring to our telephone conversation of Wednesday afternoon, our company wishes to make the following statements with respect to the effect of the Taft-Hartley law on our labor negotiations, and would appreciate it very much if you will see that they are presented to the proper committee.

In our negotiations of October 1945, without prior notification the union walked out of the conference room at noon, October 15, leaving approximately 40,000 pounds of tobacco in process. This step was taken by the union although they had repeatedly told us that they would give us ample notice in order to complete the manufacturing of any tobacco in process.

The result of this walk-out was that our people lost 5 weeks' pay before a settlement was reached. This amounted to approximately $49,002.71. We believe this could have been avoided had the Taft-Hartley law been in effect at that time, as settlement probably could have been made during the 30-day cooling-off period without loss to either the employees or the company.

In 1947 we were threatened with a picket line by a union that had no contract with the company. We believe the unions having contracts with the company had no sympathy with the threatened picket line and felt that under the Taft-Hartley law, they could so express themselves. It is our firm belief that due to the Taft-Hartley law, a shut-down was avoided and our people lost no time or earnings whatsoever.

Very truly yours,

The Bloch Bros. Tobacco Co.,
S. R. Morrow, *Vice President.*

INTERNATIONAL ASSOCIATION OF MACHINISTS,
Washington 1, D. C., March 21, 1949.

HON. AUGUSTINE B. KELLEY,
Chairman, Special Subcommittee, Labor-Management Relations Act,
House Committee on Education and Labor,
House Office Building, Washington, D. C.

MY DEAR MR. KELLEY: On Tuesday evening, March 15, 1949, a Mr. Clarence Mitchell, labor secretary, National Association for the Advancement of Colored People, testified before your special subcommittee with reference to H. R. 2032. In transcript volume 7, starting on page 1754, Mr. Mitchell referred to the International Association of Machinists as barring Negroes from membership through a provision in its constitution. On page 1764 of the same transcript volume, he has made further accusations against the I. A. of M.

Speaking for the International Association of Machinists I wish to emphatically state that there is nothing in the constitution or ritual of the International Association of Machinists which bars Negroes, or any other race from membership. The International Association of Machinists has Negro members enrolled in our organization. We have had, and still continue to have, Negro members prior to the enactment of any FEPC State laws.

Any inference or statement made by Mr. Mitchell which inferred that the International Association of Machinists barred Negroes through its constitution, its ritual or bylaws is entirely incorrect.

The situation referred to by Mr. Mitchell on page 1764 of the transcript volume 7 does not pertain to the Labor-Management Relations Act as this is a railroad which is covered by the Railway Labor Act.

I trust that this letter will be inserted into the record to correct this erroneous indictment of the International Association of Machinists.

Very truly yours,

H. W. BROWN, *International President.*

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington 1, D. C., March 23, 1949.

HON. AUGUSTINE B. KELLEY,
Chairman, Special Subcommittee,
House Committee on Education and Labor,
House Office Building, Washington, D. C.

MY DEAR CONGRESSMAN KELLEY: Mr. Harvey W. Brown, president of the International Association of Machinists, has suggested in a letter dated March 21, 1949, that the testimony which I presented on behalf of the National Association for the Advancement of Colored People contains false statements about his organization. I have reviewed my testimony before writing to you and find nothing in it which I cannot prove to the satisfaction of any reasonable person.

Mr. Brown refers to page 1764 of the transcript and says that this "does not pertain to the Labor-Management Relations Act as this is a railroad which is covered by the Railway Labor Act."

I presume that he is speaking of the case of Calloway Gaddis who is employed by the Texas & New Orleans Railroad. I will not insult the intelligence of the members of your committee by assuming that they did not know this very obvious fact. I also cited a case involving the Brotherhood of Railway Carmen in Kansas which is likewise covered by the Railway Labor Act.

The whole point of my testimony was that the Gaddis case is typical of how colored people are treated in the South by the machinists. That is, they are forced to join separate unions and do not have proper representation. I am enclosing copies of correspondence on the Gaddis case which I believe amply prove this point. You will note from this correspondence that the local lodge wishes to settle this complaint, but apparently has been prevented from doing so by higher officials.

Nothing in Mr. Brown's letter refutes our charge that only court action, FEPC regulations, and pressure from local lodges have changed the pattern within his organization. The correspondence in Mr. Gaddis' case eloquently supports our case. We are fully prepared to support our entire testimony with an overwhelming amount of evidence which we have compiled through the years.

It will be greatly appreciated if you will also make my letter and the enclosures a part of the record.

Sincerely yours,

CLARENCE MITCHELL, *Labor Secretary.*

(Enclosures.)

INTERNATIONAL ASSOCIATION OF MACHINISTS,
Fort Worth, Tex., November 30, 1948.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
New York 18, N. Y.

(Attention: Mr. Clarence Mitchell, labor secretary.)

GENTLEMEN: This will acknowledge receipt of your letter of November 19, 1948, concerning Calloway Gaddis, Jr.

Please be advised that Calloway Gaddis, Jr., was discharged March 22, 1944, for cause by his employer. The International Association of Machinists did not take any seniority rights away. He chose a representative other than the regular constituted collective-bargaining agency to represent him at a hearing and, by certain actions, waived his rights to any remedy under working rules.

Yours truly,

(Signed) W. O. HAMMOND, *General Chairman.*

LABOR DEPARTMENT,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, D. C., November 19, 1948.

Mr. W. O. HAMMOND,
General Chairman, International Association of Machinists,
3704 Birchman Avenue, Fort Worth, Tex.

DEAR MR. HAMMOND: One of the members of our organization, Mr. Calloway Gaddis, Jr., who is employed in the Texas & New Orleans Railroad shop in Houston, has directed our attention to a problem he now faces.

Mr. Gaddis began work with the T&NO on July 16, 1924. He worked continuously without interruption until March 24, 1944, on which date he was charged with insubordination. He remained off the job until December 27, 1944, when he was restored to the service with full seniority. The company credited him with his seniority as of the date of July 16, 1924.

According to the information before us, he was advised by the company that his seniority date was changed from July 16, 1924, to December 27, 1944, upon the request of the International Association of Machinists.

Since that time, Eastman Lodge No. 1537, which represents workers in Mr. Gaddis' class, has voted to recommend that the seniority be restored. A copy of the letter on this matter is enclosed for your information. Unfortunately, although the lodge voted on February of 1947 to request favorable action, this action has not yet been taken.

In my opinion, it is best to discuss cases of this kind on a face-to-face basis, and, for that reason, I made an effort to do so with the officials of the IAM in Washington. It was suggested that I might take this matter up with Mr. Earl Melton, the general vice president in Birmingham, Ala. Mr. Melton, in turn, has referred me to you.

I would appreciate it if you would let me know whether Mr. Gaddis will be restored to his proper place on the seniority roster.

Fraternally yours,

CLARENCE MITCHELL, *Labor Secretary.*

(Enclosure.)

HOUSTON, TEX.

Mr. W. O. HAMMOND,
General Chairman, District 51,
Fort Worth, Tex.

Subject: Action of membership to restore Calloway Gaddis' seniority.

DEAR SIR AND BROTHER: Following your instructions in progressing the Gaddis case I have obtained 138 signatures out of 166 through a waiver of seniority rights on the machinists' helpers list, in our move to have Calloway Gaddis resume his original position on seniority roster as of July 16, 1924, instead of his present position of December 27, 1944.

Second, in terminating my assignment in obtaining these signatures, I presented these cases again to the membership at our last regular meeting held July 25, 1947, and it was moved, seconded, and carried "that the local chairman and committee proceed and send the necessary papers of information needed in having seniority date restored to Calloway Gaddis to the general chairman that he may act on this information immediately and further that this meeting go on record as approving this action."

I wish to say that there are approximately 20 signatures that could not be obtained because these people are no longer here either because of death or quits. I know of the remaining eight, six have told me personally that they have no objection to Gaddis having his seniority restored over their position, but they were not required to sign anything when his seniority was taken away and the other two refrained because they could not read or write.

Enclosed also with list of names you will find statement signed by Mr. N. F. Seneschal past local chairman, as you requested. I hope that we will be able to close our files on this case soon as there is much organizational work to be done and also we are in need of all possible time to devote to other matters of importance in connection with our union work here.

Yours very fraternally,

FRANK SILVA,
Local Chairman of I. A. of M.
W. H. JONES, *Shop Committee.*

AUGUST 11, 1947.

Mr. FRANK SILVA,
Local Chairman, Houston 10, Tex.

Subject: Seniority, Calloway Gaddis, T. N. O. Railroad, Houston, Tex.

DEAR SIR AND BROTHER: This will acknowledge receipt of your July 30 letter with attachments, in reference to the above subject matter, and in reply will advise that the matter was handled with the railway employee's department, and for your information I am quoting below their opinion of what should be done to correctly handle this request to a conclusion. Their opinion is, reading—

"It is our opinion, however, that you should be authorized to restore Machinist Helper Calloway Gaddis to his former seniority date of July 16, 1924, by each machinist helper that would then rank below him. Certainly, if the remaining eight helpers on the roster below July 16, 1924, have no objection to giving him the July 16, 1924, seniority, they should then authorize you, in writing, to do so, and until it is done we would prefer not to authorize any change."

The above opinion of the department is along the same lines I advise you on when we discussed this matter in Houston on July 13. It will be necessary that you get the commitment from the other helpers before we can afford to act in this case; for the reason that we don't want any action taken against us by such helpers after we make the request of the personnel department to restore Gaddis' seniority. Please act to get a signed statement from these eight helpers.

Fraternally yours,

W. O. HAMMOND, *General Chairman.*

INTERNATIONAL ASSOCIATION OF MACHINISTS,
EASTMAN LODGE NO. 1537,
Houston, Tex., February 28, 1947.

DEAR SIRS AND BROTHERS: Your shop committees' investigation of Calloway Gaddis and his appeal for restoration of seniority wish to report as follows:

1. Case history of Calloway Gaddis as stated in previous communication was found to be true.

2. Meeting held for purpose of interviewing all parties wishing to testify for or against action by this local in taking necessary steps toward restoration of seniority in this case by presenting further facts to substantiate present position were totally lacking except for the appearance of several Negro workers—C. B. Mitchell, I. V. Lewis, J. Gray, J. L. Givens—and one member of 1537, Brother Hartman, who works in the frog shop; all of these vouched for C. Gaddis' character.

3 Members of the organization were contacted throughout the shop individually and sounded on this case and only one member committeed himself as being against restoring this seniority at this time because it is felt that C. Gaddis has not been punished enough.

4. Members of other crafts committees are of the opinion that this case is detrimental to colored organization throughout the shops and crafts and in some cases undermining morale of its colored members.

Your committee has from time to time discussed the merits and demerits of this case and its is with the best interest of the union in mind that it makes the following recommendation: That this local No. 1537 go on record as favoring the restoration of seniority to Calloway Gaddis, and that desire be conveyed to General Chairman W. O. Hammond and request that he act on this question with the management of the Texas & New Orleans on his next visit to Houston, Tex., to confer with said officials of said railroad.

FRANK SILVA, *Local Chairman.*
M. C. WALLA, *Committee.*

THE GLASSINE PAPER CO.,
West Conshohocken, Pa., March 18, 1949.

Hon. JOHN LESINSKI,
Chairman, Education and Labor Committee,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN LESINSKI: In your letter of March 16, 1949, you suggested that I submit my views on H. R. 2032 which is now being considered by the Committee on Education and Labor.

As a response to your letter I will state the following:

(1) That if the National Labor Relations Act of 1935 with amendments is to be enacted the amendments should include most of the Taft-Hartley provisions except where they are duplicated in the 1935 law.

(2) The non-Communist oath should be replaced by a section which would deny the services of the National Labor Relations Board to either an employer or a union whose officers could not take an affidavit to the effect that they "do not belong to any party or organization which advocates overthrowing the Government by force."

(3) Union shop and maintenance of membership provisions in contracts should be permitted without recourse to the machinery now set up by the National Labor Relations Board. Past experience with this restriction has clearly indicated that the overwhelming number of members of unions will vote for union security provisions. The procedure is time consuming for the Board and serves no useful purpose, and should, therefore, be eliminated.

(4) It should be permissible for management to negotiate a closed-shop agreement with a union provided that the union admits all qualified persons to membership. This restriction will keep a union from controlling a labor market and also will not deny the right of qualified persons to secure employment in their chosen field.

The great danger, as I see it, is that any new legislation in the labor-management field may be born with only the political considerations in sharp focus; and the moral and ethical concepts relegated to some inferior background position. Unless the new legislation is written with the moral and ethical concepts in sharp focus there will be no management-labor peace, but a constant struggle for advantage over one another. The new legislation must be fair and just to both management and labor if it is to accomplish any lasting benefit to labor-management relationship.

The labor-management problem is a moral one; consequently it requires a moral solution. Political considerations and expediency are practical solutions. Whenever a practical solution is obtain for a moral problem, it always involves a compromise with principle.

If I can be of any further assistance to you or the committee, don't hesitate to call on me.

Respectfully yours,

RAYMOND A. CURRAN, Jr., *Director of Personnel.*

ASSOCIATED EMPLOYERS OF INDIANA, INC.,
Indianapolis, Ind., March 25, 1949.

Hon. JOHN LESINSKI,
Chairman, Committee on Education and Labor,
House Office Building, Washington, D. C.

In re Taft-Hartley labor law.

DEAR CONGRESSMAN LESINSKI: In your letter to us, of March 17, 1949, you stated that "the subcommittee requests that you file a written statement which will be placed in the record."

Accordingly we submit the following:

We are strongly opposed to the outright repeal of the Taft-Hartley labor law.

We are equally opposed to its emasculation to the point that it would be innocuous thereafter or become as unilateral and lopsided as was the old Wagner Act.

Employer-employee relations (labor relations), if controlled at all by law, must be established on the basis that neither one has an advantage over the other.

Furthermore, in our opinion, if our American economy is to succeed and prosper, labor relations law must also recognize and protect the rights of the general public.

It should be recognized by the Congress that organized labor does not represent a majority of the working men and women in America. These unorganized, nonunion workers have rights quite as sacred as are the rights of those who belong to a union, and no law should be enacted which would deprive them of such rights or compel them to join any organization as a condition precedent to the right to a job or to earn a living for themselves and their families.

The right to work is as important as the right not to work.

If men and women cannot be compelled to work, then by what reasoning should they be compelled to join something in order to work?

We hear a lot these days about human rights and there are those who believe that property rights are, and should always be, subordinate to human rights. Well, just what are human rights? Shall we only recognize, emphasize, and protect those human rights which are affirmative in character, or shall we, in all fairness and honesty, respect and protect those human rights which may be negative in character—the right not to do that which an individual may legitimately not want to do.

Man has an acquisitive nature. Throughout all history he has had an ambition to acquire something for himself, and we, the people, applaud the hard work, honesty, frugality, and persistence in men who practice these virtues in order to attain that end. Property is the goal of most men.

How then can we entirely divorce human rights from property rights when one is the corollary of the other?

To the extent that man's investment in property represents the product of his toil, his ingenuity, his imagination, and his wherewithal, whether it be his job or his factory, should not he not have equal protection of it?

It is our belief that the Labor Management Relations Act of 1947 contains certain elements necessary to make it a bilateral law, protecting equally certain rights of our citizens, whether they be union members, nonunion, employers, investors, or consumers.

To repeal this law and return to the Wagner Act would be a backward step indeed.

Americans like fair play, and in order to insure that the contestants should abide by the same rules, we must have such rules.

Specifically we believe in and urge the following:

(1) Freedom of speech be preserved and protected for the employees and their employer, with such restrictions or limitations as exist in the present law.

(2) The employer and the union must bargain collectively in good faith.

(3) The right of employees to self organization and to the selection of representatives of their own choosing for the purpose of collective bargaining should be preserved and protected.

(4) The right to join, or not to join, a labor union must be equally established and protected.

(5) The right of petition to the National Labor Relations Board must be equal as between employees and employers for whatever purpose it is granted.

(6) The non-Communist affidavit should be retained but made equally applicable to unions and employers.

(7) There should be equal responsibility and obligation upon the bargaining agent and the employer when an agreement has been reduced to writing and executed by them.

(8) The boycott should be made illegal, because it, more often than not, seriously affects the lives and fortunes of the innocent.

(9) The same comment with respect to jurisdictional strikes because we know that innocent people having no interest in the contest or dispute are jeopardized and suffer.

(10) Americans don't like monopolies, whether they be of business or labor. Therefore labor monopolies, which exist today, and which enable labor bosses to dominate the terms, prices, and conditions upon which free-born American

citizens may work, where they work, for whom they work, and when they work should be made as illegal as business monopolies.

(11) Mass picketing and violence should be outlawed. The record cries to high heaven for the relief—yes, protection—of the innocent worker and the general public against such high-handed tyranny. Does it require 1,000 pickets to publicize a labor dispute at a plant employing 200 employees or less? The very obvious answer is "no."

(12) If a union can qualify, under the law, to petition the Board for a representation election, then it would certainly seem only just and fair that it be denied the right to picket in order to enforce recognition by the employer before certification by the Board.

(13) The injunction has never been popular with organized labor, because it has been the subject. Neither is imprisonment popular with the culprit. But, for the general good, experience proves that both are necessary when conditions warrant. There should be certain limitations or restrictions to the injunctive process, but these must not be enervating to or destructive of the relief sought and warranted under the circumstances. The injunction should be preserved.

(14) Union security, whether it be the union shop or maintenance of membership, should not be imposed upon American workers until and unless they have expressed a desire for it. Nothing radically wrong in the present provisions of the law in regard to this matter.

(15) The closed shop is un-American in concept and principle, and must have no place in employer-employee relations.

(16) Unfair-labor practices: We have no objection to the provisions in the present law and believe they should be retained. Certainly there should be no cancellation of those applicable to a union in the event those against an employer are to be retained.

Organized labor is big business and should be treated as such. There is nothing helpless about it, and certainly it needs no legal advantages over employers. They can negotiate as equals, unless the Congress grants special privileges to labor unions.

Congress should not overlook the importance of small business to the national economy. These businessmen are small fry to practically every union in this country, and out this way we know that unions can put these small-business concerns out of business.

If business monopolies are to be controlled against destroying small business, then why should not labor monopolies be controlled for the same reason? One is just as reprehensible as the other if our country is to remain free.

Organized labor should be made responsible and accountable to its members, to the general public, and to those with whom it contracts.

Very respectfully yours,

R. W. Akin, *Secretary.*

American Trucking Associations, Inc.,
Washington 6, D. C., March 22, 1949.

Hon. John Lesinski,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.

Dear Mr. Chairman: On behalf of American Trucking Associations, Inc., I have endeavored to secure an appointment for an appearance before your committee on House bill No. 2032. It is now evident that hearings will not be extended, and that I will not have an opportunity to appear, and I therefore request that this letter be made a part of the record in the committee's proceedings.

American Trucking Associations, Inc., is the national trade association of the trucking industry. No industry in the country is more vitally affected by the national labor policy and the national labor legislation than the trucking industry. Our labor is organized to a point where the teamsters union can, by a strike, close down motor transportation in any metropolitan area and shut off for-hire service in almost any section of the country.

Our industry, and the commerce of the country, were seriously damaged by the unfair practices in which organized labor indulged, without restraint, under the Wagner Act. I would like to direct your attention to a few specific cases:

In New York City, local 807, has regularly opened contract negotiations each year with an employer association. At the first sign of resistance to its demands, the union would break off negotiations with the employer group, force individual settlements on weak employers, and eventually impose its demands on all employers in the area without any semblance of real collective bargaining. Under the Labor-Management Relations Act, the employers had a remedy; when local 807 bypassed the employer group, an unfair-labor-practice charge alleging refusal to bargain was filed, and local 807 promptly returned to the conference table.

Secondary boycotts and jurisdictional strikes are among the more serious evils which beset the trucking industry. Our business has been used as its most effective organizing weapon by the A. F. of L. Employees of businesses which must have truck service to live have been organized by the simple expedient of having the teamsters union refuse to serve the enterprise. Secondary boycott may be justified under some circumstances, but the unions cannot be trusted with the power to use such a weapon without restraint. There are many examples of highhanded and arrogant abuse of this power. To cite one, a warehouse at Menands, N. Y., was boycotted by Teamster Union Local 294 in October 1947 simply because a business agent of the local union was refused permission to enter the premises.

The closed shop, banned by Labor-Management Relations Act but restored under H. R. 2032, would return to the unions another broad field for the abuse of power. An example of such abuse is found in Intermediate Report No. 1729 of the National Labor Relations Board, dated October 7, 1948. In that case, a New York employer was forced, by a 3-day strike, to discharge a driver when the union charged that his dues were in arrears. The intermediate report found that the driver had made a valid tender of his dues, that the union was not justified in its demand for discharge, and that the employer was not justified in complying with the union's demand. The helpless employer not only lost 3 days' revenue but was compelled to pay one-half of the driver's back wages to which the Board found him entitled.

I have cited only a few examples of abuse of union power out of hundreds in our files. Unchecked under the Wagner Act, these practices multiplied until the mild restraints of the Labor-Management Relations Act were imposed by popular demand.

We may sum up by quoting the fourth paragraph of section 1 of the Labor-Management Relations Act:

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed."

We respectfully submit that neither the facts nor the logic contained in this statement of policy can be seriously questioned, and that it should be continued in any revision of laws relating to labor-management relations. Further, if H. R. 2032 is enacted it should be amended to carry out the above statement of policy by (1) requiring unions as well as employers to bargain in good faith; (2) adequately restraining secondary boycotts and jurisdictional strikes; (3) banning the closed shop; (4) making unions liable for breach of contract; (5) giving employers the right to select their bargaining agents; and (6) providing an independent mediation service.

On behalf of the trucking industry, I urge that you give equal consideration to rights of employers and of labor.

Respectfully,

EDGAR S. IDOL, *General Counsel.*

MANUFACTURERS' ASSOCIATION OF RACINE,
Racine, Wis., March 17, 1949.

Hon. JOHN LESINSKI,
Chairman Committee on Education and Labor,
House of Representatives, Congress of the United States,
Washington, D. C.:

DEAR SIR: We are opposed to scuttling the Labor-Management Relations Act, 1947, because——

(1) It has in a measure again sought to protect the individual workman.

(2) It has placed labor leaders within the law and not above it as it was formerly the case under the Wagner Act, and which is again proposed.

(3) It has placed responsibility upon labor leaders, and as a consequence improved the leadership.

(4) It has minimized coercion and strong-arm tactics, and thereby placed labor relations on a more orderly basis.

(5) It has given individual workmen a greater voice in labor matters, thereby eliminating goon squad tactics.

(6) It has stabilized labor and industry relations in this community which had been plagued with irresponsible union leadership for a decade under the Wagner Act. There has been no major labor dispute or strike since this Act became effective.

(7) It has not affected union organization or function.

(8) It has not resulted in any drive to impair or destroy unions.

(9) It has, however, brought about a more mature attitude on the part of labor leaders because of the responsibility placed upon them.

(10) It has been a milestone in the development of sound labor management relationship under the law.

(11) It should not be impaired because to do so is a step backward.

(12) It should be refined, based upon study and experience and the custom and practice which has developed under it. This is the only sound development of the democratic process. Any other method is reactionary, and will result in the chaotic condition of the thirties, since it will be a signal to a favored class, the labor leader, that he is again above the law of the land.

Respectfully submitted,

MANUFACTURERS' ASSOCIATION OF RACINE,
W. D. STANSIL, *Executive Secretary.*

WASHINGTON, D. C., *February 12, 1949.*

HON. WAYNE MORSE,
Senate Office Building, Washington, D. C.

DEAR SENATOR MORSE: Continuing our conversation of last Thursday in the Senate reception room concerning return of the Conciliation Service to the Department of Labor, where it historically belongs, the subject is so big and of such grave consequence to the continued existence of the Labor Department that I approach it with considerable trepidation. But please bear with me and I will do my best.

The Conciliation Service operated with great success in the Department of Labor from 1913 to 1946, when War Labor Board personnel took over the helm following expiration of the Smith-Connally Act. I believe you are familiar with some of the chaos and turmoil arising after the residue of the WLB took over Had it not been for this unfortunate circumstance, or set of circumstances, I believe the Conciliation Service would have ridden out the storm occasioned by passage of the Taft-Hartley Act and remained safely at anchor in the Department of Labor, its birthplace.

In my opinion, the best that can be said for proponents of removal of the service from the Labor Department is that they swapped the devil for a witch, assuming (which I do not) that the Conciliation Service had to be tossed into the maelstrom of labor legislation prevailing at the time.

If you recall, I told you last Thursday that I thought the prestige of the Secretary of Labor behind a conciliator is of inestimable value in settling labor disputes. I found this to be true while serving as a commissioner of conciliation, especially during the war years of 1943, 1944, and 1945.

They won't build any monuments or write heroic songs about the part the Conciliation Service played in maintaining labor peace and keeping the wheels of industry turning during the war, but the conciliators did a magnificent job in this respect, often working night and day, Sundays and holidays, for weeks on end. They couldn't have been successful as they were if they had not been able to win the confidence of both management and labor, which they did almost uniformly. How could they have done this if management had been suspicious of their motives due to their connection with the Department of Labor?

Only rarely did I encounter hostility from this source. Almost without exception I was accepted for what I tried to be, an honest, sincere individual, troubleshooting strikes and strike threats, and withal seeking to create a better understanding between the boss and his employees, and vice versa.

It took generations of painstaking work to bring the Department of Labor into existence; mediation is indubitably a part of the warp and woof of the Department, its very lifeblood. At any rate, removal of the Conciliation Service severed a vital organ, leaving the victim in a badly crippled condition.

Boiled down, the act of 1913 creating the Labor Department provided for two essential functions, namely:

(1) Foster, promote, and develop the welfare of wage earners.

(2) Mediate labor disputes whenever in the judgment of the Secretary the interests of industrial peace so required.

Thus, to take away the Secretary's right to mediate industrial disputes destroys one of his principal functions and violates a fundamental concept of the framers of the act (in my opinion).

How else could the Secretary better promote the welfare of wage earners than by using the influence and prestige of his office to mediate their disputes? Bearing in mind always, Senator, that the principal definition of the word "mediate" is "to interpose as a mutual friend between parties."

This is voluntarily mediation, which operated successfully for 34 years, 1913 to 1947. The Taft-Hartley Act replaced this system with compulsory mediation, which is considered by many to be just as repugnant to industrial harmony as compulsory arbitration.

I regret very much to be at variance with such a splendid gentleman as Hon. Cyrus Shing, whom I admire very much. He is a true conciliator from the heart out—all of his 5 feet 7½ inches.

Thanking you for your patience and kindness if you have read this far, and hoping that my thoughts expressed here may be of some assistance to you in reaching a decision on this all-important matter, I am

Most respectfully yours,

James I. Crockett.

International Brotherhood of Electrical Workers,
Local No. 1455, A. F. of L.,
St. Louis 10, Mo., March 18, 1949.

House of Representatives Labor Committee,
Washington, D. C.

Re repeal of Taft-Hartley Act.

Gentlemen: The International Brotherhood of Electrical Workers (AFL) Local 1455, representing approximately 1,200 employees in the States of Illinois, Missouri, and Iowa, ask for outright repeal of the Taft-Hartley Act, reenactment of the Wagner Act without dilution, and, as a final step, consideration of the Wagner Act amendments.

We strongly oppose and ask that section 2 (12 (a), (b), and section 9 (b) of the Taft-Hartley Act dealing with so-called professoinal employees be deleted from any new labor legislation to be enacted by Congress.

I, for one, can speak freely in saying that the Taft-Hartley Act has not bettered labor-management relations despite what mangement says but has been a detriment to better relations.

In the case of the electric utility properties of the Union Electric Co. of Missouri, and Union Electric Power Co. (operating in the States of Illinois, Missouri, and Iowa) these sections have been abused and used as a subterfuge to destroy our local union made up of white-collar workers, who, above all, need a union.

An example of what has occurred under so-called professional employees follows:

In the year 1937 under the Employees' Mutual Benefit Associtaion which was classed as company dominated; accountants and engineers were included and even supervisors then.

The first certification of a union on the properties of the Union Electric Cos. (which was an independent union and classed as company dominated) was on order of the National Labor Relations Board, dated August 27, 1941, case No. R–2544, which included all office, clerical, and sales employees. Included in the group were engineer and accountant classifications.

On May 24, 1946, the National Labor Relations Board certified the International Brotherhood of Electrical Workers (AFL), case No. 14–R 1397, as representatives of all office, clerical, sales, professional, and technical employees. Again, the engineering and accounting classifications were included and agreed to as technical jobs.

Trouble started with a threatened work stoppage after the Taft-Hartley Act became law and upon the expiration of the current labor agreement, March 31, 1948, because the company refused to bargain with the union because the bargaining unit, the company claimed, included professional employees and, therefore, could not be included with nonprofessional employees. Certain individuals appeared before the regional office of the National Labor Relations Board claiming that they were professional under the meaning of the act. There has always been some question as to just who sent them to the National Labor Relations Board.

The union was willing to take the individuals who were already in the unit that the company had claimed professional and ask for an election on the basis that they vote for (1) inclusion in a unit of their own, (2) inclusion in the unit of office, clerical, sales, and technical employees, (3) no union at all. The company refused such an agreement but wanted to, and did, pack the unit with so-called professional and supervisory people for whom the union has never bargained in their history.

Mind you, the union was even in agreement to the above although we certainly felt that these people were not professional employees, but did it because we were being forced to do it under the provisions of the Taft-Hartley Act.

In order not to disrupt the entire bargaining unit, the union was forced under the Taft-Hartley Act to set aside certain people (the company-packed unit) that the company claimed were professional employees. This resulted in a hearing before the regional office of the National Labor Relations Board in St. Louis, Mo., from May 25 through June 18, 1948, to determine the appropriate unit. This is known as NLRB case No. 14–RC–269. This hearing only resulted in the apparent wasting of the taxpayers' money since there had never arisen the question of the propriety of a so-called professional unit, and even to this day the National Labor Relations Board in Washington, D. C., has not rendered a decision as to the appropriate unit.

In order to appreciate more clearly the attempt on the part of the company to just automatically eliminate certain classifications as professional classifications, we refer you to NLRB case No. 14–RC–269. A brief example of such is the company representative who testified to the title of "assistant gas property engineer." He testified that he know all about this classification as well as gas-plant operations, but he did not know that the gas plant that he was supposed to be talking about, of which he did not know the location, had been retired and that the individual that he was vouching for in the matter of so-called professional duties was not performing the duties but actually on loan to another utility company. He did not know the type of gas the company distributed or that the company purchased gas from another utility company.

Another brief example is the company claim that students just out of college are professional under the meaning of the act because they were performing related work under supervision of a professional person to qualify them to become a professional employee as defined in paragraph "A", section 12 of the act. In the general accounting department of the company, 11 supervisors have no certificates or degrees in accounting; 2 have certificates only; 1 has a degree but is a supervisor of I. B. M. machines.

Student accountants are supposed to be training under professional people as claimed by the company. Of the 10 individuals (these include department heads and supervisors) who are to work in connection with the administering of the training program only 1 has a degree in accounting.

Of 75 managerial, supervisory and confidential employees who are noncontract, 45 possess no certificate or degree in accounting; 14 have certificates from correspondence or night school; 14 have degrees; 2 have diplomas, and yet students training under them are supposed to be professionals under the meaning of the act.

The company stipulated with the union that the title of "junior accountant" and "assistant accountant" were nonprofessional, only to do an about face and say that an employee who has a college degree and possessing the classifications of junior accountant or assistant accountant is professional.

A question which should be answered is why the union was required (other than through force) to go through a lengthy hearing to determine professional employees when there was no formal claim or complaint filed with the National Labor Relations Board by any employees or by the company. Not a single engineer in question appeared at the hearing to testify that they were professional under the meaning of the act. The regional office took the position that they could not certify a unit that included both professional employees and employees who are not professional but yet there are other utilities that are being bargained for as of today that include accounting and engineering classifications.

It is apparent that if the company is successful in the splitting of an already proven unit of office, clerical, sales, and technical employees, it will be just a matter of time when the company will contend for another group and this process continued until the local is abolished.

I have just briefly outlined conditions prevailing between the Union Electric Co. and the union under the Taft-Hartley Act and will be glad to answer any questions for enlightenment of the House Labor Committee.

Sincerely,

MATTHEW G. BUNYAN, *Business Manager.*

FLAT VENEER PRODUCTS ASSOCIATION,
Washington 5, D. C., March 24, 1949.

COMMITTEE ON EDUCATION AND LABOR,
House of Representatives, Washington, D. C.

GENTLEMEN: At a recent meeting of this association, the members discussed H. R. 2032 and voted unanimously to oppose its passage by the House. As general counsel of the association, I was instructed to communicate to you the fact of the association's opposition to the bill, and the principal objections which it has to specific provisions contained in the bill. It is hoped that consideration of the views of the association will be given during the course of your current study of the bill.

For your general information, the association is composed of manufacturers of more than 90 percent of all flat veneer products manufactured in the United States. They operate plants located in the States of Tennessee, Maine, Delaware, New York, Idaho, California, Ohio, Minnesota, Washington, Virginia, Colorado, Wisconsin, and Massachusetts.

General opposition: Members of the association unanimously oppose passage of H. R. 2032. Although they recognize that the Taft-Hartley Act could be revised to advantage in certain respects, they feel that such changes should be in the form of amendments to the act, rather than as a part of an outright repeal of the act and resurrection of the Wagner Act. The Taft-Hartley Act has benefited both employers and employees and the proposal to repeal it by means of H. R. 2032 and its companion measure in the Senate (S. 249) is not in accord with the real wishes of either group.

The principal opposition to the Taft-Hartley Act originally came, and still comes, from labor leaders who are more concerned with the collection of dues from union members, and with increasing their own personal power, than with the needs and desires of their members. Most union members, given an opportunity to understand the real meaning and effect of the Taft-Hartley Act, without being influenced or coerced by union leaders, would be wholeheartedly in favor of most of its provisions. It is the opinion of the association that a very large majority of union members would approve the Taft-Hartley Act, and oppose any repeal of it, if given an opportunity to express their views. Unfortunately, they do not have any real opportunity to express themselves. Their union spokesmen do all the talking, and frequently make no effort to ascertain the views of the members.

Opposition to specific changes effected by H. R. 2032—Closed and union shops: Prior to the Taft-Hartley Act closed and union shop agreements were used by union organizers as weapons to increase their membership and to maintain that membership once gained. It was common practice for a union, through strikes, boycotts, and other coercive means, to force an employer to sign closed or union shop contracts, despite the fact that the union did not represent more than a small percentage of the employees covered by the contracts. Employees were, by this means, forced to join a union, and accept it as their sole bargaining representative, in order to keep their jobs.

There is some slight justification for a union shop contract in cases where a large percentage of the employees belong to the union and desire a union shop. They are presently able to get such an agreement under the Taft-Hartley Act, when the union has been certified as the sole bargaining representative, and an election has been held to ascertain the wishes of the membership. However, there is no possible justification for permitting unions to use closed and union shop contracts as a means of organizing.

The association feels that no person should be required to join a union in order to earn a livelihood for himself and his family. Once he has obtained a job, he should not be forced to join a union in order to keep it.

No employer should be required to employ only such individuals as a union chooses to send to him. The success of any business is largely dependent upon the judgment of its executives and upon the proper exercise of that judgment in the selection of employees. If the employer is limited to union members, he is frequently unable to obtain the services of better qualified men who are not members of the union. The result is lowered plant efficiency, with consequent injury to other employees.

It should be pointed out that the principal benefits of closed and union shops accrue to union organizers and leaders and not to the union members. A duly recognized union under an open shop is just as effective as a bargaining representative for its members as is a similar union under a closed or union shop. It can do just as much for its members in the form of higher wages, better working conditions, and so forth.

The real features of closed and union shops are the organizing power, referred to above, and the power to force members to pay their dues and maintain their membership even though they are dissatisfied with the union as their representative. Such forms of contracts enable the union leaders to obtain and maintain their power.

Thus closed and union shop contracts spell security for union leaders, serfdom for union members, and inefficiency for employers.

Free speech: The Wagner Act provision on free speech, which is to be put back into effect by H. R. 2032, was so strictly construed by the NLRB and the courts that employers were afraid to even mention the word "union" in front of their employees for fear of being charged with engaging in unfair labor practices. Unions could make any charges they cared to about employers, and employers could not answer them. They had to sit back and watch while their employees were misled by false charges and representations of union leaders.

Employees should be permitted to hear both sides before being asked to make a decision as to whether to join a union. Neither the union or the employer should be permitted to threaten or coerce employees in any way in reaching such a decision. The present Taft-Hartley Act provision guarantees to employers the right to express their views, within such limitations, and guarantees to employees the opportunity to hear both sides and to reach an informed, independent decision.

Refusal to bargain: H. R. 2032 in effect says to the employer, "You must bargain in good faith with the union representing your employees. If you don't, you will be found guilty of unfair labor practices. However, the union does not have to bargain with you unless it wants to. If it refuses to do so, you are just out of luck."

Union leaders have branded the Taft-Hartley Act requirement that unions also bargain in good faith as "unnecessary." They claim that no union would refuse to bargain. If this claim is correct (and there is ample evidence to refute it), what is the objection to the requirement? Certainly it cannot hurt a union unless it does refuse to bargain in good faith.

Employer petitions for elections: Under the Taft-Hartley Act, in cases of disputes as to whether a particular union represented the majority of the employees in a bargaining unit, either party could petition for an election. H. R. 2032 eliminates the right of the employer to petition, but continues the right of the union. The employer is thus put completely at the mercy of opposing unions claiming to represent his employees.

Legal means for the settlement of all disputes should be provided, and either party to the dispute should be able to use such legal means. The principal objection raised by union leaders to the right of the employer to petition is the claim that it permits employers to catch a union before it is ready for an election. This objection is spurious on its face. The Taft-Hartley Act permits the employer to petition for an election only after he has received one or more claims for recognition. A union which represents a majority of the employees and makes a claim for recognition should be willing to establish such fact through an election. If it does not represent a majority, but is merely hoping to gain a majority through campaigning, it should not make a claim for recognition.

Moreover, the NLRB has complete authority to postpone the election until such time as it believes all unions involved have had an opportunity to prepare for the election.

Supervisory employees: Inclusion of supervisory employees in the definition of "employees" covered by the bill, forces employers to bargain with unions representing supervisory employees. A supervisory employee is a representative of management in double dealings with employees. If he is a member of a union representing other employees, he has a divided loyalty, which is detrimental both to the interests of the other employees and of the employer.

NLRB organization: Abolition of the office of general counsel and removal of Taft-Hartley Act restrictions on the NLRB will result in a return to the abuses prevalent prior to the enactment of the Taft-Hartley Act. The Board would again act as prosecutor, jury, and judge, which combination of powers in one body is directly contrary to the American conception of checks and balances. The present procedure, under which the general counsel has independent and exclusive authority to issue complaints and bring charges, and the Board acts solely as judge, works fairly from the standpoints of both the employer and the union.

Conciliation Service: Reestablishment of the Mediation and Conciliation Service in the Department of Labor will destroy the effectiveness of such service. To be really effective, any mediation or conciliation service must be completely impartial, and both parties to a dispute must have implicit confidence in such impartiality. Employers have little confidence in the impartiality of the Department of Labor. Such Department was set up for the primary purpose of representing labor and is generally recognized as an "exponent and supporter of organized labor." A mediation and conciliation service which is subject to the jurisdiction of the Department of Labor naturally will be influenced by the aims and policies of such Department.

The present Service is completely independent of the Department of Labor and has gained the confidence of employers by its impartiality. Union opposition to the independent set-up merely reflects an unwillingness to submit controversies to any body which is not partisan to union interests.

Suits for violation of union contracts: Prior to the Taft-Hartley Act employers were bound by their contracts with unions and were subject to suits for violations. Unions were not. Unions were free to violate their contracts at will without fear of suits for damages brought by employers. This freedom enabled them to give employers many contractual assurances that they did not intend to fulfill, merely to get the employer to grant benefits desired by the unions.

Union opposition to the Taft-Hartley Act provision which authorizes employers to bring suits for violation of union contracts is a clear indication that unions do not expect to live up to their agreements. If they did, they would have no objection to the provision.

Conclusion: The association believes that union opposition to the Taft-Hartley Act generally, and to many of the specific provisions referred to above, indicates an unwillingness on the part of union leaders to accept any kind of restraint on their activities. They favor, and actively sponsor, every kind of restriction on employers and insist upon laws governing practically every move made by employers, but object to the slightest control over their activities.

Members of the association recognize that there have in the past been many abuses by employers and agree that reasonable regulations are needed to correct such abuses. However, labor unions have also been guilty of many unfair practices and have abused their rights. Instead of being willing now to accept reasonable regulation, they insist that they be permitted to correct their abuses by voluntary action. They want complete freedom for themselves and expect employers and the general public to trust them to properly exercise that freedom. Their actions in the past have not warranted any such trust.

The Taft-Hartley Act basically is a fair and reasonbale regulation of the conduct of both unions and employers. It safeguards each, as well as the general public, against abuses by either.

The association respectfully urges that you give careful consideration to the above facts and arguments before taking any action on the bill now pending before you.

Respectfully submitted.

FLAT VENEER PRODUCTS ASSOCIATION,
By RICHARD A. TILDEN, *General Counsel.*

STATEMENT BY LEE PRESSMAN, COUNSEL, RELATIVE TO EXPERIENCE OF THE MARINE ENGINEERS' BENEFICIAL ASSOCIATION UNDER THE TAFT-HARTLEY ACT

MARINE ENGINEERS EXCLUDED FROM TAFT-HARTLEY ACT

The Taft-Hartley Act contains a definition of the term "supervisor" and excludes such personnel from the term "employee" covered by the various provisions of the act. For this reason, no employer has an obligation to engage in collective bargaining with a union representing supervisors.

Licensed marine engineers have been organized in their own union, namely, the National Marine Engineers' Beneficial Association for a period in excess of 25 years. During such period, this union has enjoyed collective bargaining with the shipowners on the Atlantic, Gulf, and Pacific Coasts, and inland rivers and harbors.

Following the enactment of the Taft-Hartley Act, the question arose as to whether the shipowners would continue their collective bargaining with the National Marine Engineers' Beneficial Association. Fortunately, for the peace of the industry, the decision was in the affirmative.

The curious contractions of the Taft-Hartley Act produced a situation that because the licensed engineers were supervisors and therefore outside of the Taft-Hartley Act, collective bargaining between the parties did not run into the difficulties regarding preference of employment as did in the case of the unlicensed personnel who are within the pale of the Taft-Hartley Act.

The committee of shipowners for the Atlantic and Gulf coast agreed in negotiations with the Marine Engineers' Beneficial Association, following the enactment of the Taft-Hartley Act, that licensed marine engineers who comprise the membership of MEBA, fall within the definition of supervisor as set forth in section 2 of the Taft-Hartley Act.

This conclusion was confirmed by several regional directors of the Labor Board, who rejected unfair labor practice charges filed by individual engineers against employers or MEBA. Such rejection was based upon the fact that such engineers were supervisors under the law and, therefore, did not come within the Act.

NO CONTROVERSY OVER PREFERENTIAL EMPLOYMENT

During the spring of 1948 negotiations began between the shipowners on the Atlantic coast and the various seafaring unions and between the shipowners on the west coast and the other seafaring unions and longshoremen's union. In all of these negotiations, one of the burning issues was that pertaining to the union hiring hall.

The only negotiations which did not have this problem were those between the shipowners and the MEBA. The reason for the absence of this problem in this situation is that title I of the Taft-Hartley Act did not apply to the members of the MEBA.

The Fact Finding Board appointed by the President for the maritime industry for the Atlantic and west coasts, in their official report to the President, specifically stated that the problem of the hiring hall, which had brought a complete impasse between the parties, could be laid completely at the door of the Taft-Hartley law in that neither the employers nor the union wanted or expected any change in their standing practice of the union hiring hall.

Thus, whatever difficulty arose in the maritime industry because of this particular issue was due entirely to the Taft-Hartley law. In the case of the MEBA, where the provision did not apply, the issue did not even arise.

FACT FINDING BOARD AND ENGINEERS IN NATIONAL EMERGENCIES

(1) Negotiations between the shipowners on the Atlantic coast and the west coast (separate conferences) and the maritime unions began some time in March or April 1948. The contracts between the unions and the various employers expired on June 15, 1948.

The shipowners believed that in the event an impasse on June 15, the President of the United States would invoke the provisions of title II of the Taft-Hartley Act, setting up a fact-finding board and obtain an injunction and, therefore, there was practically no effective bargaining between the employers and the union. The meetings became a farce.

On June 15 the employers had not advanced a single proposal beyond the position they had taken at the first negotiating conference.

Thus, the very existence of title II negated completely the processes of collective bargaining between the employers and the maritime unions.

(2) The Conciliation Service had stepped in before the expiration of the contracts and found itself completely helpless and could perform no useful service. The employers were looking to the deal line when the President of the United States would invoke the provisions of title II of the Taft-Hartley law, and paid no attention to the efforts of the Conciliation Service to bring about a settlement. Thus, title II completely negated the efforts of the Conciliation Service.

(3) A few days before the date of the expiration of the contract, the Presi-

dent, as the employers had anticipated, appointed the Fact Finding Board of Inquiry to investigate the facts relating to the dispute.

(*a*) In spite of the fact that officials of the Labor Board and the employers had agreed that the licensed marine engineers were supervisors and therefore were not employees as defined by the law, and could not be held to be within title II any more than they could be held to be within title I, the President directed the fact-finding board to investigate the dispute between the MEBA and the shipowners. The MEBA never had any opportunity of presenting this issue before the President. When the board of inquiry opened its hearing for the marine engineers, the same issue was raised. But the board of inquiry held that it was bound by the President's direction and could not investigate this issue. Thus, marine engineers were brought within the confines of the board of inquiry, without any opportunity being given to the MEBA to challenge this point.

(*b*) The whole proceeding of the board of inquiry was a complete farce. All that the board obtained were statements from the respective parties as to the issues they had presented in collective bargaining as to which there was no agreement. Since there had been no collective bargaining, the statement of issues were practically the demands of the respective parties as presented on the first day of the negotiating conferences.

The board of inquiry, therefore, merely made a report to the President as to what the parties requested in their negotiating conferences—no more, no less. This information could have been given to the President by the Conciliation Service. The board of inquiry served no useful purpose other than during the course of this proceeding there was no collective bargaining between the parties.

(4) Immediately upon receipt of the board of inquiry's report, the President directed the Attorney General to proceed to the proper Federal district court to obtain injunctions preventing the unions from striking upon the expiration of their contracts.

(*a*) The most general statements were contained in the complaint of the Government and in the supporting affidavits to prove that a national emergency would develop in the event there was a strike. Such statements if held to support the issuance of an injunction could probably apply to almost every strike in any industry involving the workers of more than one large corporation, and in some cases even through confined to the employees of one corporation.

(*b*) The injunction issued as requested by the Government was sweeping in its terms, binding the workers to maintain the conditions which prevailed at the expiration of the contract.

STATUS OF NEGOTIATIONS DURING INJUNCTION PERIOD

(1) The employers knew that the injunction was valid for approximately 80 days. Therefore, during almost this entire period there were no negotiations between the parties. The unions and their members were tied by the injunction and there was no incentive to the employers to consummate an agreement.

(2) As the time approached when the injunction would expire, the Labor Board, under the act, was obligated to hold a secret ballot among the employees covering the employers' last offer. In this connection, the MEBA pointed out to the Board that on the basis of the employers' agreement and the decisions of officials of the Board, licensed engineers did not come under title II of the law. Though representatives of the Board accepted this contention, nevertheless they held that they would go ahead and take the secret ballot of the engineers on the shipowners' last offer. In other words, the provisions of the law were flagrantly violated in this situation.

(3) Prior to the holding of the ballot before the expiration date of the injunction, for the first time the shipowners actually engaged in collective bargaining with the MEBA. When collective bargaining began, within 3 days an agreement was consummated.

CONCLUSION

(1) The entire process of fact-finding boards and injunctions only serve to negate the process of collective bargaining. Only the unfettered right to strike on the part of workers encourages collective bargaining and promotes the consummation of collective-bargaining agreements. The 80-day cooling-off period imposed under title II of the Taft-Hartley Act extends outstanding collective bargaining agreements that number of days—all to the benefit of employers who need not change the working conditions during such period.

(2) Licensed marine engineers though technically supervisors have, through the union, the National Marine Engineers' Beneficial Association, enjoyed collec-

tive bargaining for over three-quarters of a century. As such they are entitled to all the protection that other employees may receive through the repeal of the Taft-Hartley Act and the reenactment of the Wagner Act.

For this reason in any new legislation there must not be included any provision which excludes supervisors, so defined, as to include licensed marine engineers.

STATEMENT OF R. D. DOUGLAS, JR., ATTORNEY, OF GREENSBORO, N. C., REPRESENTING SEVERAL THOUSAND NONUNION EMPLOYEES IN TEXTILE, HOSIERY, AND STEEL INDUSTRIES IN GREENSBORO AND VICINITY

I have requested permission of the committee to appear as a representative of several groups of workers in Greensboro, N. C., who appear to be caught in the middle between management and the unions.

In the Senate hearings, their committee has heard management urge the retention of the Labor Management Relations Act of 1947, and has heard the unions condemn the act as a slave bill. Apparently there was no testimony from the great group of Americans, the workers who are not union members. This group numbers uncounted thousands in the South and Southwest.

I am not a labor law expert, nor are the working men here with me. The problems of secondary boycotts are seldom found in our part of the country. So far as I know, we have never had a jurisdictional strike in North Carolina. But there are other and more fundamental problems which are before you under consideration, with which we are familiar and with which we are vitally concerned.

One of these problems concerns union coercion. Some books say that southerners have hot tempers, and others say we are easily led. I do not entirely agree, but I do know of many instances where a northern labor leader has come into a southern plant, gained a considerable following through legitimate persuasion, then proceeded to show his convert a few of the northern "tricks" of overturning automobiles, throwing stones through parlor windows, and threatening still further violence to workers slow to join the union.

Of course, there are local laws against such violence. But these mean little to some of the organizers.

An organizer for the United Steel Workers sat in my office in Greensboro the day before he called a strike at the Truitt plant and told me our laws meant nothing to him, that he'd been in better jails than Greensboro could offer. I had just told him that some of my clients wanted to go to work in spite of his picket line, and he had told me that anybody who tried to pass his line would "crawl through in his own blood, with his head split open." My comment about local laws prohibiting violence in picketing, brought forth his comment about the jails.

But whatever they think of local ordinances, the professional organizers do give some weight to Labor Board decisions, and they prefer not to be charged with unfair labor practices if they can help it.

And yet, can the members of this committee fail to see that once having had such coercion prohibited by law, a repeal of that law will be an open invitation to employ coercion at will? Even in the most violent coercion—of a sort that any reasonable man would call unlawful—the Labor Board and the courts would almost of necessity have to hold that since the Congress expressly and explicitly repealed the prohibition regarding union coercion, it was the intention of Congress to allow unlimited coercion.

There is another matter of great concern to the men I represent. It is the fact that the new bill under consideration takes away from the working man his right to vote to decertify a union which has not lived up to its promises and has proved to be a burden rather than a help.

I cannot imagine a more American, democratic practice than that which says that if a group of Americans vote a man or a union, or a party into power and control, those same voters shall have the right to vote them out of power. You men of the committee are elected by your friends at home. You were sent here because you had their confidence. And in all sincerity and respect, I ask each of you to think of the reaction of your constituents if you dared propose a law under which you would never have to stand for reelection, but might retain your office as long as you wished.

Yet that is just what the new bill provides. Once a union is voted into a plant the only way the very men who put it there can remove it is to persuade the company to violate the law and refuse to bargain with the union in order to force the Board to call an election.

Gentlemen of the committee, these two things I have mentioned, decertification and union coercion, slip into insignificance beside the real problem that the new bill brings to the millions of nonunion American workers, I refer, of course, to the closed shop.

I know that you have heard endless arguments for and against the closed shop and the union shop. There is little I can add, except to assure you most earnestly that the southern workers are vehemently opposed to a union membership requirement as a condition to keeping their jobs. Some of the most violently union men that I know, who fought my clients and me, tooth and nail in a decertification campaign at Proximity mill, have told me they do not want a closed shop. They say that the day may come when they grow dissatisfied with the union and want to get out.

There is widespread resentment in the South against such restrictions. I have heard many most picturesque outbursts that I cannot quote here. But I think their feelings are summed up in the words of Mr. Justice Brandeis, who said, "Why should the workers exchange the tyranny of the employer for the tyranny of the labor boss?" Mr. Brandeis said the union shop is un-American. Mr. Justice Frankfurter quoted him at length 2 months ago in the Whitaker case, pointing out that the unions should seek to hold their members by persuasion and by performances, rather than through legal coercion.

In North Carolina the farmers, the businessmen, the school teachers, as well as the workingmen, have opposed the closed shop. Two years ago our State legislature passed a right-to-work bill. It provided that no man can be deprived of his job because of union membership or the lack of such membership. The law was given overwhelming support by members of the legislature, and 2 months ago the Supreme Court of the United States said the law was constitutional. It was in this opinion that Justice Frankfurter substantiated his opinion of the closed shop by quoting private letters of Justice Brandeis never before made public, so far as I have heard. I think no one would contend that either of those two learned justices was or is an enemy of organized labor.

A union leader recently compared the nonunion worker who pays no union dues to the citizen who, having voted for the wrong candidate, refuses to pay taxes. There is no parallel in such an illustration; the taxpayer knows that even his candidate, having won, would have levied the same taxes.

We think a much better example would be that of a Democrat civil-service worker whose party had lost out in a municipal election, and who was thereupon told that from then on he must join the Republican Party and finance its campaign fund with dues if he wanted to keep his job.

Most of the North Carolina industrial workers came from the farms and small towns of the State. They have been reared in the belief that strong local government offers one of the greatest safeguards against all encroachments on the rights of the individual in our system of democratic government. Thus 2 years ago their views were expressed by the State legislature which outlawed the closed shop in North Carolina. If the workers had been dissatisfied they would have gone to the polls in the Democratic primary last May and voted for a new set of legislators who would have repealed the law at once. And in 1950, if they want the closed shop, they will go to the polls and vote for it.

The adoption of a blanket national rule which says that all industrial workers may find themselves in closed shops deprives the individual employee of his right to have a voice in his affairs.

We believe that the closed shop should be a local government issue, to be decided by individual States in conformity with the wishes of the majority of the people who go to the polls to vote. And the fact that industrial workers in the North are reconciled to the closed shop and union shop, does not give them the right to force such conditions upon the workers of North Carolina who are overwhelmingly against it.

The whole policy of the closed shop—which a great liberal justice has called un-American—is not a national policy. It is not like a State tariff which would seriously impede the flow of interstate commerce. Remember that even in the States which have outlawed the closed shop the union workers are given the same protection afforded the nonunion ones. They cannot be discriminated against because of their union activities.

If the working people of one State believe that no man should lose his job or be denied another because of his union membership or lack of it, then that is a matter of State policy to be decided; certainly it can hurt no one in the rest of the United States unless it be the union professional leaders who have come to rely on what Justice Frankfurter calls the force of the law rather than legitimate persuasion and performance to sell their union memberships.

The great masses of southern industrial workers inherently believe that they have the right to decide upon the issues that affect their liberties by the free exercise of the ballot in a secret voting booth. They believe that the closed shop very definitely deprives them of their liberties and they insist that this should be a matter for State legislation.

STATEMENT OF GARFIELD HEPLER, MACHINE-SHOP EMPLOYEE AT PROXIMITY COTTON MILL, GREENSBORO, N. C.

I want to tell this committee why I think the right of us workers to call for a decertification election ought to be kept in the law. About 8 months ago I filed a petition for a decertification election at Proximity, so I know a little bit first hand about this part of the law.

Proximity mill has about 1,300 workers, making cotton cloth. I grew up in the mill village and never have worked anywhere else. But I was in the Army when the textile-workers union got voted in at our mill, and just about the time they won the election I was getting some machine-gun bullets picked out of me that I got when the Third Army crossed the Rhine.

When I got back home and went back to work there was an awful lot of trouble in our mill. The workers were about half for the union and half against it. It got pretty rough in our village, with neighbors not talking to each other, and even church congregations splitting up over the union.

About a year ago a bunch of us heard about our having the right to vote the union out. We got us a lawyer and filed for a new election. We got laughed at by the union folks. Their organizers filed charges that the company put us up to it, and they said we'd never get an election. We told them democracy ought to work both ways; that when they wanted to vote the union in they got an election real quick; but now, they all of a sudden didn't believe in voting anymore.

But we got our election. We lost it by a pretty close margin. But somehow there wasn't any hard feelings. Of course, we had a lot of rough talk just before the election, but after it was over, it seemed like everything got better settled. Maybe we and the union folks each worked out some of our bitterness in the election campaign. Whatever it was things are a whole lot better now. The union still has just about half of the employees, and I don't think they picked up any new members by winning.

But we do know that the shop committee is a whole lot friendlier these days, and even the union members I work with say that the union is trying harder to do things for the members. I reckon our election sort of jolted them out of feeling too safe about everything.

We're not figuring on asking for another election anytime real soon. If things go along like they are now, we're not going to make any trouble for anybody. Bu we know that anytime we want to we can make democracy work again. It's just like voting for a man for office; it's good to know that if you don't think he's making good, you can vote him out next time.

STATEMENT OF JAMES S. ALBERT, HOSIERY WORKER AT MOCK-JUDSON-VOEHRINGER HOSIERY PLANT IN GREENSBORO, N. C.

Like thousands of other workers in southern plants where I have worked, we feel that the right to join a union or not to join a union is something that ought to be left up to us.

A few years ago at the hosiery plant where I work we had a union for our bargaining agent. The union was not strong enough to force our employer into a closed-shop agreement and hundreds of us never joined the union. It was not that we wanted a "free ride" like the organizers said; it was just that we did not believe in the union and we honestly felt that we would be better off without it.

However, if the union had been a little stronger it might have forced a closed shop and hundreds of us would have had to join an organization that we bitterly disliked and distrusted and would have had to pay our money to keep the union in power or lose our jobs. To me, this is about as un-American as anything I know. In American democracy, a minority may not like what the majority is doing, but at least they don't have to join what they dislike and pay for its upkeep.

We feel safer now with the North Carolina law against the closed shop and the union shop. We know that this law represents the wishes of most of the industrial workers in this State. If the sentiment of the workers ever changes, we can change the law. But we don't think that the Federal Government has any right to take away our protection and deprive us of our liberties just because some northern workers want a closed shop.

Statement by Hymie Pokras, Representative of Newsboys and Carriers Division, International Printing Pressmen and Assistants' Union of North America, A. F. of L.

Newsboys and newscarriers are entitled to the protection of labor laws.

Newspapers are distributed in various ways throughout the United States. Among those ways are newsstands, newsboys (distribution on the streets), and carriers (delivery to subscribers' homes). All of these persons work as an integrated distributing force, or labor force, for the publishers in distributing news to the public.

If you approach the question of whether the people engaged in this work are employees of the publishers in one of two ways, it is solved in one of two ways.

If you approach it in terms of common-law rule surviving from the days of handicraft economy, that is one thing; if you approach it the way it should be approached, as the problem of the legal limits of group activities in a modern industrial society, you will reach the solution required in this case, that these people are employees of the publishers and entitled to bargain collectively, regardless of lawyers' fine-spun legal distinctions as to carrying them or not carrying them on the pay roll.

The question of the status of newsboys and carriers and whether they are or are not entitled to the protection of the labor laws must be viewed as to whether or not they are subject to the evils the labor laws intend to eliminate and if collective bargaining is appropriate to that end.

Newspaper publishers are not manufacturers. They purport to render a service to the public. Newspaper publishers pay taxes (or do not pay them) precisely on that theory. The-sale-of-an-ordinary-commodity analogy is mere camouflage.

Publishers everywhere in the country, always, feel it necessary to term newsboys and carriers who make single copy serves of their papers independent merchants. The adjective is significant. A real merchant is by definition independent; these merchants, so christened by the publishers, always seem to need the support of the extra word, even on paper, so that, by force of the word alone, color may be lent to the attempt to belie the industrial facts as to status. Independent merchants, as for example a grocer, do not stand in service relationship to the large number of manufacturers and jobbers from whom they buy their groceries and other ordinary commodities for use or consumption. They operate mercantile establishments simply devoted to the purchase of a unit at one price and selling it at another. They buy a tangible commodity and receive title to it. They may open or close as they see fit, stock the merchandise on their shelves as they see fit, run special sales and push any item they care to in order to compete with other merchants throughout their respective communities.

Newsboys and carriers, on the other hand, do not handle a tangible commodity, nor do they receive title to the papers they pay for. They perform a service for the publisher by serving the news to the public. The publisher sets the price to the public and the newsboys and carriers retain part of the purchase price as their earnings. This is also established by the publisher.

Despite the fact that newspaper publishers claim that newsboys and carriers are independent merchants, whenever they are asked to bargain collectively with them, publishers themselves have proven, beyond any question of doubt, the falsity of their claims. As a matter of fact, their own words have convinced, not only us but the courts that they are not manufacturers and that it is impossible for a newsboy or carrier to be an independent merchant.

The following is an example:

In the Circuit Court of Cook County, State of Illinois, County of Cook, ss. Calumet Publishing Company et al., Chicago Tribune et al., intervening plaintiff, plaintiff *v.* George B. McKibbin, as director of finance; Warren Wright, as State treasurer; and George F. Barrett, as attorney general, all of the State of Illinois, defendants. No. 41–C–3507. The Interstate Company et al. *v.* George B. McKibbin. No. 41–C–5874.

DECISION OF THE COURT

The COURT. I shall discuss first the intervening petition of the newspapers. The point here presented is simple and calls only for the determination of the character of the business of a newspaper and its distributors with a view to ascertaining if they come within the definition of the Retailer's Occupational Tax Act as taxable occupations.

It is the position of the plaintiffs (publishers) that the publishers and distributors of newspapers render service to the public, and that the sale of the newspaper for some trifling consideration is simply incidental to the business of disseminating news and information. It is also claimed that such sales are not sales of tangible personal property within the meaning of the act; that what is in fact sold, if there is a sale, is not the paper and ink, but intelligence, information, and that these are intangibles.

The position of the defendant is that since the paper that is sold is something that can be perceived by the citizens—may be seen, felt, and has body—it is tangible property, and therefore the sale of it comes within the meaning of the act.

It is hard to escape the conclusion that the publishing and selling of newspapers is primarily a service occupation; that the thing that is being sold is the gathered-up intangible material for the enlightenment or entertainment of those who purchase the newspaper and that the paper upon which the material is printed is simply the vehicle or the instrument by which the information is passed on from the publisher who gathered it to the person who seeks it.

A newspaper is a sheet of paper upon which is imprinted in intelligent form the news of the day, the utterances and offers of the advertisers, the drawings of cartoonists, the reproduction of photographs, the interpretation by way of editorial comment of the problems of the day. If some medium other than paper were to be found for the communication of that information to the readers, they would accept it and probably pay the same price for it. It is almost fantastic to argue that the reader purchases his paper simply because he can use it for wrapping purposes. The purchaser is not intended in the nature of the medium used for the conveyance of the information. What he seeks is the news or the advertisements, or whatever else of interest to him is impressed upon the paper as a visual representation of an idea or a subject matter. The paper appearing on the stand at 10 o'clock in the morning will be worthless as a commodity at 11 o'clock if at that hour another edition were to appear having less paper and less ink but containing later news. After the paper is purchased and read, it is, in the terms of one of the cases cited, consigned to oblivion, and the purchaser is ready to buy another paper containing later news.

The public is anxious for information. It is interested in foreign news, domestic news; it is anxious to see an interpretation of the complicated forces which operate about us. It is anxious to ascertain where it can purchase required articles at the most reasonable prices and from the most reliable merchant. It is constantly seeking intelligence upon a variety of matters, intelligence upon the behavior of public officials, upon the action of its government—and the necessity has arisen, not suddenly but developed through the ages, for the maintenance of an institution devoted to the gathering of all that information and of presenting it to those who are interested, in an intelligent form, and in the most understandable language. That institution has so progressed that the information is available to everyone who has ability to read or to hear the paper read and at a price relatively insignificant when compared with the cost of gathering that information, and preparing it for distribution.

This institution is able to survive, not by what it profits from the sales price of the newspaper, but because by reaching a large portion of the public, it has become a valuable vehicle for the distribution of information, and those who desire or stand in need of appealing to the public use the newspapers as an advertising medium and pay for the space used.

One can become very eloquent in attempting to describe the uses to which newspapers are put in this country. They render service of such paramount value to each community that it is not at all flattering to the public to classify this great and indispensable institution as a retail business engaged in selling tangible personal property for use and consumption. The newspapers not only educate the public or contemporary events by bringing reports of the happenings throughout the world upon the table of each reader, who may assimilate the information while having his breakfast, but it is the mirror which reflects public opinion, the universal strivings of mankind, conflicts between nations and within each nation or community. It does even more than reflect those opinions. By the selection of the news to be emphasized, by editorial comments, and by interpretations by its columnists it seeks to and often succeeds in influencing and shaping public opinion.

It is the community's watchful eye on the conduct of its officers; it evaluates their work, criticizes and exposes their shortcomings. In short, it is performing a variety of functions without which no democracy can survive—at any rate survive with any degree of intellectual participation in the affairs of government by the general citizenship.

To say that an institution performing such functions is nevertheless simply engaged in the business of selling tangible personal property at retail involves the deliberate disregard of the invaluable services the rendering of which is the primary purpose of those who are engaged in that business and which alone gives it life and guarantees its survival.

As a matter of fact, to say that the newspaper is a business which might be included under any such a general definition as is contained in the Retailer's Occupational Act is to ignore the history of nearly 400 years replete with struggles, and calculated to take the newspaper business out of the class of ordinary manufacturing or mercantile enterprises. It would mean that we ignore the fact that by our constitutions and laws we have set aside the publication of newspapers as a unique and distinct enterprise, with special guarantees of freedom which we consider of the essence of democratic living.

It is not a manufacturing enterprise devoted to profit making even though it may be a very profitable enterprise; it is not a mercantile establishment simply devoted to the purchase of a unit at one price and selling it at another. It is, as I have already indicated, an institution, unique, in a class by itself, established for the purpose of rendering those public services which I have already briefly described. In the days of illiteracy the printing of one copy, exposed either on the wall of some public place for those men who could read to peruse it, could and did serve the full purpose of disseminating news; but with the advance of literacy amongst the millions, they have become anxious to know what is happening. To meet the demand for knowledge, the incredible machinery has been developed which reproduces millions of copies of the record of the gathered news which is conveniently distributed amongst all who desire to peruse it at a cost not much greater than the mere cost of distribution.

If the legislature intended that such an enterprise be taxed, it would have specifically provided for it in the act. I would not be very complimentary to the legislature if I concluded that in passing the act as it did it did so either in ignorance of the nature and distinct character of the newspaper business, or, by deliberately ignoring the nature of it, intended by the mere use of the general term, "engaged in the retail business," or similar words to include this enterprise. It must be kept in mind that it is not a sales tax with which we are dealing. It is an occupation tax, and the statute is of the type that must be strictly construed so far as inclusion of enterprises is concerned. Even if the rule of strict construction were not to be applied—taking cognizance of the character of the enterprise here involved, the facts of which are admitted as pleaded in the complaint by the motion to strike—the court would still feel that under a liberal construction the words of the statute are not broad enough to include newspapers within its orbit.

There is yet an additional but more technical reason why I am forced to the conclusion that the enterprise here in question does not come within the definition of a retail merchant as contained in the act. You will recall that the definition is that the tax is assessed against all persons engaged in the business of selling tangible personal property for use of consumption and not for resale, and, as I have indicated in cases previously decided here, this statute is unique in this respect—it does not assess a tax upon the business or occupation of selling commodities; it is limited to those who are engaged in the occupation of selling commodities for specific purposes, namely, use or consumption.

Before a court can say that a prospective taxpayer comes within the act, it must in each case, in fact, in each sale, ascertain the purpose of the sale. In other words, it must go beyond the person taxed and inquire as to the use to which the purchaser of the commodity puts it—a rather anomalous situation, but we have to deal with it, and so in each case the question is always present, "Was this sale made for use or consumption?"

Now, of course, no one will argue for a moment that a newspaper is consumed by the reader. When he is through reading it, it remains unchanged; not a particle of it is lost; and "consumption," within the meaning of the act, contemplates an actual destruction of the thing. It has to disappear or, at least, vitally change its original form. It is even questionable whether there is a consumption if the commodity was used so that its original character is entirely destroyed, but the elements of which it is made up remain incorporated in some other commodity; but certainly where no particle of the commodity in question is changed or lost and the whole would be useful to another person for the very purpose to which it was originally adapted, no one can contend that there was a consumption or that the paper was purchased for consumption. Now, then, was there a use of the paper by the reader within the meaning of the act? Our courts have defined the word "use" as meaning a long-continued possession and employment of the thing to the purpose to which it was originally adapted, and not merely a temporary or casual use of it. Could the mere reading of a newspaper possibly come within that definition?

Defendant Counsel. I think so.

The Court. Long-continued possession and employment and not a mere temporary or casual use? I cannot possibly see how it could come within the definition.

The answer to it all is that it is not purchased for use or consumption. It is purchased simply for the purpose of gathering from it by the visual and auditory senses the intelligence contained therein. So far as the paper itself is concerned, that which the defendant claims is tangible, it is not purchased for use at all. That paper without the impressions which convey intelligence or ideas, none would pay anything for the paper. The nearest one can come to contending that a purchaser of a newspaper buys it for use is that he intends using it as wrapping paper. The Attorney General so argued. But this is rather too fantastic to require further discussion. Moreover, it may seriously be questioned whether the transaction called in common parlance the sale of a newspaper is a sale in the legal sense. An essential element in legal sales is the transfer title in the commodity sold without a residuum of control of its use remaining in the seller. Can the purchaser of the news make unrestricted use of it? Of course not. The Associated Press and other news-gathering agencies would go out of business if every purchaser of a newspaper could reprint its contents and distribute it. No title passes to the printed material which alone constitutes the consideration for the payment of the purchase price.

Now, what I have said about newspapers in the main applies to magazines. There is some difference, of course. Nevertheless, the publishing and distributing of magazines is as much a functional activity as is the sale of the newspapers. They contain stories, that is true; but that does not change their character. What is sold is the story. The purchaser may not use it as he desires; he may not reproduce it; he has brought only the intelligence of the story for his own enlightenment or entertainment.

Moreover, there are magazines which publish no stories at all, and which perform the mere function of analyzing the news, or giving information to the public on scientific discoveries or discussions, or descriptions of artistic creative activity. Magazines generally come within the same distinguishable enterprise which we in a democracy prize so highly, whose freedom is guaranteed by our constitutions and continuously safeguarded by our laws.

A different situation is presented by the sale of books, of course. Books are purchased for use. We put them on our shelves, we keep them for reference, and in fact for the decoration of our homes. The sale of books may come within the term "use" as contemplated by the statutes. Occasionally a magazine may come within that term, but on the facts alleged in the complaint which are admitted and the court's general knowledge of the character of those publications (of which we take judicial notice), I must hold in this case that the distribution of magazines does not constitute a sale at retail within the meaning of the act.

The motion to dismiss accordingly will be overruled as to each complaint.

Defendant Counsel. And the intervening complaint. There are two classes, sales of publishers and also sales of distributors. So far as the rules applying to both of those——

The COURT. I have indicated that in the distribution lies the great value of the service rendered to the public. A newspaper may be printed and remain on the publisher's desk and its value could be zero to the public. It does not make any difference whether it is distributed by the publisher himself or by someone who retains part of the purchase money as his earnings for doing so, the sale, if it is a sale at all within the meaning of the act, is not of tangible personal property, nor for use or consumption, and therefore the reasoning of the court applies to the newspaper boy and distributor equally as it does to the publisher who might himself distribute it.

The practice of self-organization and collective bargaining to resolve labor disputes has been established and highly developed between newsboys, carriers, and the publishers for more than 60 years.

It was only since many newsboy and carrier groups become affiliated with the International Printing Pressmen and Assistants' Union of North America that interruptions in collective bargaining began. This was not because the underlying economic facts had changed or because these workers no longer stood in a service relationship to the publishers, or because the collective bargaining process was thereafter deemed inappropriate to resolve disputes between the publishers on the one hand and newsboys or carriers on the other, but because of the decision and order of the Labor Board in the Hearst cases, and of the special interest shown by the International Printing Pressmen and Assistants' Union of North America in guaranteeing to corner men and carriers the protection of the National Labor Relations Act.

The records abound with instances of the subject matter of the bargaining over a period of decades and as to which there has either been bargaining and agreements reached between publishers and newsboys or carriers, or which are appropriatet subjects for bargaining. The picture presented is clearly within the pattern of basic service relationships inherent in industrial-union disputes, traditionally adjusted by the industrial-union technique. Among these matters are:

Increased earning for service rendered in distributing newspapers.

Pay for extra service in carrying heavy papers, necessitating extra trips and longer hours.

Pay to carriers for verifying new serves.

Credit for losses and establishing of fair method of compensating newsboys or carriers for such losses.

Pay for serving bad accounts assigned to carriers by publishers in addition to credit merely for the money due the publishers.

Credit for shortages in papers.

Machinery for arbitration.

Job security and seniority rights (no cut-off, complete or partial, for trivial reasons).

Protection of earnings by publishers eliminating bootjackers from routes and corners.

Fixing of geographical areas of routes and corners, and bilateral settlement of such disputes.

Protection of carriers against loss on new serves supplied by publishers.

Protection of newsboys on returns.

Transportation allowances.

Cash differential to night corner men.

Amount of commissions for soliciting subscriptions on (*a*) straight serves, (*b*) premium serves, (*c*) insurance serves, (*d*) magazine serves, (*e*) vacation or mail subscriptions.

Amount of commissions on collection for the publishers on (*a*) insurance serves, (*b*) premium serves, (*c*) magazine serves.

Elimination of, or payment for, "stuffing" of papers by carriers or newsboys.

Appropriate payment for extra service by carriers in delivering circulars or posters on routes.

Permission to make service or delivery charges to long-distance subscribers to companies' newspapers.

Elimination or reduction of deposits, with responsibility of union for payment of money due publishers from newsboys or carriers.

Under these circumstances it is difficult to see how the matters for discussion could fairly or practically be settled between newspaper publishers and newsboys of carriers, other than through collective-bargaining process.

Newsboys and carriers work under varying terms and conditions. These venders, misnamed boys, are generally mature men, dependent upon the proceeds of their serves for their sustenance, and frequently supporters of families. Working thus as news vendors on a regular basis, often for a number of years, they form a stable group with relatively little turn-over.

Over-all circulation and distribution of papers are under the general supervision of circulation managers. Most cities are divided into geographic districts under direct and close supervision of district managers or street bosses. His function, in the mechanics of distribution, is to supply the newsboys in his district with papers, and in the case of carriers, adjust complaints of subscribers, increase or decrease the number of serves, and advise them as to the performance of their duties.

Newsboy and carrier compensation consists in the difference between the prices at which they serve the papers and the prices they pay for them. Both of these prices are fixed by the publisher.

Not only are the earnings per paper thus effectively fixed by the publisher, but substantial control of newsboys' and carriers' total take-home can be effected through their ability to designate their serve areas and their power to determine the number of papers allocated to each. While, as a practical matter, this power is not exercised fully, the newsboys' and carriers' right to decide how many papers they will take is also not absolute. Very often the number of papers they must take is determined unilaterally by the publisher's district men.

In addition to effectively fixing the compensation the publishers, through their circulation departments, in a variety of ways prescribe, if not the minutiae of daily activities of these workers, at least the broad terms and conditions of work. This is accomplished largely through the supervisory efforts of the publisher's district men or street bosses, who serve as the nexus between the publishers and the newsboys and carriers.

Hours of work on the spots are determined not simply by the impersonal pressures of the market, but to a real extent by explicit instructions from the district managers. Adherence to the prescribed hours is observed closely by the district managers or other supervisory agents of the publishers. Sanctions, varying in severity from reprimand to "cut-off" (dismissal) are visited on the tardy and the delinquent. By similar supervisory controls minimum standards of diligence and good conduct while at work are sought to be enforced. However wide may be the latitude for individual initiative beyond those standards, district managers' instructions in what the publishers apparently regard as helpful sales technique are expected to be followed. Such varied items as the manner of displaying the paper, of emphasizing current features and headlines, and of placing advertising placards, or the advantages of soliciting customers at homes or in the traffic lanes are among the subject of this instruction. Moreover, newsboys and carriers are furnished with sales equipment, such as racks, boxes, and change aprons, and advertising placards by the publishers. In this pattern of employment the carriers and the newsboys are an integral part of the publishers' distribution system and circulation organization. And the record discloses that the newsboys and carriers feel they are employees of the papers and their supervisory employees.

The principal question is whether the newsboys and carriers are "employees." Because Congress did not explicitly define the term, the publishers say its meaning must be determined by reference to common-law standards. In their view "common-law standards" are those the courts have applied in distinguishing between "employees" and "independent contractors" when working out various problems unrelated to the National Labor Relations Act's purposes and provisions.

The argument assumes that there is some simple, uniform, and easily applicable test which the courts have used, in dealing with such problems, to determine whether persons doing work for others fall in one class or the other. Unfortunately this is not true. Only by a long and tortuous history was the simple formulation worked out which has been stated most frequently as "the test" for deciding whether one who hires another is responsible in tort for his wrongdoing. But this formula has been by no means exclusively controlling in the solution of other problems. And its simplicity has been illusory because it is more largely simplicity of formulation than of application. Few problems in the law have given greater variety of application and conflict in results than the cases arising in the borderland between what is clearly an employer-employee relationship and what is clearly one of independent, entrepreneurial dealing. This is true within the limited field of determining vicarious liability in tort. It becomes more so when the field is expanded to include all of the possible applications of the distinction.

It is hardly necessary to stress particular instances of these variations or to emphasize that they have arisen principally, first, in the struggle of the courts to work out common-law liabilities where the legislature has given no guides for judgment, more recently also under statutes which have posed the same problem for solution in the light of the enactment's particular terms and purposes. It is enough to point out that, with reference to an identical problem, results may be contrary over a very considerable region of doubt in applying the distinction, depending upon the State or jurisdiction where the determination is made, and that within a single jurisdiction a person who for instance, is held to be an "independent contractor" for the purpose of imposing vicarious liability in tort may be an "employee" for the purposes of particular legislation, such as unemployment compensation. The assumed simplicity and uniformity, resulting from application of "common-law standards," does not exist.

Mere reference to these possible variations as characterizing the application of the National Labor Relations Act in the treatment of persons identically situated in the facts surrounding their employment and in the influences tending to disrupt it, would be enough to require pause before accepting a thesis which would introduce them into its administration. This would be true, even if the statute itself indicates less clearly than it should the intent they should not apply.

Two possible consequences could follow. One would be to refer the decision of who are employees to local State law. The alternative would be to make it turn on a sort of pervading general essence distilled from State law. Congress obviously does not intend the former result. It would introduce variations into the statute's operation as wide as the differences the 48 States and other local jurisdictions make in applying the distinction for wholly different purposes. Persons who might be "employees" in one State would be "independent contractors" in another. They would be within or without the statute's protection depending not on whether their situation falls factually within the ambit Congress has in mind, but upon the accidents of the location of their work and the attitude of the particular local jurisdiction in casting doubtful cases one way or the other. Persons working across State lines might fall in one class or the other, possibly both, depending on whether the Board and the courts would be required to give effect to the law of one State or of the adjoining one, or to that of each in relation to the portion of the work done within its borders.

Both the terms and the purposes of the statute, as well as the legislative history, show that Congress has in mind no such patchwork plan for securing freedom of employee's organization and of collective bargaining. The National Labor Relations Act is Federal legislation, administered by a national agency, intended to solve a national problem on a national scale. It is an act, therefore, in reference to which it is not only proper, but necessary for us to assume, "in the absence of a plain indication to the contrary, that Congress * * * is not making the application of the Federal act dependent on State law." Nothing in the statute's background, history, terms, or purposes should indicate its scope is to be limited by such varying local conceptions, either statutory or judicial, or that it is to be administered in accordance with whatever different standards the respective States may see fit to adopt for the disposition of unrelated, local problems. Consequently, no far as the meaning of "employee" in this statute is concerned, "the Federal law must prevail no matter what name is given to the interest or right by State law."

The term "employee" should include such workers as newsboys and carriers and must be answered primarily from the history, terms, and purposes of the legislation. The word "should not be treated by Congress as a word of art having a definite meaning * * *." Rather "it should take color from its surroundings * * * (in) the statute where it appears," and derives meaning from the context of that statute, which "must be read in the light of the mischief to be corrected and the end to be attained."

Congress, on the one hand, should not think solely of the immediate technical relation of employer and employee. It should have in mind at least some other persons than those standing in the proximate legal relation of employee to the particular employer involved in the labor dispute. It cannot be taken, however, that the purpose is to include all other persons who may perform service for another or is to ignore entirely legal classifications made for other purposes. Congress should have in mind a wider field than the narrow technical legal relation of "master and servant," as the common law had worked this out in all its variations, and at the same time a narrower one than the entire area of rendering service to others. The question comes down therefore to how much should be included of the intermediate region between what is clearly and unequivocally "employment," by any appropriate test, and what is as clearly entrepreneurial enterprise and not employment.

It will not do, for deciding this question as one of uniform national application, to import wholesale the traditional common-law conceptions or some distilled essence of their local variations as exclusively controlling limitations upon the scope of the statute's effectiveness. To do this would be merely to select some of the local, hairline variations for Nation-wide application and thus to reject others for coverage under the act. That result hardly would be consistent with the statute's broad terms and purposes.

Congress should not seek to solve the nationally harassing problems with which the statute deals by solutions only partially effective. It rather should seek to find a broad solution, one that would bring industrial peace by substituting, so far as its power could reach, the rights of workers to self-organization and collective bargaining for the industrial strife which prevails where these rights are not effectively established. Yet only partial solutions would be provided if large segments of workers about whose technical legal position such local differences exist should be wholly excluded from coverage by reason of such differences. Yet that result could not be avoided, if choice must be made among them and controlled by them in deciding who are "employees" within the act's meaning. Enmeshed in such distinctions, the administration of the statute soon might become encumbered by the same sort of technical legal refinement as has characterized the long evolution of the employee-independent contractor dichotomy in the courts for other purposes. The consequences would be ultimately to defeat, in part at least, the achievement of the statute's objectives. Congress no more intends to import this mass of technicality as a controlling "standard" for uniform national application than to refer decision of the question outright to the local law.

The act, as its first section should state, should be designed to avert the "substantial obstructions to the flow of commerce" which result from "strikes and other forms of industrial strife or unrest" by eliminating the causes of that unrest. It is premised on explicit findings that strikes and industrial strife themselves result in large measure from the refusal of employers to bargain collectively and the inability of individual workers to bargain successfully for improvements in their "wages, hours, or other working conditions" with employers who are "organized in the corporate or other forms of ownership association." Hence the avowed and interrelated purposes of the act are to encourage collective bargaining and to remedy the individual worker's inequality of bargaining power by "protecting the exercise * * * of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The mischief at which the act is aimed and the remedies it offers should not be confined exclusively to "employees" within the traditional legal distinctions separating them from "independent contractors." Myriad forms of service relationship, with infinite and subtle variations in the terms of employment, blanket the Nation's economy. Some are within this act, others beyond its coverage. Large numbers will fall clearly on one side or on the other, whatever test may be applied. But intermediate there will be many, the incidents of whose employment partake in part of the one group, in part of the other, in varying proportions of weight. And consequently the legal pendulum, for purposes of applying the statute, may swing one way or the other, depending upon the weight of this balance and its relation to the special purpose at hand.

Unless the common-law tests are to be imported and made exclusively controlling, without regard to the statute's purposes, it cannot be irrelevant that the particular workers in these cases are subject, as a matter of economic fact, to the evils the statute is designed to eradicate and that the remedies it affords are appropriate for preventing them or curing their harmful effects in the special situation. Interruption of commerce through strikes and unrest may stem as well from labor disputes between some who, for other purposes, are technically "independent contractors" and their employers as from disputes between persons who, for those purposes, are "employees" and their employers. Inequality of bargaining power in controversies over wages, hours, and working conditions may as well characterize the status of the one group, as of the other. The former, when acting alone, may be as "helpless in dealing with an employer," as "dependent * * * on his daily wage" and as "unable to leave the employ and to resist arbitrary and unfair treatment" as the latter. For each, "union * * * (may be) essential to give * * * opportunity to deal on equality with their employer." And for each, collective bargaining may be appropriate and effective for the "friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions." In short, when the particular situation of employment combines these characteristics, so that the economic facts of the relation make it more nearly one of employment than of independent business enterprise with respect to the ends sought to be accomplished by the legislation, those characteristics may outweigh technical legal classification for purposes unrelated to the statute's objectives and bring the relation within its protections.

To eliminate the causes of labor disputes and industrial strife, Congress should create a balance of forces in certain types of economic relationships. These do not embrace simply employment associations in which controversies could be limited to disputes over proper "physical conduct in the performance of the service." On the contrary, Congress should realize those economic relationships cannot be fitted neatly into the containers designated "employee" and "employer" which an earlier law had shaped for different purposes. Its reports on the bill should disclose clearly the understanding that "employers and employees not in proximate relationship may be drawn into common controversies by economic forces," and that the very disputes sought to be avoided might involve "employees (who) are at times brought into an economic relationship with employers who are not their employers." In this light, the broad language of the act's definitions, which in terms reject conventional limitations on such conceptions as "employee," "employer," and "labor dispute," should leave no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications. Carriers and newsboys work continuously and regularly, rely upon their earnings for the support of themselves and their families, and have their total wages influenced in large measure by the publishers who dictate their buying and selling prices, fix their markets, and control their supply of papers. Their hours of work and their efforts on the job are supervised and to some extent prescribed by the publishers or their agents. Much of their sales equipment and advertising materials is furnished by the publishers with the intention that it be used for the publisher's benefit. Stating that "the primary consideration in the determination of the applicability of he stautory definition is whether effectuation of the declared policy and purposes of the act comprehend securing to the individual the rights guaranteed and protection afforded by the act."

The common-law tests are irrelevant because when newsboys and carriers services are examined in the light of the purposes of the labor laws, newsboys and carriers are entitled to, and should be under, the protection of those laws.

Newsboys and carriers do not and cannot combine to hurt anyone. Their purpose in organizing their union is only to gain a little better terms for their services. They do not and cannot monopolize anything except the services they perform for the publishers, for they have nothing else to sell. All unions do exactly the same, seek better terms for the services their members perform for their employers. Without such concerted organization and action, they would be helpless and at the mercy of their employers, just exactly as newsboys and carriers are absolutely helpless and at the mercy of the publishers, especially now since the Taft-Hartley Act deliberately legislated these workers out of contractual relationships that have existed for over 60 years.

STATEMENT BY BENJAMIN C. MARSH, SECRETARY, PEOPLE'S LOBBY, INC., WASHINGTON, D. C.

The conception that labor-management relations are confined to which has priority to grab for the consumer's dollar, belongs to the unlamented horse and buggy days.

When the Wagner labor law was enacted, both membership and power of labor unions were relatively small.

The monograph, Collective Bargaining, published in January 1949 by the Public Affairs Institute of Washington, states:

"Over 14,000,000 wage earners belong to unions at the present time in the United States. While this is a smaller proportion of our labor force than organized labor represents in England and Sweden, numerically it constitutes the largest free trade-union membership in world history.

"Other statistics provide a measure of the extent to which this organization of labor has spread throughout the country.

"There are approximately 197 national and international unions with an estimated 60,000 to 70,000 locals. In addtion, there are 795 city centrals and 50 State federations of labor maintained by the AFL, as well as 243 city, county, and district councils maintained by the CIO.

"Over two-thirds of the workers employed in manufacturing are covered by collective contracts."

The annual income of labor unions from dues and assessments is estimated at about $500,000,000, of which only a small part is paid in death and sickness benefits.

Since the Wagner labor law was enacted, not only has there been this enormous increase in the number and power of organized labor, but Government has accepted responsibility for maintaining the well-being of all citizens—although it has not yet met that responsibility—from the womb to the tomb.

Among the implications of that acceptance, is the necessity for a new concept of the role of Government—representing all Americans—with respect to the division of the fruits of production, that is income, between owners, workers, consumers and Government, as tax-collector.

Forty years or even 25 years ago, it would not have seemed conceivable that America would have even the present coverage for unemployment benefits, guarantee parity prices for about two-thirds of the value of farm production, would seek billions from the Federal Treasury, to provide help for small business, sometimes as efficient and nearly always as aquisitive as big business, and guarantee big business against commercial losses on foreign transaction, and encourage big business to profiteer, by ending price controls and rationing, and by fostering delayed payments and installment buying, by liberal credit for consumers.

Two facts in the current economic scene are of great importance: (1) We now have a form of controlled capitalism, the controls being for the benefit of capitalists, not of consumers, domestic or foreign; (2) because existing controls of capitalism are for capitalists, not consumers, our economy today is in its most parlous state since the crash of 1929, and only the $15,000,000,000 armament program of the cold war, keeps our economy from a tail spin, while, of course, the longer these cold war expenditures continue, the more probably a hot war.

Under these conditions, American labor's historic role of trying to get a larger cut of the capitalist swag as wages, as its major objective, is clearly out of the window.

A marked exception to this policy, is that of the United Automobile Workers of America to adjust wage rates to the cost of living index.

Government cannot pay unemployment benefits for any length of time or to any large number of people, without controlling location of factories, mines, distributive centers, and so forth, and having something to say about wage rates and where people shall work.

The lush luxury millions of wage earners had during the recent war, due to a judicious distribution of fool's gold, cannot be taken as a permanent status.

No nation in the world is going to rescue America from an economic pit, if we fall into one.

United States News and World Report Newsgram, February 18, 1949 says:

"Farming by 1950, will become a tightly regulated industry; Government by that time, will be up to its neck in ownership of commodities, if weather is normal this year, and will have to do something to control production."

It is equally obvious that by 1950, Government, now flirting with disaster by its cold-war armament program, will have to direct all industrial production to turn this country now rushing to war, to an economy of abundance, for peace.

On March 1 this year by a vote of 10 out of 14 members, the congressional joint committee on the President's Economic Report stated:

"The Government, which is the only instrumentality that can balance the needs of agriculture, industry, and labor, cannot afford to be without a plan.

"Industry plans for the years ahead, and counts among its executives some of the most efficient planners we have. Labor and agriculture likewise plan for the future, but none of these plans has any assurance of successful accomplishment unless they are geared one with another and it is only the Government, as the representatives of all groups, all classes, all callings, that can provide the framework within which each separate group and class and calling can operate.

"Curiously enough, it is only in the economic field that the objection to planning is raised."

Two members of the committee, Senator Ralph E. Flanders, of Vermont, and Representative Christian A. Herter, of Massachusetts, said "we find much on the report with which we can agree," but asked that voluntary allocations of scarce materials be tried longer, and that reduction of expenditures, instead of tax increases "should be more strongly recommended."

Senator Taft, of Ohio, and Congressman Rich, of Pennsylvania, opposed the report.

Of course, real planning involves much public ownership.

Organized labor will have to stop making a whipping boy of the Communists, its top leadership will have to stop trying to get the same salaries and expense accounts as the captains of industry they denounce, and come to an agreement to increase production, and work vigorously to reduce cost of production and all living costs.

To date, organized labor has exerted its political power chiefly to get more economic power, so that by increasing their money income members of labor unions could buy temporary immunity from results of policies, which most labor, supported, or condoned.

The Taft-Hartley law should be amended, and the right of labor papers to oppose or endorse political candidates restored.

The requirement about the Communist affidavit should be repealed unless Catholics also have to report that fact.

It is an open question whether a union should be permitted to get the same wage rate throughout the Nation, because costs of living vary so much.

State and local governments have responsibility for high living costs, as well as the Federal Government, while with the large number of local and State labor organizations, cited earlier, labor should be able to get taxes on buildings transferred to land values, and end profiteering building codes to reduce costs of homes, and rents, and also foster municipal and cooperative markets to help bring down food costs.

A uniform wage rate for a single person, and for a wage earner with several small children to support, seems inequitable.

Competing or duplicating pension systems are both expensive and confusing, and since the Government must assume final responsibility, company plans should not be permitted, as a substitute.

Labor should be compelled to make its accounts public, as many unions do, even if it doesn't have to report expenditures over $10 quarterly, to Congress, as lobbyists have to do.

The Bureau of the Census estimates that in 1950 there will be 11,298,000 persons 65 years and over in continental United States; in 1955, 12,911,000; and in 1960, 14,644,000.

The Federal Security Agency reports that in October 1948 there were 2,469,000 recipients of old-age assistance and forecasts the average case load for the next fiscal year as about 2,550,000 recipients. Of course a large proportion of the aged and of the indigent aged have not been members of organized labor but are as fully entitled to the concern and protection of Government.

Organized labor has its rights but also its responsibilities. It cannot win, or retain, the support of the American people unless it adopts a program for the common good instead of so largely concerning itself with obtaining special opportunities for dues-paying members.

Most Americans need to think of themselves more as citizens not as members of organizations to foster raids on the Federal Treasury or to obtain some special privilege through Government action.

Statement by Women's International League for Peace and Freedom, United States Section, on Labor-Management Relations Legislation

The Women's International League for Peace and Freedom, United States section, believes that a strong and responsible labor movement is necessary in a democracy. The men and women who depend for their livelihood on wages paid to them by an employer must have the right to form their own organizations and to bargain with their employer through representatives of their own choosing. Economic pressure from those who have control over jobs and therefore over people's livelihood must not be allowed to interfere with these basic rights. We also believe that the interest of the general public must be protected in grave industrial disputes.

The following are among the provisions of the present labor law which we disapprove:

(1) Its ban of the closed shop and its restrictions in regard to other union security clauses.

(2) Its featherbedding ban, which threatens guaranteed minimums and the like.

(3) Its absolute ban of jurisdictional strikes and secondary boycotts.

(4) Its provision for mandatory injunctions for an extensive list of newly specified unfair labor practices.

(5) Its ban on political contributions of unions.

(6) Its requirement that union officers file non-Communist affidavits.

(7) Its method of handling national emergency strikes by an 80-day injunction.

We recognize that in the complex and dynamic modern industrial world issues on which labor and management disagree will be recurrent. We conceive such issues to be the field of collective bargaining. We are not unconcerned with the public welfare which is almost always affected adversely when strikes occur. Nevertheless, we hold that the touchstone of labor legislation should be not whether it prevents strikes—an impossible goal in a free society—but whether it protects collective bargaining from obstructions, and at the same time strengthens the instruments of mediation and conciliation. We champion individual freedom, but believe that the best guaranty of such freedom to the industrial worker is the security of his union. The preservation of this freedom, by this means is, in our view, the first public service.

We further hold that our political freedoms are a precious heritage which should be guarded and preserved. We believe that attempts to suppress minority views are futile, dangerous, as well as unconstitutional. We deplore, therefore, the restraint of political rights under the Taft-Hartley Act, and particularly the provision that the right to bargain depends on foreswearing a particular political doctrine

H. R. 2032 has the support of organized labor and is not incompatible with the interests of fair-minded employers. We believe it is a more equitable approach to the isues in the field of labor-management relations than the present law. We believe that H. R. 2032 would safeguard collective bargaining and at the same time provide adequate safeguarding of the public interest. We therefore urge the passage of this legislation.

Statement of C. C. Dickinson, Chairman, Committee on Industrial Relations, West Virginia Chamber of Commerce, Relative to Amendment of the Labor-Management Relations Act

Under date of March 4, 1949, we telegraphed Chairman Lesinski, requesting an opportunity to be heard on the question of repeal of the Taft-Hartley Labor Relations Act and in relation also to amendment generally of the Labor-Management Relations Act of 1947.

Under date of March 14, Chairman Lesinski replied, describing the difficulties being experienced by the subcommittee in its efforts to hear all those desiring to appear and suggesting that instead of appearing, the West Virginia Chamber of Commerce file a statement which would be placed in the printed record. Not wishing to burden the record, our proposed statement has been very much condensed and is as follows:

(1) The closed shop should remain outlawed. If any form of union shop is permitted, employees should be protected against arbitrary control by unions.

(2) Bona fide supervisory employees should as now, be entirely excluded from the collective bargaining field, the reasons for such exclusion being clear to all students of the problem. Management must be free to manage according to its best judgment.

(3) The public should be protected against concerted activities that have for their purpose violence, secondary boycotts, or any other activity that endangers the public health, safety or welfare.

(4) In rewriting the labor-management law, consideration should be given to the imposition of restraints upon the monopolistic practices of unions, conspicuously illustrated by current procedures of the United Mine Workers of America. Such practices can only be restrained by making labor unions and their leaders subject to the same antitrust laws which govern business and in-

dividuals engaged in business. It would seem to be self-evident that powerful labor organizations should have equality with other organizations and citizens under such laws, such equality to include equal responsibilities as well as equal rights.

We regret that the busy schedule of your subcommittee has prevented Chairman Lesinski from granting our request for a personal appearance, and thank you for such consideration as you may give the above statement.

Statement by New York Board of Mediation Relative to New Federal Labor Law

NOTICE TO STATE AGENCIES OF EXISTENCE OF DISPUTE

Section 8 (d) of National Labor Relations Act, as amended by the Taft-Hartley law, provides that no party shall terminate or modify a contract unless it serves a 60-day notice on the other party and, among other requirements, "notifies the Federal Mediation and Conciliation Service within 30 days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time. * * *

Section 108 of the administration bill provides for notification of contract termination or modification to the United States Conciliation Service. However, no provision is made for notification to an active State mediation agency.

We urge that if notice of a contract termination or modification to a Federal conciliation agency is required by the new legsiation, then simultaneous notice to an active state mediation agency should also be required for the following reasons:

(*a*) State mediation agencies are performing an important and essential part of the dispute settlement work in many of the largest industrial States:

In 1947 State mediation agencies handled 9,025 mediation cases whereas the Federal Service handled 11,338. With respect to arbitration cases, the State agencies handled 1,939, the Federal Service only 686. State agencies intervened in 1,184 strikes and the Federal Service in 2,113.

(*b*) The notices to States have enabled these agencies to increase their ability to handle and settle disputes within their jurisdiction.

The case load of the New York State Board increased during the last 3 years as follows: 1946, 643; 1947, 1,181; 1948, 1,522. In addition, the New York State Board handled 1,500 arbitration cases in 1948.

(*c*) Mediation is a voluntary, not a law-enforcing, process. The jurisdiction of State agencies, meaning the area in which their voluntary services are offered, involves a substantial number of businesses which are engaged in interstate commerce. State agencies, through continued receipt of dispute notices, can continue to offer their services to employers and unions well before the termination date has been reached.

We suggest that if the notice requirement of the administration bill is retained, it be amended to read:

"It shall be an unfair labor practice for an employer or a labor organization to terminate or modify a collective-bargaining contract covering employees in an industry affecting commerce, unless the party desiring such termination or modification notifies the United States Conciliation Service, *and simultaneously notifies any active State or Territorial agency established to mediate and conciliate disputes within the State or Territory where that dispute occurred*, of the proposed termination or modification 30 days prior to the expiration date of the contract, or 30 days prior to the time it is proposed to make such termination or modification.

DEFINING AREA WITHIN WHICH FEDERAL SERVICE SHOULD NOT OFFER FACILITIES

The Taft-Hartley law (sec. 203 (b)) provides: "The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties."

The administration bill (sec. 202 (a)) carries no such stipulation, but simply states: "The Director is authorized to establish suitable procedures for cooperation with State and local mediation agencies and to enter into agreements with such State and local mediation agencies relating to the mediation of labor disputes whose effects are predominately local in character."

We urge that this section of the administration bill be amended to read:

"The Director is authorized to establish suitable procedures for cooperation with State and local mediation agencies and to enter into agreements with such State and local mediation agencies. *The Director shall avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties.*"

We believe this amendment should be adopted in the interest of preserving cooperative arrangements and agreements which have already been established between the State and Federal services and which are working satisfactorily to both agencies and to the parties concerned.

For instance, the Director of the Federal Mediation and Conciliation Service has stated in his first annual report:

"As this report is written both agencies are well pleased with its operations. The New York agreement represents a great stride forward in State-Federal relations, and the Service will earnestly strive to achieve, in those few States where equally satisfactory cooperative agreements have not yet been worked out, the same relations of mutual confidence, respect, and cooperation which exist in New York."

A BRIEF IN SUPPORT OF CERTAIN PROVISIONS ESSENTIAL TO A SOUND LABOR LAW, BY BENJAMIN WERNE, ADJUNCT PROFESSOR OF INDUSTRIAL RELATIONS, GRADUATE SCHOOL OF BUSINESS ADMINISTRATION, NEW YORK UNIVERSITY; MEMBER OF THE NEW YORK BAR

The purpose of this brief is to urge the continuance of certain provisions of the present national labor law because they define the responsibilities of unions as well as of management, equalize those responsibilities, and provide for adequate Government authority to protect the national health and safety from labor disputes which threaten them.

If unions are capable of abuse, as the record shows they are, appropriate measures should be available to remedy the abuses. Unions have achieved their present power through the aid of the Wagner Act. Their exercise of that power should be subject to law when it exceeds or threatens to exceed permissible limits.

The purpose of this brief is, also, to attempt to bring into focus situations which, in much of the present discussion of labor policy, are veiled in vagueness and uncertainty.

Typical of this vagueness are the assertions made regarding the President's power to act in the case of strikes which affect the national welfare. That "no President would permit the economy of the country to come to its knees" is an assertion without substance. It does not establish the right of the President to deal effectively with a situation under the Federal Constitution and statutes. It is at best a hope and at worst an evasion. And as such, it gives a false sense of security against the menace of labor disputes of such scope as to threaten the Nation.

This brief is intended to prove that the limited experience with the present law demonstrates the soundness of certain of its provisions, and to answer those who have characterized this legislation as a slave-labor law.

SUMMARY OF ARGUMENT

1. *Unions and their agents should be responsible for their unfair labor practices.*—The Wagner Act recognized only unfair labor practices by management.

The present law holds also unions and their agents responsible for their unfair labor practices.

The President's bill eliminates this responsibility of labor unions and reverts to the Wagner Act except as to strikes and secondary boycotts in jurisdictional disputes, or to compel disregard of a Board certification, of an order to bargain, or of a recognized union.

Provisions of the present National Labor Relations Act, making unions responsive for unfair labor practices, have been denounced as a "slave labor" law.

However, the record shows that as a result of the impact of court decisions and public opinion, techniques for checking abuses committed in the course of labor disputes were developed under the Wagner Act.

Strikers who were discharged claimed before the Labor Board that their employers thereby violated the Wagner Act and that they should be reinstated to their jobs. If the Board found that the strikers had committed any of a variety of wrongful actions, they lost their claims to reinstatement.

No cry of labor enslavement was raised. No charge was made that the rights of self-organization or collective bargaining were being destroyed.

Many of these cases reasonably suggest that the unions, too, were responsible for the wrongful conduct of the strikers. The unions, however, were shielded from responsibility because, under the Wagner Act, the Board could proceed only against employers for their unfair labor practices.

This method to deter wrongful contract is plainly insufficient. The wrongdoing strikers escaped responsibility if they did not file unfair labor practice charges against their employer. Even if they did file such charges, no remedy was available to assure that the wrongful acts would not recur. And, in no event, could unions be held responsible even if they instigated or participated in the wrongful conduct because unfair labor practice charges could not be filed against them.

The present law places responsibility where it justly should rest—upon the unions themselves.

The responsibility of unions for unfair labor practices established under present law imposes no enslaving burdens. It levies no fines, penalties, or forfeitures. Its purpose is to provide for relief from unfair practices and prevent their recurrence rather than to penalize the offenders.

These provisions do not in any sense make for labor slavery.

2. *The tyranny of the closed shop should not be revived.*—Under the Wagner Act the closed shop was encouraged and the right to remain unaffiliated with a union was discouraged.

The present law, in barring the closed shop, recognizes and sanctions the right of any employee to join a union, and equally recognizes his right not to be coerced into union affiliation except in the event of a duly certified union shop.

The President's bill eliminates the ban on the closed shop and has the effect of restoring it and all the evils which must follow upon such restrictions against the right to work.

The present statute outlaws the closed shop. The union shop is permissible if the requirements of the statute are satisfied. When the union shop is authorized, employees may not be subject to discriminatory treatment by union organizers in obtaining union membership. They are entitled to membership upon payment of the regular initiation fees and dues. Excessive fees are barred. Discharges under a union shop clause can occur only for nonpayment of initiation fees and periodic dues.

The unions claim that an unregulated closed shop is essential to their existence.

Union leaders fail to cite a single instance of the death of a labor organization because of the present ban against the closed shop.

Unions have achieved growth more by reason of the effective exercise of their function and authority as collective-bargaining representatives which has been enforced and broadened by law, rather than by reason of the monopoly of the closed shop.

As firm a supporter of labor as the late Mr. Justice Brandeis regarded the closed shop as "the exchange of the tyranny of the employer for the tyranny of the employees."

A return to absolute union control over hiring is unwarranted particularly at a time of growing union political activity. Being able to attain assurance of financial payments by all employees in the bargaining unit in support of its functions through the present union-shop provision, the union should depend on its effectiveness as collective bargaining representative rather than on its economic power over the employees. The closed shop has been used to interfere with political freedom, to aid racial discrimination, to suppress fair criticism, to punish for testifying and taking court action against the union and to penalize employees for activities on behalf of a rival union prior to the effective date of the closed shop and for activity on behalf of a rival union upon the expiration of a contract. This does constitute labor slavery.

3. *Secondary boycotts and jurisdictional strikes should be restrained.*—The Wagner Act afforded no relief from these weapons employed by some unions to compel compliance with their wishes.

The present law bans such coercive practices.

The President's bill forbids secondary boycotts only in the case of jurisdictional strikes, or in defiance of a Labor Board certification or a validly existing contract without provision for injunction.

The present law makes secondary boycotts and jurisdictional strikes unfair labor practices. The Labor Board has the right to obtain Federal court injunction against such conduct pending a final determination of the case by the Labor Board.

Secondary boycotts have caused serious economic injury to the public welfare and persons having no interest in the dispute. Small business particularly has been a victim of such conduct because of its inability to cope with powerful unions.

Speedy and effective Government intervention through the Labor Board's application to the Federal courts for an injunction is essential to limit economic loss and prevent the spread of industrial warfare. While the statute creates a private right to recover money damages against the offending union, the loss in most instances is irreparable. Because injunctive relief cannot be invoked by private parties themselves, the remedy is not subject to abuse. The remedy of injunction under the present law is available only to the government.

The unions claim that the curb on secondary boycotts marks a return to Government by injunction.

What does the record of 18 months of such restriction actually show?

In the first 6 months of operation of the law, the Board filed nine petitions in Federal courts to enjoin secondary boycotts. For the 18-month period, approximately 18 such applications were made and in 4 of these cases, injunctions were denied.

Actually, the ban against secondary boycott is of limited effect on the union's right to engage in industrial warfare. Direct strikes against the immediate employer for recognition or economic reasons are not affected. To constitute a violation of existing law, the union must strike against the secondary employer or induce his employees to cease work. If the primary employer subcontracts his work to the latter, a strike against the subcontractor is not prohibited by the statute and both employers are regarded as allies in the principal dispute, and therefore legitimately subject to boycott.

The jurisdictional strike over assignment of work and the strike or boycott to force a disregard of the Labor Board's certificate of a bargaining representative cannot be justified. The President's labor Bill would ban such union action. An employer who yields to the union's pressure and defies a Board certification violates the law. Yet, compliance with the Labor Board's certification may be fatal to his business because of the economic pressure directed by a rival union.

There is no element of slave labor in prohibiting such union conduct.

4. *Unions, as well as management, should be obligated to bargain collectively in good faith.*—The Wagner Act made it mandatory that management bargain in good faith. Management refusal to do so resulted in a cease-and-desist order.

The present law also imposes the same obligation on unions—no more, no less.

The President's bill, by eliminating this requirement, reverts to the one-sidedness of the Wagner Act.

Collective bargaining contemplates that both parties shall meet and negotiate to the end that a meeting of minds shall be achieved. If either management or labor goes to the bargaining table with a mind "hermetically" sealed against agreement, no agreement can be reached.

If a union may submit demands on a "take it or leave it" basis, backed by a threat of strike action, the basic objective of the law is defied; since the law was designed to encourage collective bargaining as a substitute for strike action.

Once the labor agreement is entered into, the law today relieves the parties of the obligation to discuss modification during the contract term unless the agreement provides for such reconsideration. Both parties are thereby equally bound during the life of the agreement. In this manner stability in industrial relations, wages, hours, and terms of employment is secured. Manifestly, the parties are at liberty to modify their agreement by mutual consent.

The law further encourages recourse to the peaceful procedure of collective bargaining before either side may turn to industrial warfare. It provides 60 days' notice of intention to modify or terminate an expiring contract, and requires the parties to meet and negotiate for a new agreement during that time without strike or lock-out.

This is not a condition of slave labor.

5. *Management should retain the right to speak freely.*—Under the Wagner Act, while management nominally enjoyed its constitutional prerogative of free speech, the hazard of talking was exceedingly great. As a result, management was substantially silenced.

The present law protects the right of management and union to speak freely so long as there is no threat of reprisal or force and no promise of benefit.

The President's bill eliminates this protection.

There is no question that employees and unions enjoy the right to speak freely—a right guaranteed by the Wagner Act and a constitutional right of all Americans, mandatory under the Bill of Rights. The same right is now recognized for management, not by virtue of a Labor Board ruling or a court decision but by the express language of the statute.

The law must not be altered to permit the impairment of this right. If unions are to continue, as well they should, with the right to speak freely, it is imperative that any fair labor law must grant the same right to management.

Even labor spokesmen have conceded that adequate protection of management's right of free speech is essential. Judge Padway, one of the foremost lawyers representing labor, pointed out in the official organ of the American Federation of Labor that if labor unions and their members desire to retain the full benefits of freedom of speech, the same privileges must in nowise be denied management.

The Supreme Court has recognized that the right of free speech should be exercised by management with respect to union organization.

While it is true that during the latter days of the Wagner Act the Labor Board broadened the scope of employers' right to speak to employees on labor matters, it repeatedly restricted this constitutional right whenever in its judgment it saw fit so to do. The specific assurance granted management in the existing law should be retained. It should be made crystal clear that no administrative denial of a fundamental privilege will be permitted so long as the privilege is not abused.

This is not a condition of slave labor.

6. *The ranks of management should not be divided by compelling bargaining with supervisory employees.*—The Wagner Act compelled management to bargain collectively with supervisors.

The present law, recognizing supervisors as part of management, does not obligate management to bargain collectively with them unless it wishes to do so.

The President's bill would restore supervisors' right to compel collective bargaining.

Foremen and other supervisory employees are the "arms and legs" of management and its direct contact with employees in the execution of labor policies and the administration of the labor contract. They must be consulted in order to prepare properly for collective-bargaining negotiations with the union. Complete loyalty to management is an essential ingredient of their jobs.

Management is responsible for the illegal antiunion conduct of supervisors. Even when they have violated instructions not to engage in such conduct, management has been held liable. This responsibility has been imposed on management when employees may reasonably conclude that the conduct of its supervisors represents the attitude of management.

Mandatory collective bargaining with supervisory employees disturbs the traditional balance of power in the bargaining process. Experience under the Wagner Act shows that, just as soon as supervisory employees were granted bargaining rights, unions representing rank-and-file employees organized the supervisors in affiliated unions. Thus, the unions representing the rank-and-file employees were in a position to exert pressure upon management's representative and place in jeopardy the trust and loyalty which constitute an integral part of the supervisory job.

The self-interest of supervisory employees, who attain a place in management on the basis of complete loyalty, must be subordinated to the paramount interest of establishing confidence and fair play in the collective-bargaining process between management and unions representing the rank-and-file employees.

7. *Management should retain the right to petition for elections; employees should retain the right to terminate a union's authority.*—The Wagner Act made no such provisions. The Labor Board permitted employer petitions only when two or more unions claiming to represent the same employees demanded bargaining rights of the employer. The Board refused to entertain petitions by employees to revoke the authority of a bargaining representative.

The present law authorizes an employer to file a petition for election, and employees may petition for revocation of authority of an existing bargaining representative.

The President's bill reverts to the situation under the Wagner Act.

The present law permits an employer to file a petition for certification of bargaining representative when he has been presented with a claim for recognition by a union. Union representatives claim that an unscrupulous employer can, by this provision, compel an election before the union is ready for it.

This claim overlooks the fact that an employer cannot file a petition until the union has served him with a demand for bargaining rights. By withholding the demand until it is ready for an election, the union avoids the danger of a premature election.

The existing statute also provides for the decertification of a recognized or certified union upon the petition of employees. This procedure, whereby employees may definitely terminate the authority of the bargaining representative, is said to be in conflict with the policy of encouraging collective bargaining. The essence of free collective bargaining, however, is freedom of choice to designate bargaining representatives on the part of employees.

Under the Wagner Act, the employees had no means for terminating the authority of a bargaining representative unless a petition for certification was filed by another union. The Labor Board ruled that it had no power to entertain decertification petitions and could not conduct an election for that purpose. As a result employees, who desired to terminate their bargaining representative, were without relief unless they had selected another union to act in their behalf. This "slave" labor provision was cured by the present law.

If the employees failed to designate a new bargaining representative and the labor contract was renewed pursuant to its provision or by agreement, they were saddled with the rejected representative for the period of the new contract because that contract prevented a newly designated representative from being certified by the Board. In effect, then, an unwanted union remained as bargaining representative and the employee's freedom of choice was ignored. Emancipation of slave labor was here accomplished under the present law.

8. *Unions, as well as management, should be liable for breach of contract.*—The Wagner Act made no provision for liability in the case of a breach of contract by a union.

Under the present law, unions which have entered into labor contracts may be sued for breach thereof. The union membership, however, is shielded from any personal liability for damages for breach of the contract.

The President's bill, by its repeal of the present law, reverts to a one-sided standard.

The present law provides that a union may be sued as an entity for its violations of a labor contract. This provision recognizes the unreality of the laws of many States, which make it difficult effectively to sue or to recover a judgment against a labor union because most of the unions are unincorporated associations and not subject to suit at common law.

The existing law, taking cognizance of court decisions that collective bargaining, even under the Wagner Act, is not a unilateral undertaking binding only upon the employer, makes contracts binding upon both parties by giving them equal access to remedies for a breach by the other party.

The Labor Board has visited responsibility upon employees, who strike in violation of a no-strike clause, by denying them the right to reinstatement if the employer discharges them. The present law permits the union to be held responsible if it caused the violation of the contract.

9. *The President should have power to invoke restraints on strikes involving national welfare.*—The Wagner Act made no provision with respect to strikes affecting the national health and safety.

The present law recognizes the right of Government to intervene when strikes threaten the national health or safety. The President has the power to convene a fact-finding board and the courts by injunction may delay for 80 days a strike constituting a national emergency, upon application of the Attorney General, acting at the direction of the President. The 80-day injunction period is utilized to permit further study by the fact-finding board, publication of its report and holding of an election by the Labor Board among the employees as to whether they wish to accept the employer's last offer of settlement.

The President's bill provides only for the appointment of an "emergency board" and the publication of its findings and recommendations. No provision is made for the Government's right to obtain an injunction.

That some remedies must be available to protect the Nation from the danger of strikes affecting national health and safety is acknowledged even by the proponents of the President's bill.

There were no such provisions in the Wagner Act; there are no effective ones in the President's bill. The present law, on the other hand, specifically recognizes the Government's right to intervene in strikes of such broad effect and grave implications, and provides specific means for dealing with them. These means might be improved upon; they should not be eliminated.

In lieu of specifically granting the President power to invoke restraints, through the Attorney General, the President's bill would leave such restraints to some vague undefined implicit authority. To some, the power is apparently a constitutional grant (grant not defined or described); to some it is the power of public opinion; to some a metaphysical assumption that the President "could not" fail to find a means to halt such a strike.

In view of the strict limitations imposed upon the granting of injunctions in labor disputes by the Norris-La Guardia Act which would probably bar an injunction, unless an employer-employee relationship existed between the Government and the strikers, such uncertain and evasive authority should not be relied upon. The specific provisions of the present law should be retained.

10. *Welfare funds should be trust funds, jointly administered by management and union representatives.*—The Wagner Act did not provide any standards of conduct with respect to such welfare funds.

The present law requires that payments by employers to union representatives for insurance, pensions, and other specified employee benefits should be held as trust funds and be jointly administered by union and management representatives, subject to resolution of any deadlock by a neutral third party designated by them or by the Federal court.

The President's bill is silent on the subject, discards all safeguards for the proper use of the funds, and leaves the parties to industrial warfare if they cannot agree.

Accumulation of large amounts of money in union welfare funds, and the prospect of establishment of more such funds as a result of the widening of the area of mandatory collective bargaining to include employee insurance and pensions, create increasingly tempting possibilities of abuse of such funds.

To protect the intended beneficiaries of welfare funds, and to assure that administration of the accumulations shall not be perverted to seize and maintain union control over employees or to stifle democratic processes within unions, the present law requires that welfare funds (1) shall be trust funds, (2) shall be administered jointly by management and union representatives.

11. *Benefits of the act should be denied to Communist-dominated unions.*—The Wagner Act contained no provision directed at the elimination of Communist control of labor unions.

Under present law unions cannot file a petition for certification as collective-bargaining representatives, and cannot file unfair-labor-practice charges, unless the officials of the local union and its international affiliates have filed affidavits that they are not Communists.

The President's bill, by omitting any reference to communism, invites the return of Communists to dominant positions in national and local unions.

The present requirement of the non-Communist affidavit, while a move in the proper direction, is still markedly inadequate. The attitude of the Labor Board, in treating the filed affidavit as conclusive, permits evasion by the changing of the titles of Communist officers. Since the objectives of the regulation are beyond criticism, the requirements for compliance should be strengthened. Communist-dominated labor organizations should not be entitled to the benefit of the full force of Government aid.

ARGUMENT

1. *Unions and their agents should be responsible for their unfair labor practices.*—The present National Labor Relations Act defines certain unfair labor practices by unions and their agents and holds them responsible for the elimination of such conduct.[1] The unions are now responsible for violation of the labor contract and for damages caused by certain of their strikes and secondary boycotts.[2] A standard of conduct with respect to payments received by union officials from employers for the benefit of employees is established.[3]

These provisions have been denounced by union officials as destructive of the right of employees to self-organization, to join unions and to bargain collectively through representatives of their own choosing.[4]

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[1] Secs. 8 (b) and 10.

[2] Labor-Management Relations Act, secs. 301, 303.

[3] Labor-Management Relations Act, sec. 302.

[4] The President's new labor bill rejects these views in these respects: Secondary boycotts and strikes to compel employer disregard of a Board certification or a valid existing labor contract and over assignment of work (jurisdictional disputes) are unfair labor practices by unions.

The record shows, however, that a system of checks and balances on abuses by unions has not been destructive of industrial democracy. By reason of the pressure of court decisions and public opinion, an indirect and uncertain method for discouraging some union excesses was developed under the Wagner Act.

Long before the enactment of the present law, employees who sought the benefits of the Wagner Act themselves or through their unions by filing unfair labor practice charges against employers, were denied relief because they engaged in certain illegal conduct during the course of a labor dispute. Thus, sitdown strikers were subject to discharge and not entitled to reinstatement.[5] Strikers whose conduct amounted to violation of the laws against mutiny on board ship were not returned to their jobs.[6] Strikers who engaged in violence or threats thereof against persons and property were also held subject to discharge.[7] Employees who struck to compel an employer to violate the National Wage Stabilization Laws were denied reinstatement.[8] The reinstatement remedy was also withheld from employees who violated the no-strike provisions of the labor contract.[9] Employees who engaged in a strike to compel an employer to disregard the Board's certification of a union as bargaining representative were denied the protection of the Wagner Act and not reinstated.[10]

In some cases, denial of the benefits of the Wagner Act could be more directly applied to a wrongdoing union. Fraud and violence in obtaining membership could vitiate the union's majority status so that it could not obtain an order compelling an employer to bargain collectively with it.[11] Nationally affiliated unions that received from an employer, illegal aid and assistance in organizing, were denied the right to represent the employees unless and until they were certified by the Board.[12] Any labor contract obtained by such illegally assisted unions was declared void. Unions that received the assistance of supervisors in organizing employees could not petition for an election, and if successful at an election it was set aside, nor could they obtain an order of the Board compelling an employer to bargain collectively with them.[13]

Did these restraints enslave labor? Did they impair the right of employees to self-organization, to join unions and to bargain collectively through representatives of their own choosing?

If unions are capable of engaging in abuses, as experience shows they are, that fact should be faced forthrightly and appropriate remedies for such conduct should be available. The inadequacy of a system of correcting wrongful conduct by merely withholding remedies under the law is plain. It does not provide against recurrence of the abuse or permit the application of appropriate measure to remedy the wrong. Furthermore, the question can be raised only if the wrongdoers—the union employees or the union—file charges of unfair labor practices against the employer.

Many of the decisions withholding the benefits of the Wagner Act from wrongdoing union employees, reasonably suggest that the unions involved were in a measure equally responsible for the wrongful conduct. The suggestion is also apparent in cases where the wrongdoer was found to be the employer. For example, where the union causes an employer to discharge employees under a closed-shop contract because of their activity on behalf of a rival labor organization prior to the effective date of the closed shop contract, it participates in conduct which constitutes the unfair labor practices on the part of the employer.[14]

Another situation of joint wrongdoing occurs where an employer and a union, not representing a majority of the employees, collusively enter into a closed-shop contract, and the employer, upon request of the union, discharges employees because of their failure or refusal to join that union.[15] Both union an employer participate in conduct which constitutes coercion of employees in the free choice of bargaining representative, and in discriminatory discharge.

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[5] *NLRB* v. *Fansteel Metallurgical Corp.* (306 U. S. 240).

[6] *Southern Steamship Company* v. *NLRB* (316 U. S. 31).

[7] *International Nickel Co., Inc.* (77 N. L. R. B. No. 39) ; *NLRB* v. *Perfect Circle Company* (162 F. (2d) 566) ; *NLRB* v. *Fansteel Metallurgical Corp.* (306 U. S. 240, 252–261).

[8] *The American News Company, Inc.* (55 N. L. R. B. 1302). In this case, the Labor Board indicated that it would take cognizance only of conduct of an "aggravated character."

[9] *NLRB* v. *Sands Manufacturing Company* (306 U. S. 332) ; *Scullin Steel Company* (65 N. L. R. B. 1294) ; *Joseph Dyson & Sons, Inc.* (72 N. L. R. B. 445).

[10] *Thompson Products, Inc.* (72 N. L. R. B. 886).

[11] *NLRB* v. *Dadourian Exporting Co.* (138 F. (2d) 891) ; *Fisher Body Corp.* (7 N. L. R. B. 1083, 1092).

[12] *Louis F. Cassoff* (43 N. L. R. B. 1193, enforced 139 F. (2d) 397).

[13] *Toledo Stamping & Manufacturing Co.* (55 N. L. R. B. 865) ; *Robbins Tire & Rubber Co.* (72 N. L. R. B. 157) ; *Parkchester Machine Corp.* (72 N. L. R. B. 1410) ; *Wells, Inc.* (68 N. L. R. B. 545).

[14] See *Wallace Corp.* v. *N. L. R. B.* (323 U. S. 248).

Yet, in all these cases, the Wagner Act shielded the wrongdoing union from responsibility and prevented an investigation of the facts to determine whether the union involved was in any way responsible because under that law unfair labor practice charges could be filed, and the Board could proceed, against employers only.

By defining the conduct of unions which constitutes unfair labor practices and providing for appropriate remedies to deter them, the existing law permits responsibility for the abuses to be placed where the facts of each case show that it should justly rest.

The point is aptly illustrated by the recent decision of the Labor Board in the Sunset Line & Twine Company case.[16] There, strikers threatened nonstrikers with bodily harm; a greatly outnumbered group of nonstrikers were trailed for a considerable distance away from the plant by an inimical superior force of strikers thereby clearly conveying a threat of a bodily injury; the strikers barred ingress to the plant and threatened those who attempted to enter with physical violence. Under the Wagner Act the question of discouraging such conduct might arise in this fashion: The strikers or their union would first have to file charges with the Labor Board against the employer claiming that he discriminated against them because of their union activity. If such discrimination was found to have occurred, the Board would then consider whether the illegal conduct of the strikers constituted violence of an aggravated character[17] so as to require denying the strikers reinstatement or other relief appropriate to remedy discrimination by an employer. The question of union participation in the unlawful conduct of the strikers would not be considered at all, and in no event could responsibility be placed upon the union. Only the strikers could be required to bear the consequences of their illegal conduct by withholding from them the remedies of the statute. However, under the present law, the Labor Board can examine into the question of union responsibility for the illegal conduct because unfair labor practice charges can be filed against the union. In the case cited, the Labor Board found that the union's business agent planned and directed the strike (which was lawful) but instigated and participated in the illegal conduct of the strikers. Thus, responsibility was placed upon the union and its agent and an appropriate order issued against them.

In another recent case, the Labor Board also examined a union's responsibility for illegal conduct of strikers and there found that the union was not responsible for such activities of the strikers.[18]

The unfair-labor practices by unions and their agents are defined in section 8 (b) of the present act. The use of restraint and coercion by unions to compel employees to join their ranks and activities is proscribed. This restriction was enacted to eliminate "physical violence and intimidation by unions or their representatives as well as the use by unions of threats of economic action against specific individuals in an effort to compel them to join." [19] The Labor Board has held that this restriction on coercive union conduct does not by itself limit the right of unions to strike. The Board said,[20]

"Congress primarily intended to proscribe coercive conduct which sometimes accompanies a strike, but not the strike itself. * * * Congress sought to fix the rules of the game, to insure that strikes and other organizing activities of employees were conducted peaceably by persuasion and propaganda and not by physical force or threats of force, or of economic reprisal."

The remedy applicable for the unfair-labor practice of restraint and coercion by unions is to order the offenders to cease and desist from restraining and coercing the employees in the exercise of their right to refrain from union activities and, affirmatively, to post notices of compliance.[21] For an illegal refusal to bargain collectively with an employer, for causing an employer to discriminate against employees, for secondary boycott and jurisdictional strikes, for imposing excessive fees as a condition precedent to union membership when there is a valid union-shop agreement in effect, and for featherbedding, unions are subject to appropriate cease-and-desist orders which may direct that they refrain from such illegal conduct and prescribe affirmative action to be taken by them in order to effectuate the policies of the act.[22] Such affirmative action may require the union, in appropriate cases, to bargain collectively with an employer, to pay back pay to employees who have suffered loss of pay on account of discriminatory discharges caused by the union, or to reimburse an employer to the extent that he had been compelled to pay for featherbedding, and to post notices of compliance.[23]

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[15] See *Louis F. Cassoff* (43 N. L. R. B. 1193, enforced 139 F. (2d) 397). In the case cited, the contract also provided for a compulsory check-off of dues in favor of the contracting union that received the benefit of the illegal assistance. The employer is ordered, in such a situation, not only to pay back pay to the discharged employees but also to reimburse all the employees for dues checked off on behalf of the union.

[16] 79 N. L. R. B. No. 207.

[17] *The American News Company* (55 N. L. R. B. 1302, 1311).

[18] *Perry Norvell Co.* (80 N L. R. B. No. —, 23 L. R. R. M. 1601).

[19] *National Maritime Union* (78 N. L. R. B. No. 137).

[20] *Perry Norvell Company* (80 N. L. R. B. —, 23 L. R. R. M. 1061, 1062).

These remedies, to be applied in case of union unfair-labor practices, follow the pattern of remedies applicable to employers for unfair-labor practices committed in violation of section 8 (a) of the amended act. Such remedies when applied to employers have been held reasonable.

In *Republic Steel Corp.* v. *NLRB*,[24] the Supreme Court said—

"We think that affirmative action to 'effectuate the policies of this act' is action to achieve the remedial objectives which the act sets forth. Thus the employer may be required not only to end his unfair labor practices; he may also be directed affirmatively to recognize an organization which is found to be the duly chosen bargaining representatives of his employees; he may be ordered to cease particular methods of interference, intimidation, or coercion, to stop recognizing and to disestablish a particular labor organization which he dominates or supports, to restore and make whole employees who have been discharged in violation of the act, to give appropriate notice of his compliance with the Board's order, and otherwise to take such action as will assure to his employees the rights which the statute undertakes to safeguard. *These are all remedial measures.*" [Italics added.]

By the same token, they are, manifestly, equally remedial and reasonable when applied to unfair labor practices by unions.

Furthermore, the unions, like employers, have an additional safeguard against the imposition of unreasonable restraints because they have been found guilty of an unfair labor practice. The order issued against them must be restricted to the violation found by the Labor Board to have been committeed; general cease and desist orders are invalid. For example, if a union is found guilty of an illegal refusal to bargain collectively with an employer, it cannot be ordered to stop restraining and coercing employees in the exercise of their right to refrain from union activity unless there is proof of danger that it will engage in such conduct or that the illegal refusal to bargain is related to restraint and coercion of the employees. The Supreme Court established this principle under the Wagner Act when it said:[25]

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[21] The order in *Sunset Line & Twine Company* (79 N. L. R. B. No. 207), directed that the unions, their officers, representatives, and agents shall:

"1. Cease and desist from:

"(a) Restraining and coercing employees of Sunset Line & Twine Co., Petaulma, Calif., in the exercise of their right to refrain from any or all concerted activities, as guaranteed to them by sec. 7 of the act.

"2. Take the following affirmative action, which the Board finds will effectuate the policies of the act:

"(a) Post in conspicuous places in the business office of the International in San Francisco, Calif., and in the business office of local 6 in San Francisco, Calif., and in the business office, if any of the Petaluma unit of local 6, Petaluma, Calif., where notices of communications to members are customarily posted, copies of the notice attached hereto as an appendix. * * * Copies of the notice, to be furnished by the regional director for the twentieth region, shall, after being signed by official representatives of the international, of local 6, and of the Petaluma unit, respectively, be posted by these unions immediately upon receipt thereof and maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by these respondents to insure that said notices are not altered, defaced, or covered by any other material:

"(b) Mail to the regional director of the twentieth region signed copies of the notice, attached hereto as an appendix, for posting, the company willing, on the bulletin board of the Sunset Line & Twine Co., where notices to employees are customarily posted, where such notice shall be posted and maintained for a period of 60 days thereafter. Copies of the notice, to be furnished by the regional director for the twentieth region, shall after being signed as provided in par. 2 (a) of this order, be forthwith returned to the regional director for said posting;

"(c) Notify the regional director for the twentieth region in writing within 10 days from the date of this order what steps the respondents have taken to comply herewith."

[22] Amended act, sec. 10 (c).

[23] Requiring an employer to pay back pay on account of a discriminatory discharge has been sustained as reasonable. In *Social Security Board* v. *Nierotko* (327 U. S. 364, 365), the court said, " 'Back pay' is not a fine or penalty imposed on the employer by the Board." It follows that requiring unions to pay back pay when they have caused a discriminatory discharge is also reasonable.

[24] 311 U. S. 7, 12.

"We hold only that the National Labor Relations Act does not give the Board an authority, which courts cannot rightly exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found. To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past."

The amended act empowers the Labor Board to issue orders against unions requiring them to cease and desist from the specified unfair labor practices and to take affirmative action to remedy such conduct, and to secure enforcement of such orders by the United States Court of Appeals.[26] Such a grant of authority does not authorize the Board to impose penalties upon unions for the purpose of compelling them to stop unfair labor practices.[27] The Supreme Court has said that "The power to command affirmative action is remedial, not punitive."[28] Thus, it is abundantly clear that the administrators of the present law cannot impose fines, penalties, or forfeitures on unions because they have engaged in unfair labor practices.

For all of the foregoing reasons, the charge that the existing act is a "slave labor law," because unions are made responsible for the specific unfair labor practices, is completely unfounded. The provisions subjecting them to remedial sanctions for abuses defined as unfair labor practices should be continued in full force.

2. *The tyranny of the closed shop should not be revived.*—The closed shop is outlawed by the present statute.[29] A union shop is permissible if the requirements of the act are satisfied.[30] If the union shop is authorized and that type of agreement executed by the employer and the union, the employees who are not members of the union must become members of the union 30 days after the effective date of the agreement or forfeit their jobs. But they cannot lose their jobs because of failure to join the union, if union membership was not made available to them on the same terms and conditions generally applicable to members. They cannot be subject to discriminatory treatment in order to become union members. Nor can they be required to pay excessive fees as a condition for acquiring union membership.[31] Employees can be deprived of their jobs under the union shop only for nonpayment of union initiation fees and periodic dues.[32] Disagreement with the views or position of the union or its officials on any subject cannot result in the loss of their jobs.

The unions claim that these regulations cripple them and threaten their existence. They assert that an unregulated and unrestricted closed shop is necessary if unions are to survive at all.

The record amply demonstrates that these claims are erroneous.

Union leaders fail to cite a single instance where the present ban against the closed shop has been fatal to a labor union.

The growth of unions during the past 50 years has been notable. Mr. Justice Frankfurter in a concurring opinion sustaining the constitutionality of State bans against the closed shop[33] pointed out:

"In the past 50 years the total number employed, counting salaried workers and the self-employed but not farmer or farm laborers, has not quite trebled, while total union membership has increased more than 33 times; at the time of the open-shop drive following the First World War, the ratio of organized to unorganized nonagricultural workers was about 1 to 9, and now it is almost 1 to 3." [34]

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[25] *NLRB* v. *Express Publishing Co.* (312 U. S. 426, 437).

[26] Amended act, sec. 10 (c) and (e).

[27] *Consolidated Edison Co.* v. *NLRB* (305 U. S. 197, 235, 236).

[28] *Republic Steel Corp.* v. *NLRB* (311 U. S. 7, 12).

[29] Amended act, sec. 8 (a) (3).

[30] Amended act, sec. 8 (a) (3).

[31] Amended act, sec. 8 (b) (5).

[32] Amended act, sec. 8 (b) (2).

[33] *AFL* v. *Sash & Door Co.* (93 L. Ed. 209, 214).

During the last war, unions thrived upon maintenance-of-union-membership clauses and other forms of union security provisions less monopolistic than the closed shop. Union growth has been achieved, rather, through laws which protected and supported the union's principal function, namely, to act as bargaining representative of employees, and widened the scope of activity in that capacity.

Under the present law, as under the Wagner Act, that authority of the union cannot be undermined by an employer or dissident groups of employees. It has exclusive power and authority to bargain collectively with the employer with respect to wages, hours, and terms and conditions of employment, and recognition of its rights in that regard is mandatory. Individual employment contracts between employer and employees must give way to this bargaining authority of the union.[35] The employer is powerless to alter conditions of employment without its consent.[36] Nor can he undercut its authority as bargaining representative.[37] An employer cannot yield to the voluntary requests of employees to ignore their bargaining representative and agree with them on wages.[38]

Even the rights of the employees to affect the status of the union as bargaining representative is limited. Once they granted such authority at a Labor Board election, the employees under the Wagner Act could not revoke it for a reasonable period (normally 1 year) from the date of the Board's certification of the union.[39] Under the present law no election can be conducted during the 12-month period following the last valid election conducted by the Board.[40] Employees cannot secure adjustment of their grievance in a manner inconsistent with the existing labor contract and the union is entitled to an opportunity to be present when individual grievances are adjusted.[41] Employees cannot obtain a "free ride" by refusing to pay toward the union's financial obligations, because if a valid union-shop agreement is entered into by the employer and the union, they are subject to discharge for nonpayment of initiation fees and regular dues.

In addition to these bulwarks of its authority, the field for the exercise of union power as bargaining representative has recently been held to include merit increases, insurance benefits, and pensions and retirement plans.[42]

As stanch a friend of labor as Mr. Justice Brandeis vigorously championed "the objections—legal, economic, and social—against the closed shop" and regarded it as "the exchange of the tyranny of the employer for the tyranny of the employees." [43]

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[34] In footnote 3 of his opinion, Mr. Justice Frankfurter shows the following:

"In the following table, 'union membership' includes all members of AFL, CIO, and independent or unaffiliated unions, including Canadian members of international unions with headquarters in the United States; the 'employment' figures include all nonagricultural employees (i. e., wage and salary workers), nonagricultural self-employed, unpaid family workers, and domestic-service workers.

Year	Union membership (thousands)	Employment (thousands)	Year	Union membership (thousands)	Employment (thousands)
1898	467		1923	3,629	32,314
1900	791	17,826	1928	3,567	35,505
1903	1,824	20,202	1933	2,857	28,670
1908	2,092	22,871	1938	8,265	34,530
1913	2,661	27,031	1943	13,642	45,390
1918	3,368	33,456	1948	15,600	50,400

"The 'union membership' totals, except for 1948, are taken from Membership of Labor Unions in the United States, U. S. Department of Labor, Bureau of Labor Statistics (mimeographed pamphlet); the 'union membership' and 'employment' totals for 1948 are preliminary estimates by the Bureau of Labor Statistics. The 'employment' figures for years up to 1928 are taken from Employment and Unemployment of the Labor Force, 1900–1940, 2 Conference Board Economic Record 77, 80 (1940); 'employment' figures for years since 1929, except 1948, and the basis upon which they are estimated may be found in Technical Note, 67 Monthly Labor Review No. 1, p. 50 (1948)."

[35] *J. I. Case Co.* v. *NLRB* (321 U. S. 332).

[36] *May Department Stores Co.* v. *NLRB* (326 U. S. 376).

[37] *Frank Brothers Company* v. *NLRB* (321 U. S. 702); *NLRB* v. *P. Lorillard Co.* (314 U. S. 512).

[38] *Medo Photo Supply Corp.* v. *NLRB* (321 U. S. 678).

[39] *NLRB* v. *Century Oxford Manufacturing Corp.* (140 F. (2d) 541); *NLRB* v. *Appalachian Electric Power Co.* (140 F. (2d) 217).

[40] Amended act, sec. 9 (c) (3).

[41] Amended act, sec. 9 (a).

[42] *J. H. Allison & Co.* v. *NLRB* (165 F. (2d) 766; cert. den., 69 S. Ct. 31); *Inland Steel Co.* (77 N. L. R. B. 1); *W. W. Cross Co.* (77 N. L. R. B., No. 188).

[43] Concurring opinion of Mr. Justice Frankfurter, *AFL* v. *Sash & Door Co.* (93 L. Ed. 209).

A union's strength and growth should depend on its ability to persuade allegiance on the basis of effective performance of its primary function as bargaining representative rather than on power to compel obedience by reason of economic monopoly over jobs. A return to absolute union control over hiring is not warranted by the record, particularly at a time of vigorous union political activity. Though professedly used for democratic purposes, there is substantial evidence that the concentrated power of the closed shop has been arbitrarily employed. The record shows that such power has been used:

(1) To interfere with political freedom.[44]
(2) To aid racial discrimination.[45]
(3) To suppress fair criticism.[46]
(4) To punish for attacking an allegedly unlawful contract.[47]
(5) To punish for testifying against the union.[48]
(6) To punish for activites on behalf of another union prior to the effective date of the closed shop.[49]
(7) To punish for activity on behalf of a rival at the expiration of the closed-shop contract.[50]
(8) To fraudulently deprive employees of their jobs.[51]

Theoretically, the victim of arbitrary use of the closed shop may have recourse to the courts to test the validity of his expulsion from the union and the loss of his job. Practically, and in most instances, he is reluctant to press the issue in court and lacks the financial resources to do so. He may have difficulty enough finding a job if he is in an industry or community highly organized by the same union or its affiliates.

3. Secondary boycotts and jurisdictional strikes should be restrained.

Under the present act, secondary boycotts and jurisdictional strikes by unions are unfair labor practices.[52] If charges of such conduct are filed and reasonably believed to be well founded, the Labor Board is empowered to obtain a Federal court injunction against such activities pending the Board's final determination of the case.[53] Persons injured by such conduct have the right to sue the union in court for damages suffered thereby.[54]

These provisions have been criticized by unions as outlawing traditional union methods for organizing and improving wages and working conditions of employees, and as restoring "Government by injunction."

The criticism based on traditional union practices cannot be justified. Tradition has not been sufficient to thwart warranted regulation. Thus, organizing from the top down was traditional with some unions. The technique consisted of first securing a closed-shop contract from the employer and requiring the employees to join or lose their jobs. The practice was defended on the basis of the employee's self-interest in the betterment of wages and conditions and the maintenance of union standards. Nevertheless, it was outlawed by the Wagner Act.

The right of Government to confine the area of industrial warfare by eliminating secondary boycotts is beyond question. The union's right of free speech is not thereby denied.[55] One court has summarized the authority of Government as follows.[56]

"The constitutional right of free speech and free press postulates the authority of Congress to enact legislation reasonably adapted to the protection of interstate commerce against harmful encroachments arising out of secondary boycotts."

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[44] *De Mille* v. *American Federation of Radio Artists* (175 P. (2d) 851). Cf. *James* v. *Marinship Corp.* (25 Calif. (2d) 721, 155 P. (2d) 329); *Williams* v. *International Brotherhood of Boilermakers* (27 Calif. (2d) 586, 165 P. (2d) 903).

[45] *James* v. *Marinship Corp.* (25 Calif. (2d) 721, 155 P. (2d) 329); *Williams* v. *International Brotherhood of Boilermakers* (27 Calif. (2d) 586, 165 P. (2d) 903).

[46] *John Wood Mfg. Co.* (1 Labor Arb. Rep. 43).

[47] *Trailmobile Co.* v. *Whirls* (331 U. S. 40).

[48] *Link-Belt Speeder Corp.* (2 Lab. Arb. Rep. 338, 343).

[49] *Wallace Corp.* v. *NLRB* (323 U. S. 248).

[50] *Rutland Court Owner's, Inc.* (46 N. L. R. B. 1040).

[51] *Monsieur Henri Wines* (44 N. L. R. B. 1310).

[52] Amended act, sec. 8 (b) (4), outlaws such conduct where the objects thereof are, briefly: to force a self-employed person to join a union or employer organization, to force a cessation of business between two persons, to force another employer to bargain with a union unless it has been certified by the Board, to force dishonor of a Board certification, and to compel assignment of work to certain union members.

[53] Amended act, sec. 10 (k) (1).

[54] Labor-Management Relations Act, 1947, sec. 303.

[55] *Carpenters & Joiners Union of America* v. *Ritter's Cafe* (315 U. S. 723); *United Brotherhood of Carpenters & Joiners of America* v. *Sperry* (C. C. A. 10th, Nov. 2, 1948, 23 L. R. R. M. 2040).

[56] *United Brotherhood of Carpenters & Joiners of America* v. *Sperry,* supra, note 55, p. 2044.

The present statute limits the exercise of union economic pressure but leaves open to the unions all other methods of communication concerning the dispute except secondary strikes and secondary picketing. The Supreme Court [57] upon sustaining an injunction against secondary picketing said:

"Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication."

Secondary boycotts in the hands of large unions and allied union groups have caused serious economic injury to persons not interested in the dispute. Small business and the public have been the principal victims of such activity.

A recent case demonstrates the need for protection.[58] Local 74, United Brotherhood of Carpenters and Joiners Union was engaged in a labor dispute with Watson's Specialty Store, a substantial chain store business engaged in the sale and installation of wall and floor coverings. One Stanley purchased an old house and engaged a contractor to renovate it. The contractor employed union carpenters. It became necessary to obtain wall and floor coverings for the house. However, the only place where suitable materials could be found was Watson's Specialty Store, which insisted on installing the coverings it sold. Thereupon, Watson's sent its employees to do that work. The union then ordered the contractor's employees off the job and Stanley's partially renovated house remained unfinished. Before enactment of the present law this situation would have continued until Watson's and the union settled the dispute, in which neither Stanley nor his contractor had or were permitted an interest. However, the situation was remedied under the present statute by the filing of charges of unfair labor practices against the union. The Labor Board found the secondary boycott affecting Stanley's house illegal and ordered the union to cease and desist therefrom.

Speedy and effective Government intervention through the Labor Board's application to the Federal courts for a temporary injunction, pending decision of the case, on the basis of the Board's reasonable belief that a proscribed secondary boycott is being waged, is essential to limit the spread of industrial warfare and the economic injury—to innocent parties and to the national economy—resulting therefrom. Such widespread effect of the secondary boycott was pointed out by the United States Court of Appeals for the Tenth Circuit: [59]

"And the general practice of establishing and maintaining secondary boycotts of that kind multiplied or extended throughout the country would necessarily effect a reduction in the flow in interstate commerce of both raw materials and manufactured commodities."

Because only the Government through the Labor Board can invoke the injunctive remedy, the possibilities of abuse are substantially minimized. The statutory right of a private party to sue for damges caused by secondary boycott does not include injunctive relief.[60] The remedy in damages is inadequate in most instances because the loss is usually substantial and irreparable.

The claim that "government by injunction" has been restored is unwarranted. In the first 6 months of operation of the law, the Labor Board filed nine petitions in Federal courts to enjoin secondary boycotts. For the 18-month period of operation, approximately 18 such applications were made of which four were denied.[61]

The statutory ban on secondary boycotts is of limited effect. It does not affect strikes against the primary employer for recognition or economic reasons. The unions are also free to exert pressure against secondary employers provided such conduct does not constitute a strike against such employer or inducing or encouraging his employees to cease work. Persuasion addressed to the secondary employer or his supervisors or customers is not barred. And an employer who undertakes to act as subcontractor for the primary employer during the strike against the latter may also be subjected to the full pressure of the union's strike and economic strength.[62]

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[57] *Carpenters & Joiners Union of America* v. *Ritter's Cafe* (315 U. S. 723, 727, 728).

[58] *Local 74, United Brotherhood of Carpenters & Joiners* (*Watson's Specialty Store*) (80 N. L. R. B., No. 91).

[59] *United Brotherhood of Carpenters & Joiners* v. *Sperry* (23 L. R. R. M. 2040, 2044).

[60] *Amalgamated Assoc., etc.,* v. *Dixie Motor Coach Corp.* (C. C. A. 8th, 23 L. R. R. M. 2093).

[61] Based on tabulation of recorded cases. Publication of statistics on this subject by the Labor Board has not been found.

[62] *Douds* v. *Metropolitan Federation of Architects* (75 F. Supp. 672).

Jurisdictional strikes over assignment of work and the strike or boycott to compel disregard of the Labor Board certification of bargaining representative cannot be justified. In the latter case, an employer who yields to the union's pressure and defies the Board's certification violates the law. Yet, compliance with the Board's certification may be fatal to his business by reason of the economic pressure of the rival union.

In such a situation, prompt Government intervention is required to compel recognition of the Board's certification and to forestall substantial injury to the business caught between rival unions. The striking union undermines the employee's free choice of bargaining representative, evidenced by the certification, as well as the collective bargaining process.[63]

4. *Unions, as well as management, should be obligated to bargain collectively in good faith.*—The present act obligates the union as well as the employer to engage in collective bargaining in good faith when it has been designated as bargaining representative by a majority of the employees. Violation of that obligation by the union is an unfair labor practice. The mutual aspects of the procedure of collective bargaining are expressed in the portion of the statute which provides:[64]

"For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. * * *"

Court decisions under the Wagner Act pointed out that collective bargaining required that labor and management deal with each other in good faith and that a mind "hermetically" sealed on either side of the bargaining table against agreement foreclosed the possibility that an agreement could be reached.

Thus, in *Globe Cotton Mills v. NLRB*,[65] the court said:

"We believe there is a duty on both sides, though difficult of legal enforcement, to enter into discussion with an open and fair mind, and sincere purpose to find a basis of agreement touching wages, and hours and conditions of labor, and if found, to embody it in a contract as specific as possible which shall stand as a mutual guaranty of conduct and as a guide for the adjustment of grievances."

In *NLRB* v. *The Boss Manufacturing Co.*,[66] the court said:

"Collective bargaining, as contemplated by the act, is a procedure looking toward the making of a collective agreement between the employer and the accredited representative of his employees concerning wages, hours, and other conditions of employment. Collective bargaining requires that the parties involved deal with each other with an open and fair mind and sincerely endeavor to overcome obstacles or difficulties between the employer and the employees to the end that employment relations may be stabilized and obstruction to the free flow of commerce prevented."

These pronouncements of the courts plainly establish that genuine collective bargaining is a two-way street requiring give and take on both sides of the conference table. This standard of conduct is embodied in the requirement of the present statute that both sides—

(1) Meet and confer in good faith;

(2) Execute a written contract upon the request of either party if agreement is reached.

A union that submits demands on a "take it or leave it" basis, bolstered with a threat of a strike in event of failure to comply with its demands, defines the purposes of the act because "the act was designed to encourage collective bargaining as a substitute for strike action."[67]

The right to function as collective-bargaining representative carries with it a corresponding duty to perform that function genuinely and in good faith. Unions that fail in this respect disrupt the collective bargaining procedure and foster unrest and industrial strife. Such conduct flies in the face of the many decisions which enforce the exclusive power and authority of the bargaining representative and, in effect, violates the duty of fair representation owed to the employees in the bargaining unit.[68]

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[63] *NLRB* v. *Draper Corp.* (145 F. (2d) 199); *NLRB* v. *Clinchfield Coal Corp.* (145 F. (2d) 66).

[64] Amended act, sec. 8 (d).

[65] 103 F. (2d) 91, 94.

[66] 118 F. (2d) 187.

[67] *National Electric Products Corp.* (80 N. L. R. B., No. —, 23 L. R. R. M. 1148).

The Wagner Act imposed no duty on the union to bargain in good faith. Its refusal to bargain in good faith removed "the possibility of negotiations."[69] Since the union could not be ordered to cease and desist from such conduct and to bargain collectively, the situation created by the union was left unremedied and fraught with the danger of industrial strife substantially undermining interstate commerce. The purposes of the act were thereby defeated.

The present statute fixes the union's duty to perform its bargaining function in good faith as in the case of employers. The union's refusal to bargain collectively is also an unfair labor practice subject to remedial order of the Labor Board.[70] Enforcement of performance of that obligation on the part of unions presents no insurmountable difficulties. The standard of conduct in this regard has already been charted by the many decisions with respect to employers.

The Labor Board has said with respect to section 8 (d) of the present statute:[71]

"The legislative history of these provisions clearly indicates that it was the purpose of Congress to impose upon labor organizations the same duty to bargain in good faith which had been imposed upon employers in section 8 (5) of the Wagner Act, and continued in section 8 (a) (5) of the amended act. Moreover, the standards and tests set forth in section 8 (d), applicable to both employers and unions, closely paraphrase those established in decisions of the Board and the courts in recent years. Such decisions, although they dealt primarily with employers' responsibility to bargain collectively under the Wagner Act, are nevertheless significant guideposts in determining the collective-bargaining obligations of unions under section 8 (b) (3)."

The presently effective definition of collective bargaining stabilizes labor relations in two other respects:

(1) The parties to a contract are obligated to bargain collectively with respect to "questions arising thereunder."

(2) During the contract period, neither party is obligated to discuss modifications of its terms unless the contract provides for reopening thereof.

The powers of the union as bargaining representative have been compared to "those possessed by a legislative body to create and restrict the rights of those whom it represents."[72] The agreement negotiated with the employer by the bargaining representative establishes the rules and standards which shall govern the employees, employer, and union during the contract term. The Supreme Court has said in this regard:[73]

"The negotiations between union and management result in what often has been called a trade agreement, rather than in a contract of employment. Without pushing the analogy too far, the agreement may be likened to the tariffs established by a carrier, to standard provisions prescribed by supervising authorities for insurance policies, or to utility schedules of rates and rules for service, which do not of themselves establish any relationships but which do govern the terms of the shipper or insurer or customer relationship whenever and with whomever it may be established."

The trade agreement, therefore, is in effect a charter of labor relations, fixing wages, hours, and terms of employment, and providing and guiding, through its grievance and arbitration procedures, the course that collective bargaining should pursue.[74] Such a charter must be given some fair degree of permanence, and in point of time that period should be fixed by the parties themselves as stated in the terms and provisions of the charter.

When that charter is about to expire pursuant to its terms, proposals for modifications and changes are appropriate. The emphasis should be on conferences and negotiations in good faith rather than on industrial strife. The present provisions for a 60-day notice of intention to terminate or modify an expiring labor contract, during which time the parties must meet and negotiate without strike or lock-out, has such an effect.[75]

5. *Management should retain the right to speak freely.*—The law today insures management's right to speak freely to and with its employees. The only limita-

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[68] See *The Wallace Corp.* v. *NLRB* (323 U. S. 248, 255); *Steele* v. *Louisville & Nashville R. R. Co.* (323 U. S. 192, 201, 202).

[69] See *Times Publishing Company* (72 N. L. R. B. 676, 683).

[70] Amended act, sec. 8 (b) (3).

[71] *National Maritime Union* (78 N. L. R. B., No. 137, 22 L. R. R. M. 1289, 1296).

[72] *Steele* v. *Louisville & Nashville R. R. Co.* (323 U. S. 192, 202).

[73] *J. I. Case Co.* v. *NLRB* (321 U. S. 332, 335).

[74] *Timken Roller Bearing Co.* v. *NLRB* (161 F. (2d) 949).

[75] Amended act, sec. 8 (d).

tion on this right is that, in so speaking, management must not make threats of reprisal or force or promises of benefit.[76]

The privileges of the first amendment have been enjoyed by employees and unions, and their right to speak freely on labor organization was guaranteed in the Wagner Act and continued in the present act. Management obtained the same right, not by virtue of Labor Board ruling or court decision, but by express provision in the statute.

That protection must not be withdrawn or weakened. If unions are to continue, as well they should, with the right to speak freely, it is imperative that any fair labor law grant the same right to management. One of the foremost lawyers representing labor wrote in the official organ of the American Federation of Labor that, "if freedom of speech is to survive for trade-unions and their members, it must not be denied, directly or indirectly, to employers."[77]

Denial of the basic right of free speech to either labor or management vitiates the constitutional right which extends to all persons.[78] The right of employees to self-organization is meaningless without freedom of speech. "Of that freedom, one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom."[79]

The discussion of labor disputes and the benefits and burdens of joining a union fall within the ambit of the free-speech privilege. In *Hague* v. *Committee for Industrial Organization*,[80] the Supreme Court held that freedom to disseminate information concerning the National Labor Relations Act, and to assemble peaceably for discussion of the advantages and disadvantages of union organizaiton, was a constitutional privilege which could not be abridged by the States.

In *Thornhill* v. *Alabama*,[81] the Court said,

"In the circumstances of our times, the dissemination of information concerning the facts of a labor dispute must be regarded as within the area of free discussion that is guaranteed by the Constitution."

The privilege is so vital and an integral part of our form of government that it is not necessarily lost because of inaccuracy of views expressed, vilification, exaggeration or even false statements and misconduct or hostility of the speaker.[82]

It is not limited to ineffective speech or a mere description of facts, but includes the right that speech shall be effective and persuasive so long as the appeal is to reason. The free-speech privilege, together with all these incidents of speech, extends to employers, as well as unions, in the discussion of union organization.

In *Thomas* v. *Collins*,[83] the Supreme Court said:

"The first amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts. Cf. *Abrams* v. *United States* (250 U. S. 616, 624), and *Gitlow* v. *New York* (268 U. S. 652, 672, dissenting opinions of Mr. Justice Holmes). Indeed the whole history of the problems shows that it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given.

"Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the first amendment's guaranty. *Labor Board* v. *Virginia Electric & Power Co.* (314 U. S. 469). Decisions of other courts have done likewise. When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed. Cf. *Labor Board* v. *Virginia Electric & Power Co.*, supra. But short of that limit the employer's freedom cannot be impaired. The Constitution protects no less the employees' converse right. Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection."[84]

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[76] Amended act, sec. 8 (c).

[77] Joseph Padway, Esq., in the Federationist, June 1944, p. 28.

[78] *Midland Steel Products Corp.* v. *NLRB* (123 F. (2d) 800, 804).

[79] *Palko* v. *Connecticut* (302 U. S. 319, 327).

[80] 307 U. S. 496. The Court also pointed out (p. 512) that "* * * it is clear that the right peaceably to assemble and discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege in citizenship of the United States which the amendment protects."

[81] 310 U. S. 88, 102.

[82] *Cantwell* v. *Connecticut* (310 U. S. 296) ; *American Federation of Labor* v. *Swing* (312 U. S. 321) ; *Thornhill* v. *Alabama* (310 U. S. 88).

[83] 323 U. S. 516, 537, 538.

[84] Mr. Justice Jackson stated in a concurring opinion that he would stop or punish employer's speech "only rarely and when" it was "inseparable" from discriminatory discharges or intimidation.

The history of managemen's privilege of free speech before the Labor Board establishes the need for legislation which will protect that privilege and serve as a guide for the accommodation of the purposes of act to the requirements of the first amendment. The Board "has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore"[85] the Bill of Rights. With "excessive emphasis upon its immediate task," the Board denied management the free-speech privilege.

Under the Wagner Act, the Labor Board first forbade free discussion of the subject of union organization between employer and employee, the persons primarily interested and concerned during a union's organizational drive. "Almost any expression" of opinion by an employer not strictly neutral was ruled illegal although honestly believed. The Labor Board took the extreme position that[86]

"* * * in the normal relationship between employer and employee, almost any expression of opinion by an employer indicating to those who depend on his continued good will for their livelihood an unequivocal disapproval of their forming or joining a labor organization characteristically carries home to employees an implied threat of unlawful discrimination for noncompliance with the employer's desires."

An employer who advised his employees that union organizers urging them to join their organization were Communists or racketeers was held guilty of coercion and the possibility that the accusations might be correct was not considered.[87]

Some courts were prepared to give finality to the Board's rulings on the free speech issue as the finding of experts, particularly versed in the subject matter.[88]

However, the force of court decisions compelled the Board to revise its position and give more than lip service to the free-speech privilege when applied to management.[89] The Board then ruled the employer's speech was illegal if it was coercive on its face or made coercive by surrounding circumstances which showed that it was part of a pattern of coercive conduct.[90] The latter concept became known as the "totality of conduct" doctrine.

The application of this doctrine in particular cases again resulted in the unwarranted restriction of the free speech privilege. The Board found illegal employer speech not invalid standing alone, if the employer was guilty of unfair labor practices without regard to whether or not there was any relationship between the speech and the violative conduct. Speech was condemned even though it bore no relationship to, and was severable from the unfair labor practices found to have been committed.[91]

In viewing the surrounding circumstances of employer's speech, the Labor Board has failed to consider that an employer was entitled to defend himself before his employees against vituperative and defamatory attacks upon the character and reputation of the management engaged in by a union seeking to organize the employees. In one case, some of the defamatory remarks addressed by the union to the employees described the employer's principal executive as "a person devoid of all principles," "surrounding himself with the 'little Hitlers of America'," "labor's greatest enemy" and "fascist minded individual." The union's literature issued to the employees charged that the employer "has been despoiling the children of the northeast district for years," and said that the employer was "unpatriotic and un-American" and "had always used misguided employees for its foul purposes." The Board found illegal a speech made by an executive of the employer to the employees in an attempt to answer such accusations, although that speech repeatedly pointed out to the employees that the employer did not in any way desire to interfere with their right to join the union.[92]

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[85] *Southern Steamship Co.* v. *NLRB* (316 U. S. 31, 47).

[86] *Southern Colorado Power Co.* (13 N. L. R. B. 699, 711).

[87] *Luckenbach Steamship S. S. Co.* (8 N. L. R. B. 1280) ; *Freisinger d/b/a North River Yarn & Dyers* (10 N. L. R. B. 1043) ; *Reliance Manufacturing Co.* (28 N. L. R. B. 1051) ; *Model Blouse Co.* (15 N. L. R. B. 133) ; see *Agar Packing & Provision Corp* (58 N. L. R. B. 738).

[88] In *NLRB* v. *American Tube Bending Co.* (134 F. (2d) 993, 994), the court said:

> "Had it not been for the decision of the Supreme Court in *National Labor Relations Board* v. *Virginia Electric & Power Company* (314 U. S. 469, 62 S. Ct. 344, 86 L. Ed. 348), we might have considered some of that court's earlier decisions as requiring us to grant an enforcement order in the case at bar. Those decisions might be interpreted as holding that any address or other communication from an employer made directly to his employees may have, and ordinarily will have, a double aspect; on the one hand, it is an expression of his own beliefs and an attempt to persuade his employees to accept them; on the other, it is an indication of his feelings which his hearers may believe will take a form inimical to those of them whom he does not succeed in convincing. Insofar as it is the first, the Constitution protects him; insofar as it is the second, it does not. The Board, being composed of those especially versed in the subject matter, must decide how far the second aspect predominates, and if they conclude that it will seriously coerce the employees' freedom of choice, they may forbid it."

[89] These court decisions were principally *NLRB* v. *Virginia Electric & Power Co.* (314 U. S. 469) ; *NLRB* v. *American Tube Bending Co.* (134 F. (2d) 993, cert. den. 320 U. S. 768).

[90] *NLRB* v. *American Laundry Mach. Co.* (152 F. (2d) 400) ; *NLRB* v. *Laister-Kaufman Aircraft Corp.* (144 F. (2d) 9) ; *Fisher Governor Co.* (71 N. L. R. B. 1291).

[91] *Monument Life Insurance Co.* (67 N. L. R. B. 244) ; *Goodall Company* (68 N. L. R. B. 252.)

Shortly before the amendment of the act, the Labor Board again relegated the first amendment to secondary importance by establishing the "captive audience" doctrine. Non-coercive speech of an employer was held illegal because it was addressed to the employees assembled in the plant on the employer's time.[93] The Board has held since that this doctrine was overruled by section 8 (c) of the present act.[94]

We agree that when coercion appears, the limits of free speech are exceeded. The paramount importance of the issue requires that the line should be drawn by Congress for the guidance of the administrators of the act. Comforts that unions may have obtained from the Labor Board's prior unwarranted restrictions of the free speech privilege of employers are illusory because of the greater threat to their constitutional rights which they, too, must enjoy.

6. *The ranks of management should not be divided by compelling bargaining with supervisory employees.*—The existing act does not compel management to bargain collectively with its supervisory employees. Unions seek to return to the interpretation of the Wagner Act which imposed such a requirement.

The record shows that compulsory recognition of unions of supervisory personnel for the purposes of collective bargaining undermines management's ability to bargain collectively and casts doubt upon the fairness of the bargaining procedure, in which rank-and-file employees and management have the greatest stake.

Supervisors are the "arms and legs" of management. They are management at the point of contact with the employees. In addition to responsibility for production and safety in their departments, they effectuate management's labor policies and are in position to observe and report their effect and the need for change or improvement. They handle grievances in the first instance and can locate the causes for complaints as well as suggest the remedies. To the rank and file employees they are management and their conduct can establish employee opinion of management. Even under the Wagner Act, management was held liable for conduct of supervisors which the employees might reasonably believe represented the attitude of management, even though such conduct was contrary to instructions.[95]

Supervisory employees directly influence management's position at the bargaining table on many phases of the proposed contract. They must be consulted by management in order to adequately prepare for negotiations, and their advice plays a necessary part in the formulation of management requirements in the contract and its attitude with respect to union demands.

All of these functions of supervisory employees continue although they may be limited or directed by the provisions of the collective agreement. The supervisors' essential function in the line of management remains intact even though their authority is limited to making effective recommendations or is broad enough to include power to hire and fire. Undivided loyalty to management is an essential ingredient of the supervisory job and upon it rests the entire structure of the management's ability to operate and manage the business. Subjecting the base to conflicting interests threatens the whole structure.

Such a result was achieved under the Wagner Act. The Labor Board ruled that general foremen, foremen, and assistant foremen, with supervisory authority in mass production industries, were entitled to compel collective bargaining with them on the part of the employer.[96] The Board conceded that by its ruling foremen were made subject to interests which would conflict with the requirements of the job, when it pointed out that,[97]

"In an absolute sense, of course, the association (Foreman's Association of America) is not independent of the CIO, or any labor organization. Both are labor organizations and both are organized for basically similar purposes—the improvement of the wages, hours, and working conditions of their membership through collective bargaining. Both have common problems and therefore a common 'bond of sympathy.' For these reasons it is to be expected that they will express moral sympathy for the organizational efforts of one another *and will, on occasion, even refuse to cross the picket line established by the other during a strike*." [Italics added.]

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[92] *Montgomery Ward & Co.* (64 N. L. R. B. 432, enforcement denied 157 F. (2d) 486).

[93] *Clark Bros.* (70 N. L. R. B. 802, enforced 163 F. (2d) 373). The doctrine was rejected in *NLRB* v. *Montgomery Ward Co.* (157 F. (2d) 486).

[94] *Babcock & Wilcox Co.* (77 N. L. R. B. No. 96).

[95] *Sperry Gyroscope Co.* v. *NLRB* (129 F. (2d) 922).

[96] *Packard Motor Car Co.* (61 N. L. R. B. 4 : 64 N. L. R. B. 1212, enforcing 157 F. (2d) 80, affirmed 330 U. S. 485).

[97] *Packard Motor Car Co.* (61 N. L. R. B. 1, 16).

Such a conflict of interest in itself is sufficient to justify removing management's representatives from the possibility of breach of duty, by excluding them from the field of collective bargaining. It has been commonly recognized that strikes by foremen cannot succeed without the active aid of rank and file unions because such strikers can be readily replaced by promotions from the ranks. Supervisory unions cannot succeed, therefore, without agreements for mutual assistance and support with unions representing rank and file employees.

These realities of normal industrial operations were disregarded by the Labor Board and it sanctioned the organization of supervisory employees by a union affiliated with a rank and file union. It authorized the union which represented the rank and file employees of an employer to organize their supervisors through an affiliate[98] and held that the employer's refusal to bargain collectively with that union, acting on behalf of its supervisory employees, was an unfair labor practice.[99]

Thereby, the field was opened for rank and file unions operating through affiliates to obtain the allegiance of management's representatives. Whether or not the opportunity was used, it presented a real threat to management's ability to manage its operations and to function efficiently. It threatened the entire collective bargaining procedure by permitting the undercutting of management in negotiations.

Placing the managerial representatives in a position where they are fellow union members of rank and file employees under their supervision subjects them to the same rules of union conduct and allegiance, and creates a direct conflict with the primary duty of the supervisory employees to management.

The labor-relations field warrants no different standards of conduct for the representatives of management and of labor than other fields of endeavor, in so far as their allegiance is concerned. The rule that an agent, without the consent of his principal, should not be placed in a position to do less than the best for his principal is applicable. Management is entitled to the undivided allegiance of its representatives, through whom it must operate its business and deal with the employees on a day-to-day basis in the plant and at the bargaining table, whether there be industrial peace or strife. The self-interest of supervisory employees who attain a place in management, on the basis of complete loyalty and undivided performance of duty, must be subordinated to the paramount interest of confidence and fairness in the collective bargaining process. Impairment of management's established method of operating through representatives owing responsibility solely to it can cause irreparable damage to our industrial system.

7. *Management should retain the right to petition for election; employees should retain the right to terminate a union's authority.*—The present law authorizes an employer to file with the Board a petition for determination of bargaining representative of his employees when he has been presented with a claim for recognition as bargaining representative by a labor organization.[1] Thereby, the Labor Board's processes are invoked for the purpose of determining by a secret ballot whether the employees involved desire to be represented by the union asserting the claim.

No such provision was made in the Wagner Act, and the Board did not permit an employer to file a petition for an election unless he had been served with demands for recognition by two or more unions claiming to represent the same employees.

The Labor Board has held that an employer has the right in good faith to question the union's claim of majority status and to insist that it be resolved by a Board-conducted election. In the Arteraft Hosiery Company case,[2] the Board said:

"We have held, and still hold, that an employer may in good faith insist on a Board election as proof of the union's majority but that an employer unlawfully refuses to bargain if its insistence on such an election is motivated, not by any bona fide doubt as to the union's majority, but rather by a rejection of the collective-bargaining principle or by a desire to gain time within which to undermine the union."

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[98] *Jones & Laughlin Steel Corp.* (66 N. L. R. B. 386).

[99] *Jones & Laughlin Steel Corp.* (71 N. L. R. B. 1261).

[1] Amended act, sec. 9 (c) (1) (B).

[2] 78 N. L. R. B., No. 43, 22 L. R. R. M. 1212.

A necessary corollary to that right of the employer to insist upon an election is the right of the employer to invoke the processes whereby the election will be conducted. Insistence upon an election merely raises the issue of the union's majority status. The filing of the petition paves the way for peaceable resolution of the question.

Union representatives claim that an unscrupulous employer, with the right to file a petition therefore, can compel an election before the union is ready for it and thereby forestall successful organization of his employees. The claim overlooks the provision of the statute which bars that right to petition until the employer has been served by a union with a demand for bargaining rights. By withholding its demand for recognition until it is ready for an election, the union avoids the danger of a premature election. The possibility that an unscrupulous employer may instigate a group of employees to demand recognition so that he can file a petition, can be minimized by the Board's application of its administrative rule requiring a union seeking recognition before it to show prima facie that it represents 30 percent of the employees.[3]

The right of the employer to petition for an election is seen, therefore, to serve a useful purpose, to do no harm to any party. It should be retained.

The present act permits employees to revoke the authority of a bargaining representative that has been certified by the Board or is being currently recognized by their employer.[4] The filing of a petition for such revocation authorizes the Board to conduct an election for the purpose of determining whether the union still represents a majority of the employees and has the right to continue to act as bargaining representative.

Under the Wagner Act, employees had no right to obtain an election for the purpose of terminating the authority of their bargaining representative. The Labor Board interpreted the law so as to preclude the filing of such petitions. On dismissing a petition for investigation and certification of representatives filed by a group of employees who alleged therein:

"The undersigned hereby alleges that a question has arisen concerning the representation of employees in the above bargaining unit, in that: Majority of employees contend that CIO no longer represents them and is not their bargaining agent," the Board said:[5]

"It has been our general practice, based upon consideration of policy, not to require the only union involved to participate in an election against its desires. Therefore, as a general rule, we do not entertain petitions for investigation and certification of representatives except in cases where it appears that the alleged question of representation is related directly to the right or claim of the petitioner to be recognized as a collective-bargaining representative. Here there is no such claim, since by their own admission it is petitioners' present purpose not to act as bargaining representative."

Thus, the employees in the bargaining unit were barred from an election for the purpose of testing the right of the recognized union to continue to represent them as bargaining representative. Nor could the employees obtain peaceable resolution of the question they raised in any other way, if the recognized union had been certified by the Board on the basis of an election. The Labor Board ruled that, having expressed their desires by secret ballot in an election conducted by the Board, no other method could be regarded as of sufficient value to show repudiation of their selection. The Board stated:[6]

"Such elections, held under the auspices of the Board, in accordance with express statutory provisions, have been uniformly found to furnish the best evidence of employees' desires concerning representation for collective bargaining. When employees have expressed their considered opinions by a method which leaves no room for doubt as to their true desires, repudiation of their selection can be established only through the medium of an equally probative technique."

The effect of these principles was to deny to the employees the freedom of choice of bargaining representative guaranteed by the act. The employees were saddled with a bargaining representative they did not desire unless they secured another union to act for them, in which event the new union could file a petition with the

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[3] N. L. R. B. Rules and Regulations, Series 5, sec. 202.17.

[4] Amended act, sec. 9 (c) (1) (A) (ii).

[5] *Tabardrey Manufacturing Co.* (51 N. L. R. B. 246, 248, 249).

[6] *The Century Oxford Manufacturing Co.* (47 N. L. R. B. 835, 845, enforced 140 F. (2d) 541).

Board and obtain an election. If they did not make such selection, the union discredited as bargaining representative could permit an existing contract to be automatically renewed pursuant to its terms or compel the employer to negotiate a new agreement. The renewed agreement or a new agreement barred the employees from designating a new union as bargaining agent for the duration of the term of any such contract.[7]

The decertification procedure in no measure undermines the stability of a Board certification or a contract entered into by the certified union. The present statute permits only one election during the twelve-month period succeeding the last valid election.[8] A contract entered into by the certified representative bars any election during a reasonable term (now regarded as two years). The decertification procedure tends to reduce raiding and jurisdictional disputes. It gives full recognition to the freedom of choice of bargaining representative by the employees. It should, therefore, be retained.

8. *Unions, as well as management, should be liable for breach of contract.*—Under the present law, a union may be sued as an entity for violations of the labor contract.[9] Provision is made to protect the union members against liability for money damages assessed by a court against a union for its breach of the contract.

These provisions impose upon unions the same responsibility as upon management for breach of a labor contract.

Consideration of the Wagner Act and the present act clearly establishes that the bargaining duty imposed thereunder was for the purpose of achieving a collective-bargaining agreement binding on both parties. In *Consolidated Edison Co. of New York* v. *NLRB* [10] the Supreme Court said:

"The act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining."

The signing of the labor contract is the final step in the collective-bargaining process. The importance of the agreement is beyond question. In *Timken Roller Bearing Co.* v. *NLRB* [11] the Court said:

"Indeed, so important is an agreement to the bargaining process that when it is reached the act requires a permanent memorial of its terms to avoid frustrating the bargaining process. An authentic record of its terms must be provided which could be exhibited to employees as evidence of the good faith of the employer, and so avoid fruitful sources of dissatisfaction and disagreement."

An agreement of such importance, status and effect should be observed and effectively bind both parties. The remedies available for nonperformance by the parties should be open to both of them to the same extent, if, in their judgment, they desire such remedy. Nor should any such remedy be made illusory by resort to technicalities based on the theory that unions cannot be sued at common law. In *Timken Roller Bearing Co.* v. *NLRB*,[12] the Court said,

"This repeated asservation of the importance of a written and signed agreement as the culminating step in the bargaining process so as to avoid industrial strife, does not contemplate and can by no process of reasoning be conceived as a unilateral undertaking by the employer binding upon him but devoid of controls on the bargaining agent or those for whom it speaks. Certainly, it is not without its disciplines over both of the parties to it, within the reasonable scope of its terms and conditions."

The laws of many States made it difficult to sue effectively or recover a judgment against a labor union because most of the labor unions were unincorporated associations and for that reason were not subject to suit at common law. Such technicalities shielded unions from responsibility for breach of the labor contract. The present law discards these worn-out concepts and establishes unions as legal entities with full duty to perform agreements. The Labor Board pointed out: [13]

"The common-law concept of an unincorporated labor organization as a group of individuals having no separate entity apart from its members has been discarded—to the extent that it was not already outmoded in modern jurisprudence—by the Labor-Management Relations Act, 1947. It is clear that the act treats labor organizations for all practical purposes as judicial entities."

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[7] Eleventh Annual Report of N. L. R. B., p. 13.
[8] Amended act, sec. 9 (c) (3).
[9] Labor-Management Relations Act, 1947, sec. 301.
[10] 305 U. S. 197, 236.
[11] 161 Fed. (2d) 949, 953.
[12] 161 F. (2d) 949, 953.
[13] *Sunset Line & Twine Co.* (79 N. L. R. B., No. 207, footnote 40).

According to the Labor Board, the breach of a labor agreement by a union does not constitute an unfair labor practice on the part of the union under the present act. The Board said.[14]

"From this, we also conclude that Congress did not intend to make a strike in breach of a contract an unfair labor practice per se."

The Board has recognized that breach of the labor agreement by unions occurs and must be deterred. For the purpose of fostering reliance upon the contract rather than resort to noncompliance therewith, the Board has visited responsibility upon employees who engage in a strike in violation of the no-strike clause of a contract[15] and has sanctioned such discharges even where the strike was caused by the employer's unfair labor practices.[16]. The present statute, by providing that the union may be held liable for breach of the labor contract, permits responsibility to be placed where it should rest if it caused the violation of the contract.

The provision poses no threat to union existence. It is common knowledge that many of the unions have avoided this responsibility in damages before law courts by so negotiating various forms of protective clauses, such as the "able and willing to work" provision of the United Mine Workers, as to gain complete immunity from lawsuit provisions, limitation of liability in damages, and provisions subjecting liability for breach of contract to arbitration. If the grievance and arbitration provisions of the contract are broad enough to cover any controversy and dispute, no special provision against lawsuits would seem necessary, according to a recent court decision.[17]

9. *The President should have power to invoke restraints on strikes involving national welfare.*—The President's labor bill erases the clear authority of Government provided in section 208 of the Labor-Management Relations Act, 1947, to secure a national emergency injunction in Nation-wide strike situations which endanger the national welfare. The Attorney General of the United States is of the opinion that such authority is inherent in the President without statutory guaranty.

His viewpoint has evoked strong criticism from reliable constitutional experts, including some representing labor unions. It is contended that nothing in the Federal Constitution can logically be so broadly read as to grant such implicit power to the President. The well-established concept that the Federal Government is one of limited powers, fixed in the Constitution and statutes, is also relied on.

One point is clear. Any attempt by the President to exercise an alleged inherent authority to secure an injunction in a national emergency created by a labor dispute would result in a vigorously contested legal battle with the legal record overwhelmingly weighted against the existence or use of any such implied power.

The opinions of the Supreme Court Justices in the celebrated Lewis case[18] indicate that the Norris-LaGuardia Anti-Injunction Act would apply to any attempted exercise of the claimed inherent power of Government to an injunction in labor disputes except if there existed an employer-employee relationship between the Government and the strikers within the meaning of that decision.[19] The opinion of the Court states, with respect to the applicability of the Norris-LaGuardia Act to the Government's application for an injunction.[20]

"If we were to stop here, there would be little difficulty in accepting the decision of the District Court upon the scope of the act. And the cases in this Court express consistent views concerning the types of situations to which the act applies. *They have gone no further than to follow the congressional desires by regarding as beyond the jurisdiction of the district courts the issuance of injunctions sought by the United States and directed to persons who are not employees of the United States.* None of these cases dealt with the employer-employee relationship now before us." [Italics added.]

Mr. Justice Black and Mr. Justice Douglas, concurring in part and dissenting in part, said:[21]

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[14] *Perry Norvelle Co.* (80 N. L. R. B. —, 23 L. R. R. M. 1061).

[15] *Scullin Steel Co.* (65 N. L. R. B. 1294) ; *Joseph Dyson & Son, Inc.* (72 N. L. R. B. 445).

[16] *National Electric Products Co.* (80 N. L. R. B. —, 23 L. R. R. M. 1148).

[17] *Matter of Mencher* (N. Y. App. Div., 1st Dept., Dec. 20, 1948).

[18] *United States v. United Mine Workers of America* (330 U. S. 258).

[19] The majority opinion of the Court does not seem to disagree with the view of Mr. Justice Frankfurter that the "compelling public emergency" theory of such cases as *United States v. Debs* (64 F. 724; 15 U. S. 564) ; *United States v. Hayes* (unreported, D. Ind. 1919) ; *United States v. Railway Employees Dept. A. F. L.* (283 F. 479, 286 F. 228, 290 F. 978) was limited by the Norris-LaGuardia Act.

[20] 330 U. S. 258, 280.

[21] 330 U. S. 258, 329.

"For anything less than full and complete Government operation for its own account would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of private employers. We think the Norris-LaGuardia Act prohibits that."

Mr. Justice Murphy in his dissenting opinion pointed out that:[22]

"The Government concededly could not obtain an injunction in a private labor dispute where there has been no seizure of private properties, *no matter how great the public interest in the dispute might be.*" [Italics added.]

Thus, if there exists any inherent emergency, Government authority to secure an injunction in a Nation-wide labor dispute it is conditioned upon (1) the existence of the power to seize the property involved, and (2) the "full and complete" exercise of that power so as to create an employer-employee relationship between the Government and the strikers.[23] If the Government's right of seizure of the property does not exist[24] or has not been sufficiently exercised, the Government must meet the requirements of the Norris-LaGuardia Act in order to obtain an injunction.

Under such circumstances, it is at least doubtful that the Government could satisfy the requirements of that act. One of the findings required to be made under that act as a condition precedent to the issuance of an injunction is that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.[25] Manifestly ,the Government as claimant could not support a finding that its property was involved in the dispute in the absence of Government seizure thereof. Nor could the Government confess to an inability or unwillingness to protect the private property involved in a national emergency. Furthermore, the danger to property could not be alleged until it was threatened by the strikers with the result that a peaceable strike would eliminate any possibility of a Government injunction despite the threat to the national welfare.

In view of these obstacles to the use of an emergency Government injunction in the national interest, common sense, logic, and past experience would seem to dictate that such power and the exercise thereof be clearly defined, safeguarded, and limited by the statute. The history of Nation-wide strikes of the past few years shows that the national welfare requires that there be no impairment of the power to secure an injunction for use in labor disputes under the appropriate emergency circumstances.

10. *Welfare funds should be trust funds, jointly administered by management and union representatives.*—The present law regulates payments by employers to unions for insurance, pensions, and other specified benefits for employees and their families. These measures establish two principal requirements, namely, that these payments constitute trust funds to be used solely and exclusively for the benefit of the employees, and that there shall be joint administration of such funds by union and employer representatives, with a neutral person designated by them to resolve any deadlock.

These provisions of the law have been criticized by unions as injecting employers into an area in which they have no rightful interest and as hamstringing the use of welfare funds.

These contentions are belied by the facts.

Many companies voluntarily established pension funds and administered them in the employees' interest. Management for a long time believed that to do so was exclusively its function. The widening of the area of mandatory collective bargaining to include employee insurance and pension funds[26] has not diminished management's interest in the welfare of its employees and in the proper disposition of funds earmarked for their benefit.

Insurance and welfare funds accumulate rapidly. In many industries, payments are made to a single fund on a multiemployer basis. Since these funds represent large accumulations of money held by unions for the benefit of employees, Government supervision in the public interest is not only justified but essential. Insurance companies are under governmental supervision and regulation.

Arbitrary control and right of dispensation of such large funds by unions create real possibilities of abuse. Such unregulated power over huge funds can be utilized by union representatives as a means of control over employees.

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[22] 330 U. S. 258, 338.

[23] *United States* v. *United Mine Workers of America* (330 U. S. 258).

[24] The Government's authority to seize plants, mines, and facilities under the War Labor Disputes Act has expired (50 U. S. C. A. App., sec. 1510, note).

[25] 29 U. S. C. A., sec. 107.

[26] *Inland Steel Co.* (77 N. L. R. B. 1); *W. W. Cross & Co.* (77 N. L. R. B. 13, No. 188).

It may also be utilized to stifle the democratic process within labor organizations. It tempts the dishonest and opens the way for racketeering practices.

It cannot be denied that welfare funds for the benefit of employees should be, and constitute, trust funds. To achieve the benefits for which welfare funds have been established, their use must be limited to the objectives for which they have been created.

The wisdom of a joint administration is apparent from the nature of the trust. Excepting the form of administration of the funds from the area of collective bargaining by providing for joint supervision establishes a fair balance in the interest of the contracting parties and the employees.

Joint administration is not novel. In fact, many funds were already thus being administered before the existing provisions were added to the law. A study by the Bureau of Labor Statistics [27] states:

"A little more than a third of the employees covered by health benefit programs included in this report are under plans which are jointly administered by the union and the employer. Another third are covered by programs for which insurance companies assume the major administrative responsibility; and somewhat less than a third are under those administered by a union."

The administration of the funds, except to the extent fixed by statute and contract, remains a subject for collective bargaining between management and union representatives.

11. *Benefits of the act should be denied to Communist-dominated unions.*—The present law deprives unions of recourse to benefits of the act unless their officers and the officers of their international unions file affidavits of non-Communist affiliation and belief.[28]

There cannot be much dispute that the national interest requires the elimination of dominating Communist influence in labor unions. Many of the labor leaders who have criticized the affidavit requirement have fought the influence of Communists in their organizations for many years.

The constitutionality of the non-Communist affidavit requirement has already been sustained by several of the courts.[29]

Actually, the affidavit has been but a short step toward eliminating the influence of Communists in labor organizations. The Labor Board has held the sworn statement upon its form of affidavit is conclusive on the question of compliance with the regulation. The Board has refused to accept evidence at hearings that union officers are Communists despite the affidavit.[30]

The pride of certain union officials, who have regarded the present regulation as an affront to union dignity, should give way to the compelling public purpose which the enactment achieves in a small measure. If the price to be paid for retaining the regulation is to balance the books by applying the same regulation to employers who would seek recourse to the act, that requirement should be enacted.

The force of Government should not be available to labor organizations that are dominated or controlled by Communists. If anything, the regulations should be made more effective, so that evasion cannot be achieved by merely changing the structure of the officialdom of these unions that are subject to substantial Communist influence.

CONCLUSION

The provisions of the present law, discussed above, impart to unions a need for responsibility which some have in the past ignored or denied. In the interest of achieving a sound labor policy based on the fostering and encouraging of mutual understanding and regard, and of promoting genuine collective bargaining by both parties, one must consider these provisions as mandatory in any legislation so essential to the welfare of our economy as our basic labor law.

STATEMENT BY ARTHUR SCHUTZER, STATE EXECUTIVE SECRETARY OF AMERICAN LABOR PARTY OF NEW YORK

The American Labor Party of the State of New York respectfully requests favorable action by your committee to repeal the Taft-Hartley law outright, to reenact, without amendments, the Wagner Labor Relations Act, and to continue in full force and effect the Norris-LaGuardia Anti-Injunction Act.

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[27] Health-Benefit Plans Established Through Collective Bargaining, 1945, Bull. 841, p. 2.

[28] Amended act, sec. 9 (h).

[29] *American Communications Association* v. *Douds* (79 F. Supp. 563; cert. granted November 8, 1948); *National Maritime Union* v. *Herzog* (U. S. D. C. D. C., April 13, 1948; cert. den., 22 L. R. R. M. 2215).

[30] *Craddock-Terry Shoe Co.* (76 N. L. R. B. 842); *United States Gypsum Co.* (80 N. L. R. B., No. 122).

That is the plain mandate of the voters as expressed on election day. That is the clear duty of the Eighty-first Congress.

During the period since its enactment, the Taft-Hartley law has been demonstrated to be an instrument of suppression of labor, domination by employers, and nullification of civil rights. The record shows that—

(1) The Taft-Hartley law has seriously impaired the collective-bargaining process.

(2) It has led employers to circumvent long-established grievance machinery used in the effective disposition of day-to-day problems in shops.

(3) It has resulted in the filing of damage suits by employers against unions totaling several million dollars.

(4) It has equipped employers with weapons to intimidate and harass unions by filing employer petitions for elections and for decertifications.

(5) It has revived company unions.

(6) It has stigmatized peaceful picketing as unlawful restraint and coercion.

(7) It has outlawed, as illegal boycotts, the legitimate activities of unions in support of the demands of their fellow trade-unionists.

(8) It has restored government by injunction which was held in check for 15 years by the Norris-LaGuardia Act.

(9) It has aided and encouraged interunion raiding to divide labor.

(10) It has led to the issuance of injunctions against free speech and free press in labor disputes and the handing down of criminal indictments against labor leaders for the publication of political opinions.

No protracted legislative deliberations are required to meet the situation. All that is required is the sincere desire by this committee and by Congress to respect the wishes of the people instead of seeking to go through the motions of repealing the Taft-Hartley law and producing a new version of that law under a different name. No one will be fooled by any such maneuver.

May I respectfully point out to this committee that a bill which effectively repeals the Taft-Hartley law outright and restores, without amendments, the Wagner Labor Relations Act has already been introduced in the Eighty-first Congress. That bill is H. R. 259, by Congressman Vito Marcantonio. The Marcantonio bill is simple, direct, unequivocal. It contains only a few paragraphs because only a few paragraphs are needed to do the job.

The American Labor Party respectfully submits that inadequate time has been granted to advocates of effective repeal of the Taft-Hartley law while employers and antilabor forces have been permitted to appear and testify. The issue before this committee is of direct concern to every American family. The people have the right to be heard fully and timely on this legislation.

In conclusion, let me again renew the request that the only bill that will meet the mandate of the voters is repeal the Taft-Hartley law outright and restore, without amendments, the Wagner Labor Relations Act.

Statement of General Motors' Position on Unionization of Foremen, Submitted to Senate Committe on Labor and Public Welfare by H. W. Anderson, Vice President, General Motors, February 15, 1949

The Senate Labor Committee is presently conducting hearings in connection with proposed legislation which, if adopted in its present form, would represent a distinct and unwarranted backward step in the field of labor-management relations. This legislation would, among other things, either amend or repeal the Labor-Management Relations Act of 1947, so as to permit labor organizations, under sanction of the Federal Government, to represent one segment of management—the foremen—for the purposes of collective bargaining.

General Motors is unalterably opposed to any new legislation, or a change in existing labor laws, which would bring about this result.

General Motors' convictions with respect to the position which the foreman now holds, and should continue to hold, as a part of management, free of the influences of any outside interests, are of long standing. Through public announcements and by appearances of its executive officers before numerous congressional committees during the past several years, General Motors has had the opportunity to go on record concerning the prominent and essential role which the General Motors foreman plays as a part of management.

GENERAL MOTORS' POSITION ON THE RECORD

When the issue of foreman unionization first arose in March 1943 we made our position clear to the Congress by message to, and testimony before, the House Committee on Military Affairs. At that time we pointed out that management has inescapable responsibilities which cannot be shared with others.

Such responsibilities, we said, are generally recognized and accepted and all of our collective-bargaining agreements contain provisions recognizing management's responsibilities for the conduct of the business.

With regard to the foreman's function as a part of management, we said:

"These responsibilities of management as they apply to employees and the work in the shop are carried out in the first instance by the foremen. The foremen in industrial plants and equivalent supervision in other activities have been traditionally recognized by employees, labor unions, Government, and management as a part of management. Many employers have foremen's manuals describing the duties of a foreman. Where such manuals do not exist, the duties of foremen are in general understood and accepted due to past practice or general practice in industry.

"While the meaning of the term 'foreman' is well understood in the plants of the General Motors Corp. and in the plants of other automobile manufacturers, there is quite likely some variation in the meaning of the term and the duties of first-line supervision as understood in other industries. Generally speaking, however, the foreman or the first-line supervision, by whatever name he may be called, means 'boss'—the man who gives an employee instructions—the man who can discipline, discharge, or recommend for discharge an employee under his supervision—the man who, as an executive of the supervisory group, is empowered to enforce, execute, and assist in the determination of the detailed policies of the business, particularly as they apply to the handling of employees under his supervision."

We also stated that in our judgment, foremen could not function in a position of dual allegiance:

"It is fundamental that a man cannot serve two masters. As a practical matter, if there were foremen's unions, a foreman would be continually faced with the problem of whether a particular decision or action would be serving the objectives of the union or serving the objectives of the management. To quote from an authority some 2,000 years old and generally accepted, 'No man can serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other.'

"A foreman could not function in such a position of dual allegiance—either he would be loyal to the union and be obligated to carry out its dictates, or he would remain a part of management and carry out management policies. Any attempt on the part of any foreman to 'ride both horses' would add to his own confusion and render him ineffective."

We predicted that foremen's unions might take any of three forms:

(1) So-called independent unions;

(2) Affiliates of the same international union which represents the workmen in the plant; or

(3) Affiliates of one of the other international unions not representing the workmen in the plant; and

the situation would be intolerable, for the problem of dual allegiance would exist in all three cases because—

"If the foremen's union is affiliated with the international union which represents the workers in the plant, the foremen could not be continued in their present duties. They could no longer possibly have any executive control over the men or any position in handling their grievances, not could they be authorized to carry out the very important personnel functions which are a responsibility of management and which are now a part of their duties.

"If the foremen's union is affiliated with one of the international unions not representing the workers in the plant, there would be the added problem of the conflicting policies and ambitions of the two rival international unions."

We said then, and we are sure that subsequent events proved, that in any of these situations there would be serious turmoil and confusion in the plants; there would be endless talk and debate; policies of management would not be carried out; accurate reports of the problems and difficulties in production could not be obtained; the effectiveness of first-line supervision would be lost; production would bog down; and our important national asset of mass production would deteriorate into mob production.

APPEARANCES BEFORE NATIONAL LABOR RELATIONS BOARD

In February 1944 we again made our position clear in a letter to the National Labor Relations Board which at that time was deliberating as to whether foremen were "employees" under the act and thus entitled to the benefits of the act.

At that time we traced our long-established training program and foremen saying:

"In General Motors, for many years, we have had a policy of establishing a very clear line between the foremen on one hand and employees who have no supervisory duties on the other. In the early 1920's General Motors developed an executive training program, the purpose of which was to educate, train, and develop foremen in their management responsibilities. The program consisted of a complete training manual, subsequently copyrighted in 1927. This program was carried out in all plants of the corporation.

"The following is quoted from this program:

" 'Representative of Management to Men

" 'Just as the general manager is the highest authority in the enterprise, so the foreman is the highest authority in his department. He has been invested with the authority of management. The men in the shops look to him as the representative of management. They get their instructions from him; he carries out the company's plans and policies. The workmen also get their opinion of the company from the treatment that they receive from their own foreman.' "

In the course of the development of the management-employee relationship through the years, this program has been expanded to meet the new conditions as they arise from time to time.

We pointed out the the NLRB that our foremen have definite managerial functions and responsibilities and are clearly recognized as a part of management:

"In General Motors, foremen are the managers of the departments in which the employees perform work under their supervision. They direct the workmen through making work assignments. They reassign employees as the need arises. They initiate merit wage increases and promotion of employees. They are responsible for the efficiency of the employees under their direction. In the course of these managerial duties they are charged with the responsibility for maintaining discipline among the employees under their direction. They are empowered to take appropriate disciplinary action in the event of a violation of shop rules and union agreements and other improper conduct by employees. Under all of our union agreements, they are the first point of management contact. In a large majority of cases they make the first management decision on grievances. It is only cases involving issues beyond the jurisdiction of an individual foreman that the foreman is unable to make a decision.

"The functions of the foreman in the General Motors plants as the direct representative of management in dealing with representatives of workmen's unions was clearly recognized by the first umpire established under the 1940 agreement with the UAW-CIO, in case A-2 decided October 28, 1940."

Again in February 1945, in a statement made before the National Labor Relations Board, we pointed out that it is impossible for a foreman to be in a dual position as an "employee" and an "employer":

"When a workman accepts promotion to a foreman, he is recognized as a part of management, not only by his employer and himself but also by the workers under his supervision. In effect, then, when he accepts his appointment as a foreman, his status as a worker gives way to his responsibility as a part of the management. Due to the authority and responsibilities vested in the foreman in General Motors and the position this places him in as an employer under the National Labor Relations Act, it is impossible for the foreman to be in the dual position of an 'employee' and an 'employer.' Since the corporation is held responsible for the foreman's conduct, it follows that the corporation not only has the right but the duty when, in its judgment, the foreman is not properly fulfilling his managerial responsibilities to sever that relationship by withdrawing the managerial authority that has been delegated to him."

APPEARANCE BEFORE SENATE COMMITTEE IN 1947

In February 1947 we urged the Congress to enact legislation to clear up the contradictory and self-defeating technical interpretations of the National Labor Relations Act which placed certain management employees in a dual capacity. At that time we said:

"After much controversy and litigation the National Labor Relations Board and the courts have placed certain management employees in a dual capacity, expecting them to function both as agents of management and as unionized employees. The National Labor Relations Act under this technical interpretation is contradictory and self-defeating and must be changed by Congress. Management can function only through individuals, and individuals who have collective-bargaining responsibilities or positions of management trust cannot properly fulfill their duties if at the same time they are subject to union control. As a practical matter, to make collective-bargaining work, the status of such management employees must be clearly defined by placing them on the management side of the bargaining table."

THE FOREMAN AS MANAGEMENT IN COLLECTIVE BARGAINING AND CONTRACT ADMINISTRATION

General Motors deals with 18 different international unions representing approximately 275,000 workmen in more than 200 separate bargaining units. We have currently in effect approximately 100 separate master collective-bargaining agreements governing our relationship with the various unions. In addition there are literally hundreds of local agreements which are supplemental to these master agreements.

Under all our collective-bargaining agreements with the workmen's unions, the foremen make the first management disposition of all grievances of the workmen. These collective-bargaining agreements specifically require such management action by the foreman. Consider, for example, the current agreement between General Motors and the UAW-CIO covering production and maintenance employees in approximately 100 plants.[1] This agreement provides as follows:

"Any employee having a grievance, or one designated member of a group having a grievance, should first take the grievance up with the foreman, who will attempt to adjust it."

In a large percentage of all cases, the foreman's written disposition is the only management disposition.

In 1947, the latest year for which complete corporation-wide figures are available, there were a total of 28,319 grievances reduced to writing in behalf of the approximately 225,000 workers of General Motors represented by the UAW-CIO. Of this total, 12,697, or 44.8 percent, were settled satisfactorily by foremen acting as management. A study made of 26 plants in 1 large division of General Motors employing 48,000 represented workers developed that in 1948 a total of 6,445 grievances were filed. Of these 3,753, or 58.2 percent, were settled by foreman action alone. The above figures are related to grievances reduced to writing and, therefore, do not take into consideration the many thousands of additional grievances and problems which are settled by the foremen before they reach the formal grievance procedure.

Under General Motors agreements with the various unions, we provide for an impartial umpire to act as the terminal point in the grievance procedure and to make decisions in dispute cases which are final and binding on both parties. The umpire system of resolving grievance disputes was pioneered in the automobile industry by General Motors and the UAW-CIO in 1940. In 1940 and 1941, Dr. George W. Taylor acted as the permanent Impartial umpire under our agreement with the UAW-CIO. In one of the cases presented to him, Dr. Taylor ruled that the foreman is management in the collective-bargaining relationship. In that decision[2] Dr. Taylor said:

"Under this agreement (GM-UAW national agreement of June 24, 1940) both parties are accorded rights and they assume obligations. *In the performance of its vital function, management necessarily delegates certain duties to the foremen.* Such duties must be carried out without infringing upon any of the agreement rights of employees or of the union. What if the foreman improperly performs his duties and does infringe upon such union rights? *Since he acted for the corporation, his violation of the agreement is a violation by the corporation* and any claims of redress must be made against the corporation and not against the individual foreman." [Italics supplied]

The employee-grievance forms which are used for the filing of formal grievances under our labor agreements provide a space for the foreman to give his written disposition.[3] These written dispositions by foremen are the basis of final settlement of a large percentage of all written grievances. They are binding commitments of General Motors made by the foreman. These commitments are subject to interpretation and enforcement by the impartial umpires. For example, take a case which arose under our agreement with the UAW-CIO. The sole issue in the case was the interpretation of a written disposition to a grievance given by a foreman. The case was appealed to Mr. Ralph T. Seward who was serving as impartial umpire under the GM-UAW-CIO agreement at that time. He interpreted the disposition of the foreman and umpire's decision[4] was final and binding upon General Motors. In this decision, the umpire expressly recognized that the foreman's disposition was the sole basis for the ruling. In other words, the umpire recognized the authority of the foreman to grant a concession which was not otherwise provided for in the labor agreement.

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[1] Agreement between General Motors and the UAW-CIO dated May 29, 1948, attached hereto as exhibit A.

[2] Umpire decision A-101 rendered under terms of agreement between General Motors and UAW-CIO. Full text of this decision is attached hereto as exhibit B.

This example clearly illustrates the chaotic condition which could result from having a foreman function as management in collective bargaining and at the same time be a member of a union and subject to union control.

Our agreement with the UAW[5] provides numerous references to the foreman as the representative of management—in most instances the sole management representative—in the administration of the collective-bargaining agreement. Examples of these follow:

(1) Committeemen desiring to leave their work to investigate grievances of workers may do so only "after reporting to their respective foreman" (par. 15).

(2) Such committeeman must first "present a written grievance to his foreman" (ibid).

(3) The committeeman must notify the foreman in the department in which he is investigating the grievance, if the department is one other than that in which the committeeman regularly works (par. 20).

(4) Committeemen shall report to their foreman immediately after lunch (par. 18).

(5) Committeemen are restricted as to the amount of time for which General Motors pays them while handling grievances (par. 19) and it is the foreman's responsibility to keep track of the time used.

(6) Promotions of workmen to higher rated jobs and transfer of workmen between equally rated jobs is the responsibility of the foreman (par. 63).

(7) Workmen may make application for transfers to fill vacancies and such applications may be filed with the foreman (par. 63B).

(8) In instances where workmen protest the production standards established by management, the complaint is first taken up with the foremen. Throughout the procedure established in the agreement for handling dispute cases involving production standards, the foreman is management's representative (par. 79).

(9) The granting of certain leaves of absence is also the responsibilty of the foreman and workmen must, under the agreement, make application to him and receive his approval for such leaves of absence (pars. 103 and 104).

(10) Specific provision is made prohibiting foremen from performing any work performed by represented workmen except in emergencies, in training workmen or in ironing out production difficulties (par. 145).

There are other instances of foreman responsibility for administration of provisions of our collective-bargaining agreements where the foreman is not specifically referred to in the agreements. For example, in the GM–UAW agreement provision is made for hiring certain workmen at 10 cents per hour below the rate of the job classification with automatic progression to the job rate.[6] Workmen who meet the standard requirements for an average employee may receive such increases sooner. The determination of whether the workman will receive increases earlier than the automatic provisions require, however, is made solely by the foreman. In this connection too, the determination of whether the new hire will make a satisfactory workman rests with the foreman.

In any successful group activity there must be discipline; there must be respect for the rights of others; and there must be obedience to proper authority. Discipline is closely related to efficiency, for without discipline efficiency is impossible.

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[3] Copy of employee grievance form used under UAW agreement is attached hereto as exhibit C.

[4] Umpire decision E–187 rendered under terms of agreement between General Motors and UAW. Full text of this decision is attached hereto as exhibit D.

[5] Agreement between General Motors and the UAW-CIO dated May 29, 1948, attached hereto as exhibit E.

[6] See par. 99 of the GM-UAW agreement, copy of which is attached hereto as exhibit A.

The maintenance of discipline is an exclusive management responsibility and so recognized expressly in all our agreements with the unions. It is a responsibility which cannot be shared with others. In General Motors the primary responsibility for maintaining discipline rests with the foreman. In nearly all cases of disciplinary action, ranging from reprimand to discharge, the foreman takes the action.

The foremen in General Motors perform a vital role in connection with the formulation of the contractual provisions to be agreed upon with the unions representing the workmen.

Foremen constitute that segment of management having closest contact with workmen and union representatives in the shop. Among all the members of management, therefore, they are in the best position to know how collective-bargaining-agreement provisions actually work out in day-to-day application in the shop.

Whenever union contract negotiations are pending, the entire management organization in General Motors is consulted. For example, by means of questionnaires and conferences the General Motors foreman who is management's qualified and experienced front line representative in the shop and on the production line is asked to express his individual views and judgment concerning the additions, modifications, or other changes if any, which should be made in the existing collective-bargaining agreements in General Motors.

It is clear that this essential source of constructive judgment necessary to the formulation and maintenance of sound contractual provisions, would be destroyed if the foreman owed allegiance to some union as well as to management.

THE FOREMAN'S MANAGEMENT RESPONSIBILITIES IN AREAS OTHER THAN COLLECTIVE BARGAINING AND CONTRACT ADMINISTRATION

Emphasis has been placed upon the foreman's responsibility and authority in handling relationships under union agreements. This aspect of the foreman's job is covered in considerable detail because of its interrelationship with the broader subject of labor-management relations now under consideration by Congress. But such emphasis is not meant to minimize the importance of the foreman's direct responsibility and authority for production and for relationships with employees in areas not specifically covered by the union agreement.

The foreman in a production department, for example, has management responsibility for proper quality and quantity of product. In the performance of this responsibility he must see that schedules are met, he requisitions the tools and materials necessary for production, he sees that tools and equipment are maintained in working order, he determines the causes of scrap and takes corrective measures, he watches the flow of parts coming from other departments. He participates in the discussion of policies affecting his department. He makes suggestions for improvement in lay-outs, processes, procedures, and practices.

His typical responsibilities relating to personnel, include responsibility for final selection of employees hired to fill requisitions which the foreman has initiated, responsibility for training employees on their respective jobs, responsibility for the safety of employees, responsibility for making job assignments, and responsibility for counseling with individual employees in the handling of personal problems.

General Motors foremen have been thoroughly trained in the performance of these responsibilities, the necessary authority has been delegated to them, and they are backed up by higher management in the performance of their duties. They are assisted, also, by service departments, working in specialized areas.

Every effort has been made to avoid any situation which would undermine the foreman's authority in carrying out his responsibility.

In General Motors, foremen are salaried employees and they had this status years before there was any discussion of foreman unionization.

Furthermore, it is General Motors' policy that the foreman's salary must be established on a basis equivalent to at least 125 percent of the average rate of the five highest-paid workmen under his supervision. When it is necessary to schedule a workweek which involves overtime for the workmen in a department it is the practice to pay the foreman an extended workweek premium, which maintains this differential in pay.

Other policies are in effect in General Motors applicable to such matters as vacations, group insurance, and pension and retirement plans. There are also policies and practices which give special recognition and status to the foreman as a member of management.

General Motors foremen are not regarded as "production pushers" or "straw bosses." They are not in a "no-man's land" between management and the workmen. In General Motors foremen are management.

Indeed, any steps which might now be taken by Congress to sanction the unionization of foremen in American industry would permit severance of this group from its present position and status as management and would set it apart in this very middle ground position between management and the workman. It would place the foreman in a position where he could not exercise management responsibility and authority and where he would be greatly reduced in status and effectiveness.

FOREMAN ISSUE IMPORTANT FROM PUBLIC STANDPOINT

That the fundamental principles outlined in these earlier statements continue to apply has been made clear by labor-management relations experience during and since the war. The record of General Motors in war production—14 times better than that of the rest of the industry in terms of man-hours lost due to stoppages—was due in no small degree to the foreman, who was in fact management on the production line.

Indeed, we are convinced that unless the foreman had been firmly established in his key place in management it would not have been possible for General Motors to turn out the large volume of war materials produced by our factories. This production achievement was officially recognized. Our plants received a total of 65 Army-Navy E awards for excellence and 146 stars representing extensions of these honors.

A number of individual members of the General Motors management organization were awarded certificates of merit by the President of the United States for their contributions to the war production effort.

Following the war period the position of the foreman as a member of General Motors management stood the test of the reconversion period. It stood the test, still more recently, of building up in the face of material shortages and strikes in supplier plants of peacetime production to its present record levels.

Based on our experience we do not believe there are any problems faced by the foreman which cannot be solved through the adoption of sound policies, procedures, and practices applicable to the management group of the company. Not only has this been proved true in General Motors, but there has been mounting evidence of it throughout American industry. Unionization of foremen would jeopardize their status. Moreover, it can easily be imagined how the opportunity of workmen to advance to management jobs would be limited. With foremen organized management's hands would not be free to promote workmen merely on the basis of ability and initiative.

A STEP TOWARD SOUND RELATIONS

Early last year General Motors negotiated new contracts with major unions representing its employees. These contracts were negotiated peacefully. For the first time the periods of the contracts were fixed for 2 years instead of being restricted to 1 year. These agreements were widely commented upon at the time as representing a major forward step toward sound management-labor relations. That they are just that has been demonstrated since. Relations with and among the people in General Motors plants are good. We have had fewer stoppages arising from disputes than at any time since we have had relations with labor unions. This means that within the limits of available materials we have been able to turn out the maximum quantity of badly needed goods. It means that our people have not had to lose time and pay. Within the last year many other important negotiations throughout American industry have been carried to peaceful conclusions. This is in wholesome contrast to the economic waste of the wave of strikes and stoppages in the immediate postwar period.

FOREMEN ARE FIRST-LINE MANAGEMENT

But an agreement between employer and a union, however well conceived and intentioned, is a dead letter unless it is properly administered. The agreement must be made to function, day by day, on the job, in the way it was intended by the parties. It can be made to function only by people—by the workmen and their representatives on the one hand and by management on the other. Management on the job is the foreman, as we have made clear. Regiment the foreman, tie his hands by subjecting him to union discipline, and life and meaning go out of any labor-management agreement, however constructive.

General Motors has concrete evidence that employees themselves are keenly aware of this. In a contest late in 1947 we received letters from 175,000 employees telling us what they liked (and did not like) about their jobs. The one thing that stood out above everything else was that these employees liked their jobs because of "good supervision."

FOREMAN UNIONIZATION CONTRARY TO PUBLIC INTEREST

In view of all of these facts, it is difficult to see whose interests would be served by reversing present policy on unionization of foremen. Certainly the interests of workmen would not be served. Past experience with foreman unionization in a number of instances outside General Motors demonstrates that. General Motors' experience in more than 100 plants is evidence that there are no problems faced by the foreman which require unionization. Thus the interests of foremen themselves would not be served. The interests of rank-and-file union members—and of unionism itself—would not be served. For it must be the objective of unions as it is the objective of management to work toward sound and practical relationships. Unionization of foremen would put a major block in the path toward that objective.

Finally, and most important, unionization of foremen would be against the public interest. Experience in the auto industry during the war was quite conclusive on this point. Plants with unionized foremen suffered more than others from stoppages and slow-downs arising from troubled relations on the job. In consequence, efficiency of production was impaired. Broad encouragement throughout industry of foreman unionization would mean disturbance on a mass scale of good employee-employer relations that now exist in most of industry. This could only mean loss of production efficiency on a mass scale, with poorer quality and high prices. The consumer would pay the final penalty.

FOREMAN'S MANAGEMENT STATUS WIDELY RECOGNIZED

During the period which has elapsed since our earlier testimony we feel there has been an increase in the stature of the foreman as a member of management in American industry. We believe the recognition of his status as contained in the Labor-Management Relations Act of 1947 has spurred this desirable development. But unionization of foremen would destroy it. This is true no matter how foremen might be organized—whether into so-called independent unions or as affiliates of an international union representing the workmen in the plant, or as affiliates of some other international union. In any case there would be the problem of dual allegiance, of attempting to serve two masters. The foreman would be neither fish nor fowl, not wholly management and not wholly labor. He would be in an untenable "middle." The consequences are easy to foresee. Endless talk and debate, turmoil, and confusion would interfere with the orderly exercise of the management function. That is an impossible situation in a plant.

It is felt that the great majority of foremen prefer, and will continue to prefer, their status as members of management. But if encouragement were now given to foreman unionization through national policy, pressure undoubtedly would be brought to bear upon foremen to join labor unions. Such pressure would come from more than one direction. It would come, of course, from whatever union might be attempting to organize foremen in a plant. But it would come also from leaders of the workmen's union in the plant, even if that union itself were not attempting to organize foremen. Pressure would be brought to bear upon the foreman even by those of his own workmen who are active union members. The net effect would be unionization by force of an important segment of management.

It is the proper concern and the policy of Congress to encourage sound and constructive labor-management relations. As pointed out, General Motors' current agreements with major unions are in line with this policy and have proved to be an important and practical step in the direction of good relations in industry. We believe these agreements as well as our position on the unionization of foremen are in line also with one of our very important operating principles, which is:

WHAT IS GOOD FOR AMERICA IS GOOD FOR GENERAL MOTORS

For the reasons already stated, General Motors reaffirms its opposition to any steps Congress might take that would make it compulsory for a company to engage in collective bargaining with members of its management.

This statement has been directed particularly to an explanation of the possible effects upon the status of the foreman in General Motors and Industry, should the Labor Management Relations Act of 1947 be changed as proposed. However, General Motors' position concerning other features of the proposed legislation, to the extent that they were commented upon by C. E. Wilson, president of General Motors, in his testimony before the United States Senate Committee on Labor and Public Welfare on February 5, 1947, remains the same.

(NOTE.—The exhibits referred to in this statement are not included with this booklet. They are available upon request.)

STATEMENT OF GEORGE C. PHILLIPS, FOREMAN, CHRYSLER CORP., DETROIT, MICH.

Mr. Chairman, my name is George C. Phillips. I am a foreman in the Dodge Division of Chrysler Corp., located in the Detroit metropolitan area, and am first vice president of the Foremen's Association of America.

I left my work in the shop last Friday in order to appear here on behalf of organized foremen, and hope to be able to return to the plant on Tuesday. I have worked in factories since I was 12 years old, and have been with my present employer since 1924 and have been a supervisor since 1935.

Foremen at Dodge Main do not hire their own help—the help is brought in by the employment department. The rate of pay the new employee will receive is determined by the classification in which he is hired. The number of employees assigned to a group is determined by the amount of money allowed by the time-study department for the production or assembly of a given number of pieces. The equipment to be used in manufacturing or assembling the product is determined by plant engineering. The tools to be used are specified by the master mechanics division, and the number of units to be made or built is scheduled by the planning department. Quality standards are controlled by the inspection department. The final interpretation of the contract between employer and employees, other than supervisors, is the function of the labor-relations department.

It will readily be seen from the foregoing that the foreman in carrying out his numerous responsibilities is compelled to meet many conditions which he had little, if any, part in setting up. He may not hire the men and women needed, but he is responsible for their training and behavior. He may after a reasonable trial recommend that they are unsuited for the type of work in his group or department. He does not have any part in setting up schedules, but he must meet them. He does not set the wages of the worker or the price allowed for making or assembling the product, but he is responsible for reconciling the two factors in terms of efficiency.

In other words, though wages and salaries are fixed quantities, the mass-production foreman is practically operating on a piecework basis.

The foreman must endeavor at all times to keep his people satisfied under, or should I say despite, conditions which he had no hand in setting up. He must report equipment failures and tool wear, check his working area for steam or water leaks, keep absentee records of his people, keep a daily absentee chart, make a daily efficiency report and a weekly absentee report. He may discipline his people in a manner prescribed by others, usually the labor-relations department.

Though the foreman does not control quality standards, he must maintain them. As an agent of management, the foreman fulfills his many responsibilities and through cooperation with other foremen usually meets most, if not all, of the varied requirements of management. In a large mass-production plant, cooperation is essential to the success of the undertaking, and it is my experience that, since Dodge foremen have been organized, cooperation has increased greatly and benefited both foremen and management.

Much has been made of what is done for foremen by management. Allow me to make a comparison: the rank and file workers have access to group insurance and hospitalization at their own expense; they have six paid holidays a year; if they work on a holiday, they receive an additional day's pay; they receive 2 weeks' pay in lieu of vacation and may take a vacation if they so desire; they do not receive sick pay and are replaced during their absence, and they have no retirement plan.

Foremen have access to group insurance and hospitalization at their own expense; they have six paid holidays a year; if they work on a holiday, they do not receive any additional pay; they receive a limited sick pay and are not replaced during their absence. Thus, after the limited sick pay expires, the company is saving their salary. Foremen receive 2 weeks' vacation with pay; they are not replaced while absent. Their task is covered in some fashion by other foremen.

Rank-and-file workers receive time and one-half for all overtime, double time for Sunday. Foremen are not paid for overtime except Saturday, for which day they receive the equivalent to 30 percent of a week's salary—roughly, time and one-half. Foremen do not receive any pay for working Sunday, but are told they may take a day off later on.

Foremen do have a retirement plan to which they subscribe a small amount of the cost. The amount each foreman may receive in retirement varies. In my particular case, if I live to the retirement age of 65 years, I will have been with the corporation 37 years and expect to receive $10 per month.

Much has been said about the prestige and dignity of the foreman's position. These qualities are not conferred by the position; they are inherent in the person and are at times impaired by some unfortunate act of management such as occurred in 1948, when the rank and file were out on strike and foremen were put to work emptying trash from wagons and shoveling it into the incinerator. Incidents of this nature do not help the foreman to command the needed respect of the people who work under him. Under the Taft-Hartley law, foremen have the right to organize, but are denied protection of that right under the law when they attempt to exercise it. I am convinced that foremen must have protection under the law in their efforts to organize in order to take them from under the dark shadow of economic insecurity which ever hangs over them as they go about their daily tasks, knowing deep down in their hearts that, should their very livelihood be threatened by the action of management, there is no available grievance machinery through which they can seek relief, nor is there any proper court to which they may appeal for redress against any improper action of management. I will conclude by saying that, during my 16 years as supervisor, I have never had reason to believe that I am a part of management. I am an agent thereof. I am convinced that foremen, if given protection under the law for their right to organize in a bona fide foremen's union and bargain collectively with their employers on matters relative to their own well-being, will prove to employers that organized foremen are a boon to industry, and will not create the chaos so fearfully predicted by the manufacturers representatives.

STATEMENT OF DONALD KIRKPATRICK, GENERAL COUNSEL, AMERICAN FARM BUREAU FEDERATION, CONCERNING LABOR-MANAGEMENT RELATIONS LEGISLATION

Mr. Chairman and gentlemen of the committee, my name is Donald Kirkpatrick. I am the general counsel of the American Farm Bureau Federation. I appear in reference to H. R. 2032, which proposes to repeal the Labor-Management Relations Act of 1947 and reenact the Wagner Labor Act of 1935. I speak here today on behalf of the American Farm Bureau Federation, a national general farm organization. Its organizational structure consists of State farm bureaus at the State level; county farm bureaus at the county level, and over 1,325,000 farm families at the farm level. The representative policy-making group at the national level is the voting delegate body, which in 1948 was composed of 139 farmers, speaking for farmers in all sections of continental United States and Puerto Rico.

At the recent annual meeting of voting delegates and members, held in Atlantic City during December of 1948, policy resolutions were initially formulated, after days of consideration, by a resolutions committee consisting of 33 persons from the several States within the four great agricultural regions of the country. The committee consisted of the following persons:

R. E. Short of Arkansas, chairman.

Midwestern States: Charles B. Shuman of Illinois, Hassil E. Schenck of Indiana, H. E. Slusher of Missouri, Frank W. White of Minnesota, H. A. Praeger of Kansas, E. Howard Hill of Iowa, Perry L. Green of Ohio, C. E. Buskirk of Michigan, W. A. Plath of North Dakota, Mrs. Raymond Sayre of Iowa, Mrs. Russell Cushman of Indiana.

Southern States: Walter L. Randolph of Alabama, H. L. Wingate of Georgia, R. Flake Shaw of North Carolina, L. F. Allen of Kentucky, J. Walter Hammond of Texas, Ransom E. Aldrich of Mississippi, Thomas J. Hitch of Tennessee, John I. Taylor of Oklahoma, Mrs. D. W. Bond of Tennessee.

Northeastern States: Warren W. Hawley of New York, Herbert W. Voorhees of New Jersey, Edward P. Rowland of Connecticut, S. Lothrop Davenport of

Massachusetts, Clyde Bonar of West Virginia, Mrs. Roy C. F. Weagly of Maryland, Mrs. Lynn Perkins of New York.

Western States: Ray B. Wiser of California, Ralph T. Gillespie of Washington, W. Lowell Steen of Oregon, Delmar Roberts of New Mexico, Mrs. Harold Wright of Montana.

The following resolution on the subject matter covered by H. R. 2032 was submitted by the resolutions committee and unanimously adopted by the voting delegate body:

LABOR-MANAGEMENT RELATIONS

"The welfare of the Nation depends upon the prosperity of all segments of our economy. The rights and benefits of all the people of the United States are paramount to those of any one group or class. Farmers know we cannot maintain a sound national economy if labor, management, or farmers follow unsound or unfair practices. Thus, the welfare of all demands that both labor and industry accept their duties and responsibilities in assuring industrial peace and full production.

"Farmers produce abundantly even in periods of low prices. To do otherwise would jeopardize the health and welfare of the American people. Labor has little to gain if increased wages are translated into higher prices for the things they buy. The only real way the standard of living of labor can be improved is by increased real income resulting from high productivity per man. A high level of production at fair prices is the objective of American agriculture. We recommend that both labor and industry accept it as their objective.

"The American Farm Bureau Federation favors maintaining such provisions of law as will protect the general welfare. Strikes in industries essential to the public welfare, jurisdictional strikes, secondary boycotts, hot cargoes, closed shop, wildcat strikes, the use of force and violence, obstruction of commerce, or destruction of property are not in the national interest, and consequently not in the long-time interest of labor itself.

"Management must cooperate with labor to improve working conditions, assure policies which will give high real income to workers, and follow such other policies as will contribute to full and sustained industrial production and employment. Monopolistic practices which result in low production and high prices, unreasonable profits, inefficient management, lock-outs, and other activities which provide the basis for instability in labor-management relations must be corrected.

"Uncontrolled economic power in the hands of either management or labor leaders can equally be a threat to our national well-being. Legislation should be designed to protect the public interest against the selfish exercise of autocratic power either by labor or by management.

"We support a reasonable minimum wage for labor. In our judgment, a reasonable minimum wage should fluctuate either up or down with the cost of living.

"We urge our Government to develop and aggressively follow a vigorous antimonopoly program. The elimination of all monopoly except that under Government regulation and control is essential to the successful operation of the competitive system. Farmers and others cannot produce for a free market if prices in large segments of our economy are rigged by monopolistic practices."

I am certain that in making these recommendations it was not the intention of the Farm Bureau leaders to be either prolabor or antilabor. Likewise, it was not their intention to be promanagement or antimanagement. Our full resolution on labor-management relations is intended to provide the sort of economic philosophy which might well serve as the basis for real cooperation among the great economic groups in this country.

The board of directors of the organization, with a membership of 22 persons, representing all of the agricultural regions of the United States, has the duty, within the framework of the national legislative policy resolutions, to direct the actions of the executive officers. The board of directors held a 4-day meeting here in Washington, January 24–27, 1949. They instructed the executive officers to support aggressively such action as will best assure the maintenance of adequate legislation in the field of labor-management relations.

Prior to the consideration and enactment of the Fair Labor Standards Act of 1938, farm organizations did not take an active interest in labor legislation pending before the Congress. However, since that time there has been an ever-increasing interest on the part of general farm organizations in labor-management problems. We believe this is as it should be. After all, farmers have a manifold interest in the development and maintenance of healthy labor-management relations: (1) They are interested in having freely available widespread markets for farm products; (2) they have a vital stake in making certain that services performed between the producer and the consumer are done efficiently; (3) costs of things farmers buy are an important factor in the farm economy (farm operating costs in 1948 were higher than total gross farm income any year prior to 1942); and (4) farm people are interested in promoting, to the best of their ability, policies and programs which are in the general interest, for they know that only through the development and maintenance of a dynamic, full-production economy can the interests of farm people themselves be promoted and sustained.

I should like to reread that paragraph of our resolution which deals most directly with the subject matter of H. R. 2032:

"The American Farm Bureau Federation favors maintaining such provisions of law as will protect the general welfare. Strikes in industries essential to the public welfare, jurisdictional strikes, secondary boycotts, hot cargoes, closed shop, wildcat strikes, the use of force and violence, obstruction of commerce, or destruction of property are not in the national interest, and consequently not in the long-time interest of labor itself."

We do not presume to be experts in the field of labor-management relations; neither do I presume to be thoroughly acquainted with the technicalities of present laws on this specialized subject or of the implications of proposed legislation in this field. Nevertheless, in behalf of American farmers, we urge members of this committee to make certain that the Government has the power under law to deal with strikes that jeopardize the national welfare. Concentration of power which can threaten the public health and safety is dangerous, whether it be in industry, labor, or agriculture. We believe it is the duty of Congress, which we sincerely believe to be the best protector of the people's welfare, to make certain that our Government has the capacity to deal effectively with threats to the general welfare.

In his annual address to the 1948 convention of the American Farm Bureau Federation, Allan B. Kline, president of the organization, said:

"Monopoly is a bad thing. Traditionally, we have thought of it as centralization of capital used to control production of goods, their prices and distribution. The time has come when we must take note, as part of the public, of the apparent capacity of well-organized groups of labor, some of them very small, to disrupt production and distribution in this country. Monopoly is no more in the public interest if it is operated by a labor union than it is if it is imposed by a cartel. The farmer is interested in full production, in high real wages for labor. The farmer knows full well that his own real income depends upon continuing high production in the rest of the economy. We are more than willing as farmers, each of us to produce with the resources at his command. All we wish to get is what we earn. We insist, however, that those things must be done which will accomplish continuing high production in the rest of the economy. Personally, I am sure that this can only be facilitated by laws. That much the laws can and must do. With even the best of laws, however, there is much dependent on honest efforts of citizens working freely in a productive and progressive society."

It is our firm belief that the provisions of H. R. 2032 definitely need strengthening in at least three very important particulars which are of vital importance to the public and to American agriculture.

(1) *Restraining orders against certain strikes and lock-out.*—H. R. 2032 contains no provisions empowering the President of the United States, upon recommendation of a board of inquiry, to direct the Attorney General to apply for a restraining order to enjoin for a limited period—a reasonable cooling-off period, if you please—a threatened or actual strike or lock-out affecting an entire industry when the national health or safety is imperiled. There are some who contend that such power presently exists exclusive of any more recently enacted legislation. There are others who challenge the existence of such power. Our organization expresses no opinion as to the existence or nonexistence of this implied power. At best, the question is a highly debatable one. The American Farm Bureau Federation strongly urges the Congress to take affirmative action to place this power in the hands of the President of the United States, subject only to the condition precedent of the recommendation of a fact-finding inquiry.

(2) *Jurisdictional strikes.*—In our opinion, H. R. 2032 does not adequately provide for handling jurisdictional disputes between labor organizations, when such disputes degenerate into jurisdictional strikes seriously affecting innocent third parties. The public is entitled to protection against such conflicts. Such family fights between labor organizations must continue to be defined as unfair labor practices, with violations subject to appropriate civil sanctions. Farmers have too long been the innocent victims of these unsocial and vicious practices.

The American Farm Bureau Federation stands firmly for positive provisions of law outlawing such practices.

(3) *Secondary boycotts.*—H. R. 2032 does not adequately outlaw secondary boycotts. These instrumentalities are dangerous weapons. The possession and use of them must be made unlawful and finally subject, if need be, to the restraining processes of Federal courts. The public, and farmers in particular, must not again be subjected to the abuses of such practices, whether exercised by labor groups, or by labor groups in collusion with employers. Protection against such practices must be preserved.

We respectfully urge this committee to make certain that protection of the public interest in these three important matters be definitely assured by Federal statute.

Statement of Charles W. Holman, Secretary, National Cooperative Milk Producers Federation, Relative to H. R. 2032

As a national agricultural organization of dairy farmers, the National Cooperative Milk Producers Federation is vitally interested in the subject of labor-management relations. The federation consists of 86 cooperative dairy associations and more than 600 submember associations owned and controlled by over 425,000 farm families in 47 States. These farmers through their cooperatives marketed in 1948 over 20,000,000,000 pounds of whole milk equivalent, which was approximately one-fifth of all the milk and cream that left the farm, in commerce. At annual meetings prior and subsequent to the enactment of the Labor-Management Relations Act, 1947, the voting delegates of the federation passed resolutions clearly setting forth our position on labor-management relations.

We are opposed to the proposals as contained in H. R. 2032.

For several years our organization has given much thought and deliberate consideration to the establishment and maintenance of a sound national labor relations policy so that there may be assured the preservation of a free labor and a free competitive enterprise. Our interest in the subject of labor-management has been in connection with the over-all problems affecting the national welfare of all the people in these United States, with particular concern over the impact of certain activities upon agricultural operations. We insist that the rights of the general public are paramount to the rights of any one segment of our national economy, whether it be agriculture, labor, or industry.

Prior to the enactment of the Labor-Management Relations Act, 1947, we indicated on several occasions our anxiety and perturbation over an apparent trend of widespread industrial strife, with ever-increasing tendencies on the part of certain labor leaders and their labor unions totally to disregard the rights and welfare of the general public. It was our opinion that a continuation of such a trend would be harmful not only to the public, but also would curtail the economic freedom and employment opportunities of a large number of willing workers. Predicated upon this opinion, we urged the enactment of constructive legislation which would correct the then existing situation in the field of labor relations and develop a mature and stable national labor policy which would have the respect and trust of labor management so as to secure harmonious relations between employers and employees with resultant benefits to all segments of our economy.

As a result of the efforts of many people sincerely interested in the welfare of our Nation, legislation cited as the Labor-Management Relations Act, 1947, was enacted by the Congress of the United States, overriding a Presidential veto. This act has as its purpose among other things: Prescribing the legitimate rights of employees and employers; providing an orderly procedure for the settlement of disputes; protecting the rights of individual employees in their relations with labor organizations; defining and proscribing practices on the part of labor and management which affect commerce and are inimical to the general welfare; and protecting the rights of the public in connection with labor disputes.

A fair and unbiased appraisal of the operation of the Labor-Management Relations Act, 1947, indicates that gratifying progress has been made in reducing industrial strife and stabilizing relations between industry and labor, with substantial benefits to all people in the United States. Improvement in labor-management relations is due in large part to the establishment of mutual legal duties and responsibilities. Economic power without corresponding responsibilities, whether by labor or management, will always make possible the exercise of such power in total disregard of the rights and welfare of the general public.

Notwithstanding the restoration of labor-management equilibrium, with resultant orderly collective bargaining, and industrial peace and justice, tremendous publicity has been issued for the repeal of the Labor-Management Relations Act, 1947, and substituting in lieu thereof the provisions, with some revision, of the National Labor Relations Act, or the so-called Wagner Act.

No individual or organization genuinely interested in the rights and welfare of our Nation would advocate a return to the chaotic conditions existing prior to the enactment of the Labor-Management Reltions Act, 1947, and yet that is precisely the probable effect of the enactment of the bill H. R. 2032.

In opposing H. R. 2032 no inference should be made that we hold that the present law should be retained unchanged. It is axiomatic that laws are dynamic and a manifestation of changing conditions. Therefore, based on time and guided by experience, legislation should be enacted reflecting new concepts and ideas. So it is with respect to laws pertaining to labor-management relations. Serious and unprejudiced consideration should be given to needed revisions to the present law in order that further improvement can be achieved in the field of employee and employer relationship.

As a guide to enacting progressive legislation which will give assurance that the rights and welfare of the public will continue to be paramount to that of any one segment of our national economy, the balance of this statement will be devoted to a consideration of some specific subjects concerning labor-management relations.

1. *Definition of agricultural labor.*—Considerable confusion and uncertainty has existed since the enactment in 1935 of the National Labor Relations Act concerning agricultural exemption from the provisions of the act. Although the act specifically states that the term "employee" shall "* * * not include any individual employed as an agricultural laborer," the act failed to define "agricultural labor." As a consequence every time a dispute arose involving agriculture, the National Labor Relations Board had to make a determination as to whether or not the employees in question came within the exemption. In the absence of a definition of agricultural labor, the Board could never for a certainty know if it properly had jurisdiction of the case, and frequently juisdiction was assumed in contravention of generally accepted definitions of agriculture or agricultural labor.

In order to remove all doubt as to the limitation of authority of the National Labor Relations Board concerning agriculture, the Congress incorporated in appropriation bills a prohibition against the use of funds in cases involving agricultural labor as that term is defined in the Fair Labor Standards Act. The appropriation for the National Labor Relations Board for the fiscal year ending June 30, 1949, contains a similar prohibition.

During the consideration of proposed legislation of labor relations, subsequently enacted as the Labor-Management Relations Act, 1947, strenuous efforts were made to include a provision defining agricultural labor either as contained in the Fair Labor Standards Act or in the Social Security Act. The Senate and House conferees could not agree on which definition to accept. Hence legislation was enacted again failing to define the term "agricultural labor."

We are cerain the Congress will recognize the need for incorporation in proposed legislation on labor relations a definition of agricultural labor and we respectfully urge the adoption of either the definition as contained in the Fair Labor Standards Act or the Social Security Act, preferably the latter since it delineates in greater detail agricultural operations.

2. *The health, safety, and welfare of the public.*—Adequate authority and power must be available at all times to cope effectively with activities and practices which endanger the health, safety, and welfare of the public. Merely providing a so-called cooling-off period is totally inadequate. It is futile to expect to control actual or threatened strikes or lock-outs which imperil the Nation by finding "that a national emergency is threatened or exists because of a stoppage of work has resulted or threatens to result from a labor dispute"; by issuing "a proclamation to that effect"; and by calling "upon the parties to the dispute to refrain from a stoppage of work or, if such stoppage has occurred, to resume work and operations in the public interest."

The power of injunction to enforce appropriate orders must be continued.

3. *Secondary boycotts.*—The use of secondary boycotts is aimed in many cases directly against the operations of farmers and farmer cooperatives. It is a pernicious form of compulsion to achieve union objectives of increased membership and employee representation. Farmer cooperatives and the individual farmer are innocent victims and unless the use of this destructive power is un-

conditionally prohibited, they are helpless to prevent the deterioration and decreased value of agricultural commodities caused by the refusal of certain workers to handle the merchandise. Farmers refuse to endure again the hardships and financial losses incurred due to the secondary boycotts so frequently practiced prior to the enactment of the Labor-Management Relations Act, 1947. We insist there is no such thing as a good secondary boycott. Every type of secondary boycott must be prohibited, not merely those in connection with jurisdictional strikes. Injunctive relief and recovery of damages must be available against this abuse of power.

4. *Jurisdictional strikes.*—Equally responsible as secondary boycotts are jurisdictional strikes. The farmer or his cooperative in this case is an innocent third party of a dispute between labor organizations. It is our opinion that all jurisdictional strikes are unjustified and we insist that full protection must be given against this indefensible practice, with injunctive relief whenever needed.

5. *Rights of employees.*—Farmers of America believe in the right of labor to organize and to bargain collectively for the purpose of advancing their welfare, but with such right, it must be recognized that employees should also have the right to refrain from joining a union or participating in concerted activities.

To safeguard these rights, individual employees or groups of employees must be given protection against any acts of compulsion by employers or labor leaders and their unions, such as coercion, intimidation, violence, or threats. Any legislative proposal which will destroy this protection is of utmost concern to all who believe in freedom of action by the individual employee. We insist that neither employers nor labor organizations should have immunity from restraints against such form of compulsion.

6. *Contractual responsibility.*—The philosophy of collective bargaining is the achievement of peaceful labor relations through negotiation, with the terms agreed upon embodied in a legal contract. The success of collective bargaining depends upon the extent to which both parties carry out their obligations under the agreement. Any effort to limit contractual responsibility upon only one party to the contract dooms the effectiveness and value of collective bargaining. To preserve the sanctity of contract, both parties must be held accountable for the failure to perform according to the provisions of the contract and may be subject to legal action for the enforcement of the contract.

7. *Freedom of speech.*—The Constitution of the United States assures to all the right of free speech. There must be no qualifications as to the possession of this right in the field of labor-management relations. Individual employees are entitled to be given all the facts as presented both by management and by labor organizations. To abridge the right of freedom of speech for the employer, but to permit labor union's and labor union organizers to freely express their views, is to create a condition of inequity and set up obstacles in the development of harmonious relations.

With such rights, care must be taken that any expression or statement of fact is not accompanied by coercion or threats of reprisal.

8. *Supervisory employees.*—The very nature of a foreman's duties or other supervisory employee makes such person an instrumentality of management in dealing with labor. He is the point of contact between the employer and the individual employee. Such duties imply a delegation of authority and to permit a foreman to be organized by the same union which represents the employees supervised by such foreman, inevitably raises serious difficulties, particularly with respect to conflicting loyalties on the part of the supervisory employees.

To assure the elimination of conflicts of interest and give management the individual loyalty of such representatives of management and to prevent the disruption of efficient production, it is highly desirable that management should not be required to bargain with foremen or other supervisory employees.

In conclusion, we want to emphasize again, as we have on many occasions in the past, that the National Cooperative Milk Producers Federation is neither prolabor nor antilabor. By the same token it is neither promanagement nor antimanagement. The farmer members of our organization are interested in and concerned wtih the welfare of all the people in the United States, and they have a strong conviction that the law which is best for all is best for labor and best for management. We respectfully urge the enactment of legislation which will provide for the exercise of powers and discharge of duties and responsibilities by labor and industry in accordance with the principles of democracy, which in turn will assure full employment and full production.

STATEMENT OF H. L. WINGATE, PRESIDENT, GEORGIA FARM BUREAU FEDERATION, MACON, GA.

My name is H. L. Wingate. I am president of the Georgia Farm Bureau Federation, which has a membership of more than 75,000 Georgia farm families, a vast majority of which are small, family-type farmers. I am also a member of the board of directors of the American Farm Bureau Federation, which has a membership of more than 11 million farm families in 45 of the 48 States.

At the annual meeting of the American Farm Bureau in December 1948, a resolution on labor-management relations was adopted after long and careful deliberation on the subject. I quote from the resolution as follows:

"The welfare of the Nation depends upon the prosperity of all segments of our economy. The rights and benefits of all the people of the United States are paramount to those of any one group or class. Farmers know we cannot maintain a sound national economy if labor, management, or farmers follow unsound or unfair practices. Thus, the welfare of all demands that both labor and indusrty accept their duties and responsibilities in assuring industrial peace and full production.

"Farmers produce abundantly even in periods of low prices. To do otherwise would jeopardize the health and welfare of the American people. Labor has little to gain if increased wages are translated into higher prices for the things they buy. The only real way the standard of living of labor can be improved is by increased real income resulting from high productivity per man. A high level of production at fair prices is the objective of American agriculture. We recommend that both labor and industry accept it as their objective.

"The American Farm Bureau Federation favors maintaining such provisions of law as will protect the general welfare. Strikes in industries essential to the public welfare, jurisdictional strikes, secondary boycotts, hot cargoes, closed shop, wildcat strikes, the use of force and violence, obstruction of commerce, or destruction of property are not in the national interest, and consequently not in the long-time interest of labor itself.

"Management must cooperate with labor to improve working conditions, assure policies which will give high real income to workers, and follow such other policies as will contribute to full and sustained industrial production and employment. Monopolistic practices which result in low production and high prices, unreasonable profits, inefficient management, lock-outs, and other activities which provide the basis for instability in labor-management relations must be corrected.

"Uncontrolled economic power in the hands of either management or labor leaders can equally be a threat to our national well-being. Legislation should be designed to protect the public interest against the selfish exercise of autocratic power either by labor or by management." The Georgia's Farm Bureau participated in the preparation of this resolution and we subscribe to it fully.

Obviously, this resolution is neither antilabor nor antimanagement. Rather, it deals with a set of principles which the Georgia Farm Bureau believes should be incorporated in whatever labor-management legislation is enacted by the Eighty-first Congress.

The farmer who owns any portion of the land or equipment which he operates is a capitalist. Also, he must be a laborer if he chooses to be a farmer. He is willing to endure the hard work and long hours associated with his business because he is an individualist; he values his freedom of activity more than he values the added gains which might come to him in other types of endeavor. So the farmer is in a logical position to look objectively at the problem of labor-management relations because he is representative of the three basic segments of our economy: labor, management, and agriculture. He is a part of each. He believes that what is good for one is good for all. At the same time he knows that the surest way to create economic chaos is to allow any one of these three basic segments an undue advantage over the others.

The Georgia Farm Bureau stands firmly for equality of opportunity between labor, management, and agriculture. The history of this Nation has taught us that stability and prosperity cannot be maintained when any one of these groups is out of line for any length of time, or when any one of the groups is in position to suppress or depress the others.

We witnessed an era not too long ago when managment and capital were given undue advantages over labor. The results were bad, and millions of workingmen suffered. Then the pendulum swung and we witnesses an era when labor leaders were given undue advantages over management, over the workingmen whom they represented, and over agriculture. In due time that system was responsible for internal strife, for inefficiencies, monopolies, suppression of freedom, exploitation of power, and eventually for demands by the public that corrective legislation be enacted.

In both cases the failure of the system was due to disregard for the basic principle that a reasonable balance of opportunity, of advantage and freedom must be maintained among the major economic groups.

So far, there have been only brief periods in our history when agriculture has been on an economic level with capital and labor. But, if the time ever comes when agriculture, either through actions of Government or for other reasons, is given an undue advantage over these other segments, the results will be the same.

Two years ago, because organized labor was exploiting its legalized powers to the detriment of the whole Nation, the people demanded and got corrective legislation. Unquestionably, this legislation was aimed at equalizing the advantages of labor and management. The record speaks for itself on the effectiveness of the law in stabilizing relations between the two groups and in preventing national emergencies. However, since passage of the act, labor-union officials have said that it is a slave-labor bill; that it is an insult to the workingman; that it is crushing the organized-labor movement, and many other things. Now, in response to the demands of labor, and without regard for the record of the effectiveness of the law, the administration proposes to do away with Taft-Hartley and take us back to the situation that prevailed prior to 1947. Actually, the workingmen of the Nation have not suffered due to the Labor-Management Relations Act of 1947.

The thousands of farmers whom I represent are not particularly interested in whether or not the Taft-Hartley law is maintained as such, or whether we have a Thomas-Lesinski bill, or a bill by any other name. But they are intensely interested in developing and maintaining legislation that will insure a proper balance between labor and management. Stated differently, they are rigidly opposed to legislation that places labor or management in position to suppress other groups.

It may be that some of the Taft-Hartley law needs correcting, but certainly a law that received such long and careful study and had such overwhelming support in Congress cannot be all bad. This Congress has an obligation to labor to change the law in those instances where it creates an undue hardship on the laboring man. But the Congress must not forget that it also has a responsibility to the rest of the Nation to see that the chaos which prevailed prior to 1946 is not reimposed.

The Georgia Farm Bureau believes that the same basic principles apply, whether Congress is legislating in behalf of labor, of industry, or of agriculture. Consequently, the Taft-Hartley law should be examined, not in light of the broad criticisms which have been leveled against it by those whose powers have been curtailed, but in light of the principles involved as they apply to the laboring man, to industry, to agriculture—in fact, to the economy of the Nation as a whole.

Should a man have a right to work in an endeavor of his own choosing, according to his own abilities, without paying tribute to those who would dictate his actions? The farmers believe that he should. It is basic to the American system of individual freedom. We would oppose to the end any efforts to deny this right to a man engaged in agriculture, and we believe that the same principle is just as applicable to labor. We recommend, therefore, that the ban on the closed shop in the Taft-Hartley be retained.

We feel that both employees and employers should have the right of free speech, within reasonable limits. Naturally, neither employees nor employers should be allowed to attain their ends through such methods as coercion and bribery. We do not favor a return to the situation which prevailed under the Wagner Act. I am not a labor expert, but it is no secret that, under it, employers were muzzled while union leaders were given full freedom of discussion. The Taft-Hartley Act gave the employers the same rights of free speech that it gave employees. This, to us, seems a desirable objective.

The two points I have mentioned are matters of principle upon which, as we see it, everyone should be able to agree. As farmers, we did not come directly in contact with many phases of the Wagner Act, and I am not qualified to discuss them. We did, however, have some experience with secondary boycotts. The ordinary secondary boycott is one in which union employees refuse to handle or deal with goods (including agricultural commodities) that are made, produced, or handled by nonunion labor.

In instance after instance, under the Wagner Act, farmers stood by and watched their produce rot and become valueless because union labor would not allow it to be unloaded. In some instances, the driver of the truck, according to union employees, did not belong to a union. Other reasons were given in other instances.

Mr. Edward A. O'Neill, in testimony before the House Education and Labor Committee during the Eightieth Congress, insisted that the secondary boycott be outlawed.

The Taft-Hartley Act made secondary boycotts an unfair labor practice and provided for an injunction to restrain them.

Our experience has been that the act gives farmers and others protection against secondary boycotts. We would like to see this protection continued, and recommend strongly against any proposal which would weaken the act in this regard.

Farmers also have been the innocent bystander during jurisdictional or sympathy strikes. These strikes, under certain conditions, have operated like secondary boycotts. Unions could not agree upon the handling of farm products; consequently, nobody handled them.

Even union leaders do not defend jurisdictional strikes. Under the Taft-Hartley Act they have almost ceased, and we see no reason for changing provisions which obviously have done what they were intended to do.

We feel that provisions in the present law which require both employer and employee to bargain in good faith are fair and just. If anyone can explain why only employers should be required to bargain in good faith, I certainly am willing to be educated.

We think workers should have the right to join unions or not to join unions, as they see fit, and once union members they should be protected in their rights from both employers and union leaders. We would strongly oppose any move to require farmers to join a farm organization. The same principle is applicable to labor.

The use of force and violence in labor disputes cannot be condoned. We are not too certain that existing law goes far enough in this regard, for there are recurrent reports of mass picketing that is in reality a form of coercion.

The Georgia Farm Bureau believes that the right of individual States to legislate on labor-management relations should be protected. Our own State legislature has enacted a ban on the closed shop and on jurisdictional strikes. This action was taken only after the most careful consideration and represents the judgment of our legislature as being in the best interests of labor, of management, and the State as a whole.

To deny our State governments the right to act in their own best interest would be a serious blow to our constitutional form of government.

Finally, we favor giving Government the power to deal with strikes in basic industries. Only recently the need for some such legislation once more impressed itself upon the American people when John L. Lewis called out the mine workers. Labor objects to the use of the injunction to deal with national emergencies caused by labor disputes, and the administration seems to agree with them. Yet, the administration has used the injunctive powers in six cases. Twice the courts held Lewis guilty of contempt for violating an injunction not to strike. In view of the successful use of the national emergency dispute provisions, we strongly urge their retention.

In conclusion, let me say again that existing labor legislation must be looked at from the standpoint of the welfare of the entire country. Slogans and generalized charges should not sway the committee. The fundamental to be considered is the welfare of the people of the entire country. This requires fairness to labor, fairness to management, and fairness to agriculture.

STATEMENT BY J. GORDON DAKINS, GENERAL MANAGER, ON BEHALF OF THE NATIONAL RETAIL DRY GOODS ASSOCIATION

The National Retail Dry Goods Association is a voluntary trade organization whose members operate some 7,000 retail department and specialty stores located in every State in the Union. Its membership comprises small as well as large retail stores. Approximately 65 percent of its members do an annual volume of business of less than one million dollars.

Many of its members now have one or more collective-bargaining agreements in force with labor unions. Our members are directly interested in and affected by legislation governing collective-bargaining activities.

Retail management's stake in labor legislation is not in laws that tend to impair or limit the right of employees to join unions or the right of unions to represent them in free and honest collective-bargaining activities. Management's stake rather is in laws that do two things: First, prescribe rules of fair conduct in order that employees, when asked to merge their individual interest with the interest of an entire group, may exercise their choice in an informed and intelligent manner free of coercion or fear of any kind from any source; and, second, laws that protect management against the impairment of efficient and continuous business operation.

Retailing is essentially a local business serving customers of its community and immediate trading area. It is intrastate in character. No retail department or specialty-store establishment, to our knowledge, makes a majority of its sales outside of the State in which it is located.

Because of its intrastate character, the question may arise as to why retailing should be concerned with Federal labor legislation applying to interstate commerce. The answer is simple. Retailing as an industry has never requested that it be subject to Federal labor legislation. When the original Wagner Act was passed, retailers generally did not believe that they were subject to the provisions of the act or to the jurisdiction of the National Labor Relations Board. However, both the National Labor Relations Board and the highest courts consistently ruled that they were covered, principally on the basis that stores purchased most of the goods which they sold from outside of the State in which they were located.

The National Labor Management Relations Act of 1947 contained the same "commerce" clause as the Wagner Act. Under it, the National Labor Relations Board and the courts have continued to hold that retail employers—large or small—who buy and receive goods from other States are subject to the present act. This same "commerce" clause is contained in the proposed bill now before your committee. If the proposed bill is enacted retailers will be subject to its provisions. Because of this, the National Retail Dry Goods Association has a direct interest on the behalf of its members nad the consuming public in urging that any new legislation enacted provide for fair, well-balanced regulations which will really promote sound and equitable management—labor relations.

Retailing is currently confronted with a multiple-pronged drive by various labor unions to organize employees in stores throughout the country. This announced drive comes not only from the leading unions but from various subdivisions within both the CIO and the AFL. It is bound to be confusing to both management and employees—and particularly the employees when they may be solicited by several union organizations simultaneously to represent them with their managements. It resolves itself simply to a contest, between management on the one hand and the labor organization on the other, for the loyalty of employees. If management is to have an equal opportunity in retaining the loyalty of their employees and if the employees are to exercise their free choice in an intelligent manner in the absence of coercion or fear, rules of fair conduct should be prescribed and specifically set forth by legislative enactment which will apply equally and fairly to management and to unions. We believe the establishment of these principles is necessary in the best interests of the public and of the employees and employers in the retail industry. We therefore strongly urge that any new labor legislation to be enacted or any amendment of existing labor legislation should establish the following principles by the direct incorporation in the law itself, of provisions to effectuate their purposes.

1. *Freedom of speech for both management and unions in labor matters.*—New legislation should insure the right of employers as well as labor organizations to freely express their views on labor matters provided that such statements in themselves do not threaten economic reprisal or violence, or give promise of benefits. Labor has long enjoyed complete freedom of speech. Employers were said to have had the right of free speech under the original National Labor Relations Act; but that right for management was so restricted and so qualified under the so-called course-of-action doctrine and the captive-audience theory that it was only with the enactment of the Labor-Management Relations Act of 1947 that an employer was really free to express his views and opinions in a labor dispute. This right of management should continue to be explicitly stated in legislation.

2. *Outlaw the "closed shop," but permit the "union shop."*—The present prohibition against the closed shop contained in the present LMRA should be continued but the troublesome and costly procedure for union shop elections can certainly

be discontinued, leaving that issue to collective bargaining. Retailing has always been a free field of employment and is not adapted to so-called hiring halls. Because of the public contact nature of the retail business, high standards of appearance and other personality traits are basic employment requirements. The retailer should be free to select his employees from any available source, and at the same time opportunities for a career in retailing should be available to all. Union scurity in retailing can always be protected without infringement of either the individual's right to seek employment wheresoever he may choose or of management's right to select his own employees.

Related to the right of the employee to freely solicit employment is the principle that he should not be deprived of employment, once attained, merely because of expulsion from a union other than for the nonpayment of dues and initiation fees.

3. *Guaranteeing individuals the right to engage in or to refrain from engaging in concerted union activities.*—The overriding purpose of labor legislation has been the right of employees to determine for themselves whether they prefer to deal with management individually and directly on questions of wages, hours, and conditions of employment—or whether they prefer to be represented by a union. All other provisions of labor law which establish rights or obligations for employees, labor organizations and employers flow from this fundamental right vested in employees. Section 7 of the N. L. R. A. (Wagner Act) announcing employees' right to engage in concerted activities established the foundation upon which employer unfair labor practices were based. The present L. M. R. A. paralleled the N. L. R. A. by adding a provision to section 7 recognizing the fundamental right of employees to refrain from such concerted activities. Thus was established the basis that union interference with this fundamental right by way of coercion or encouragement of certain strikes and boycotts for illegal purposes constituted union unfair labor practices. The safeguard this fundamental right of the individual to make up his own mind on the question of representation requires that any new labor legislation reiterate his right to engage in or refrain from engaging in concerted activities for the purposes of collective bargaining.

4. *Setting forth unfair labor practices by unions as well as by management particularly with respect to strikes and boycotts for illegal purposes including provision for injunctive relief.*—The right of an employee to freely select his bargaining agent should be guaranteed against coercion not only by the employer but also against coercion by the union.

Similarly it should be an unfair labor practice for one union to strike for bargaining rights where another union has been certified or has contractual relations with the employer. If an employer is legally obligated to deal with a particular union, surely the same law that imposes the duty should protect him against efforts to force him to deal with any other union. The present act prevents such a distortion by making these activities subject to injunction and it is difficult to find any justification for its repeal.

It should also be unlawful for any union to engage in picketing and boycotting of a secondary nature which involves "picketing of the premises of or refusal to work for, or refusal to handle merchandise for a person who is not a party of the labor dispute which such acts are intended to affect." Such boycotts invariably result in loss and inconvenience to innocent bystanders who have no connection with the particular labor dispute. Retailers are especially susceptible to secondary strikes and boycotts. They feel strongly that parties to a dispute should be required to settle their differences between themselves.

Similarly it should be an unfair labor practice for employees or a union to engage in a jurisdictional strike. Here, too, an employer is confronted with demands by opposing unions which he cannot resolve. It is an issue which he has not created and cannot settle. The law should continue to protect him against such senseless harm.

Legislation should also define other unfair labor practices by unions which experience has already established—such as refusal to bargain, and "featherbedding."

5. *Require NLRB to seek injunctive relief in instances of illegal strikes and boycotts.*—New labor legislation should continue to make it mandatory for the Board to seek injunctive relief where labor unions strike to force employers to capitulate to illegal demands and practices as outlined in the preceding principle. Whereas the present law leaves it to the discretion of the Board to act in cases involving jurisdictional disputes, we think here, too, injunctive relief should be made mandatory.

6. *In determining appropriate bargaining units the extent to which employees have been organized should not be controlling.*—Prior to the enactment of the L. M. R. A., the Board permitted unions to carve units out of larger groups depending largely upon the extent to which the unions had succeeded in organizing among a given group of employees. This was true even though the employees so organized composed an integral part of a larger operating unit.

The L. M. R. A. attempted to minimize such "accident of organization" by providing that the extent of organization should not be controlling in determining the appropriate unit. The implication being that greater consideration be given to the actual business operations and conditions of employment for all employees concerned in determining the appropriate unit.

This principle is particularly pertinent to retailing and should be continued. In the past, unions have sought to establish units consisting of individual selling departments rather than the selling force as a whole.

In other instances they have concentrated upon certain nonselling groups rather than on all related nonselling activities. Such balkanization of employees into splinter groups disregards completely the close relationship among the many and varied operations characterizing retailing. And what is most important, it ignores the factors of uniformity of working conditions, personnel policies and practices, compensation methods, and supervision for all retail employees, thereby destroying the true operating unit and curtailing management's efficiency.

7. *Exclusion of supervisor from bargaining rights.*—Supervisors are part of management and represent the employer to rank-and-file employees. By the very definition spelled out in the L. M. R. A., true supervisors are vested with such genuine management prerogatives as the right to hire or fire, discipline, promote, grant rate increases or to make effective recommendations with respect to such action. Membership in a labor organization, whether a rank-and-file union or an organization of foremen would obviously create conflicts of interest incompatible with their obligations as management representatives. While it is unlikely that legislation can prevent supervisory membership in unions, the law ought not to encourage the unionization of supervisors, and employers should continue to be relieved of any compulsion to recognize and bargain with unions on behalf of supervisors.

8. *Permitting the employer or individual employees, as well as labor unions to petition for elections.*—The employer and the employee should have equal recourse to the NLRB in the matter of representation elections to preserve the peaceful method of settling disputes whether it be one union or several unions seeking representation rights. The argument advanced by unions that such a provision could serve to permit employers to effectively frustrate employee organization by petitioning for an election immediately upon the appearance of organizers must necessarily fail because the Board still retains the discretion to dismiss petitions whenever conditions make an election inappropriate. When only the union is given the right to petition for an election, management may be pressured by unions for recognition in instances where there is doubt that they truly represent the employees and where the union refuses to submit the claim to formal determination under the Board's facilities.

Similarly, the right of the employee to petition for decertification election should be preserved. Also, management and employees should be protected from unnecessary harassment by some restriction on the frequency with which elections for representation purposes are held.

9. *Provide restrictions on union welfare funds to which management contributes.*—It seems essential that where employers contribute funds for the welfare of their employees based upon services rendered by such employees, that the use of these funds be strictly safeguarded and that the administration of the trust be held strictly accountable. Joint administration, periodic audits and reports to the membership are among the basic requirements for protecting the best interests of employees and their beneficiaries.

10. *Preserve administrative procedures for the investigation and prosecution of unfair-labor-practice charges separate and apart from the judicial function of the Board.*—This is fundamental to the whole democratic process and in prescribing rules for an orderly solution to labor disputes, this principle should be incorporated in the law. The dual right to act as both prosecutor and judge is contrary to our philosophy of government.

11. *Unions should be responsible in damages for breach of contract and other unlawful acts.*—The importance of such responsibility needs little argument from an employer's point of view. However, even from labor's standpoint it is important that it should recognize that responsibilities go with privileges and that the day of irresponsible leadership is past.

12. *Adequate procedure for handling strikes affecting the health and safety of the Nation.*—While it is improbable that a labor dispute in any retail establishment would directly affect the national welfare, the retail trade feels strongly that no union should be in a position of paralyzing the economy or the safety of this Nation for the purposes of promoting its own interests. Assurance of a continuous flow of goods from producer to user is essential to public welfare. In the interest of the public, effective and adequate procedures should be incorporated in any new legislation for dealing with national emergencies arising from labor disputes. We do not believe the provision for merely a "cooling off" period is sufficient.

13. *Preserve an independent Federal Mediation and Conciliation Service.*—Experience has certainly demonstrated that the success of mediation in resolving labor disputes hinges entirely upon the objective and unbiased perspective of the mediator or conciliator. We believe it can function more effectively as a separate agency.

The above principles are essential to good labor relations and are in the interest of the public and of the parties directly affected. We urge that they be specifically provided for in any new legislation to be enacted.

STATEMENT OF ROWLAND JONES, JR., PRESIDENT, AMERICAN RETAIL FEDERATION ON PROPOSALS TO AMEND THE LABOR-MANAGEMENT RELATIONS ACT OF 1947

Inasmuch as a personal appearance before your subcommittee has been impracticable, I wish to submit the following statement of the views of the American Retail Federation upon proposed amendments to the Labor-Management Relations Act of 1947.

This statement contains 15 major principles which retailing believes should be taken into account in the development of any equitable labor-management relations legislation. These fifteen principles were evolved by a group of the ablest retail executives in the Nation and have been endorsed generally by all segments of the retail trade.

The American Retail Federation with offices in Washington, D. C., is a federation of 33 State-wide associations of retailers and 18 national retail trade associations.

The membership includes: California Retailers Association; Colorado Retailers Association; Delaware Retailers' Council; Florida State Retailers Association; Georgia Mercantile Association; Illinois Federation of Retail Associations; Associated Retailers of Indiana; Associated Retailers of Iowa, Inc.; Kentucky Merchants Association, Inc.; Louisiana Retailers Association; Maine Merchants Association, Inc.; Maryland Council of Retail Merchants; Massachusetts Council of Retail Merchants; Michigan Retailers Association; Mississippi Retailers Association; Missouri Retailers Association; Nevada Retail Merchants Association; New Hampshire Council of Retail Merchants; Retail Merchants Association of New Jersey; New York State Council of Retail Merchants, Inc.; North Carolina Merchants Association, Inc.; Ohio State Council of Retail Merchants; Oklahoma Retail Merchants Association; Oregon State Retailers' Council; Pennsylvania Retailers Association; Rhode Island Retail Association; Retail Merchants Association of South Dakota; Retail Merchants Association of Tennessee; Retail Merchants Association of Texas; Utah Council of Retailers; Vermont Council of Retail Merchants; Virginia Retail Merchants Association, Inc.; West Virginia Retailers Association, Inc.; American National Retail Jewelers Association; Association of Credit Apparel Stores, Inc.; Cooperative Food Distributors of America; Institute of Distribution, Inc.; Limited Price Variety Stores Association, Inc.; Mail Order Association of America; National Association of Credit Jewelers; National Association of Music Merchants, Inc.; National Association of Retail Clothiers and Furnishers; National Association of Chain Drug Stores; National Association of Shoe Chain Stores; National Retail Dry Goods Association; National Retail Farm Equipment Association; National Retail Furniture Association; National Retail Hardware Association; National Shoe Retailers Association; National Stationers Association; Retail Credit Institute of America, Inc.

Retailing sincerely desires Federal labor-management relations legislation which will be fair and equitable to the greatest possible number of employees, employers, and the general public. Legislation of this type will go a long way toward the achievement of the proper climate for wholesome labor-management relations which, in turn, will contribute substantially to the maintenance of economic stability in the field of retail distribution.

Retailing has had rather limited experience under both the Wagner Act and the Taft-Hartley Act—limited, that is, if number of cases presented to the National Labor Relations Board is an appropriate yardstick of experience. In the past, few retail employees or retail employers have found it necessary to seek the services of the Board. This scarcity of retail cases may be due to the fact that, basically, retailing is local business and therefore is more responsive to local conditions of employment than many other types of industry. Retail employees and their employers come in close touch with the lives of the people in their respective communities. This closeness tends to temper attitudes toward each other and toward the people they serve.

The existence of relatively few retail cases before the Board may also be explained by the fact that in only a few areas of the Nation have retail employees been organized into labor unions. Labor union organizational activity, however, has begun to develop in more and more retail communities.

Within the past 6 months, four of the large national labor unions have announced extensive campaigns to organize employees of retail stores from coast to coast. These labor unions are big interstate operations comparable in size and strength to many of the larger interstate business corporations. It is understood that these four labor unions will aggressively compete with each other for membership and support of retail employees. Labor leaders will seek collective-bargaining contracts with employers in all branches of retail trade from large department-store units in metropolitan areas to corner grocery stores in the crossroads villages. This prospect obviously contains the potential for bitter jurisdictional strife with all the extremes known to attend such controversies. The welfare of the public, as well as that of retail employees and retail employers, may be seriously jeopardized unless the rules set up under Federal enactment to regulate activities related to collective bargaining are fair and equitable to all affected parties.

In the course of the recent public hearings on S. 249 before the Senate Committee on Labor and Public Welfare, it was intimated that retailing appeared to be inconsistent in its desire on the one hand to be covered by the Labor-Management Relations Act and on the other hand to be excluded from coverage of the Fair Labor Standards Act.

There is no inconsistency in retailing's position with respect to these two Federal laws.

The so-called retail exemption was placed in the Fair Labor Standards Act originally in 1938 because retailing is fundamentally local in nature and thus more responsive to local wage and hour regulation than to such regulation from the national level. Retailing is typically intrastate business.

Local economic conditions have an extraordinary effect upon retail employment; perhaps more so than is the case in most other types of employment. The peculiarities of retail operations, the variables in the costs of living between large and small communities, together with the local intrastate character of retailing, have the effect of precluding the successful establishment of a national pattern of wages, hours, or other standards of employment in the field of retailing. Recognition of these factors and the difficulties inherent in them prompted the Congress in 1938 to leave retail wages and hours to such State and local regulation as might be deemed necessary by the State and local authorities.

On the other hand, if retailing is obliged to bargain with national and international labor unions having widespread interstate connections, then retailers must be permitted to meet these labor unions under the same applicable rules of conduct and restraint.

The history of the Wagner Act shows that retailing did not request coverage under that act in 1935; neither did it object to coverage. Similarly, when the Taft-Hartley Act was under consideration in 1947, retailing did not question coverage.

Retailing's position upon these two Federal enactments is logical and understandable when the purposes and the limitations of the two laws are viewed in their true perspective.

In recognition of retailing's stake in the outcome of Federal labor-management-relations legislation, the American Retail Federation urges the committee to consider the following 15 points:

(1) Free speech must be guaranteed to employers as well as unions and employees.

(2) Every employee must be protected in his right to work and to join or not to join a union without fear of reprisal from any source.

(3) The right of employers as well as unions to obtain an election must be preserved.

(4) Employees who become dissatisfied with their union must have the right to ask for an election to determine whether that union shall continue to represent them.

(5) In order to protect the freedom of employees to select their own representatives without fear of coercion, questions of representation must be determined only by secret ballot.

(6) Unions as well as employers must be prohibited from committing unfair labor practices. The following practices by unions must be prohibited:

(*a*) Interfering with an employee's right to join or not to join a union.

(*b*) Forcing an employer to discriminate against an employee because he belongs or does not belong to a union.

(*c*) Refusing to bargain with an employer in good faith.

(*d*) Engaging in jurisdictional strikes or secondary boycotts or forcing an employer to deal with a union other than the duly qualified representative of his employees.

(*e*) Forcing an employer to carry on his pay roll more employees than are needed, or engaging in other "feather bedding" practices.

(*f*) Prohibiting or limiting union membership of employees qualified to perform the work.

(7) Any strike or picketing to force an employer to violate the law must be regarded as an unfair labor practice.

(8) Supervisory employees must be recognized as members of management and excluded from the provisions of the act.

(9) The Government must have authority to prevent and deal with strikes affecting key industries which may be seriously injurious to public health, safety, and welfare.

(10) Unions and employers must be equally responsible for the performance of their contracts and equally liable for damages for violating such contracts.

(11) Unions and employers must be equally liable for damages resulting from unlawful strikes, boycotts, and lock-outs.

(12) The Board must not use the extent to which employees have organized as the controlling factor in determinnig which employees shall be eligible to vote in an election.

(13) Monopolistic practices are harmful to the public whether brought about by combinations of employers or unions and must be prohibited. Unions and employers must be equally subject to the antitrust laws.

(14) The right to work must be protected, and the right of any State to prohibit compulsory union membership must be preserved.

(15) Stability of labor relations must be protected. The holding of elections more often than once a year for the same groups of employees must be prohibited.

Retailing is also interested in the ultimate decisions upon the issues of administration of health and welfare funds, Communist affidavits, industry-wide bargaining, financial reports, stranger picketing, closed shop, check-off, independent Federal mediation nad conciliation service and right of an individual to adjust grievances directly with management.

Some segments of retailing have already communicated their views with respect to these additional subjects to members of the committee and to other Members of the House of Representatives.

We urge your earnest consideration of these 15 points in the belief that they are fair and equitable to all concerned and will contribute to effective collective bargaining and, equally important, to labor peace.

Statement of Charles H. Merideth, Executive Vice President, Industrial Association of Quincy, Inc., Relative to Association's Position Regarding the Proposed H. R. 2032

The Industrial Association of Quincy, Ill., is speaking as a representative of the industries in this area, which includes the natural industrial areas of Macomb, Ill., and Keokuk, Fort Madison, and Burlington, Iowa.

The following testimony, presented for your consideration, refers to the proposed H. R. 2032 which would replace the present Labor Management Relations Act of 1947 with another law built for the most part around the Wagner Act. We want you to know that we have seen a remarkably improved relationship between employee and employer, as well as between unions and management, since the passage of the Labor-Management Relations Act of 1947, and we urge you to enter into the record and to consider the experiences and views which are attached to this letter in your deliberations concerning the proposed changes in labor legislation.

We feel, fundamentally, that the place to settle differences between employee and employer is in a spirit of mutual responsibility and cooperation; and if it were possible to have no laws passed regarding this subject, we could do an even better job. However, the principle of labor legislation is now so well entrenched that it will probably be impossible to take that idealistic view, and we must, therefore, enact legislation which is equally fair to both sides of a union-management problem with mutual responsibilities and mutual privileges.

We urge you to look at the proposed bill which starts out with a prejudiced viewpoint. In the present Labor Management Relations Act of 1947, under section 101, subsection 1, the third paragraph points out why employers by their actions have caused the need for labor legislation. The fourth paragraph points out why activities by unions have made it necessary to pass certain labor legislation. The proposed law deletes any reference to any need for any control over unions because they "have done and can do no harm." That, in its very inception indicates the unfairness of the point of view in the proposed law.

We are convinced that the following basic concepts are necessary to guide proper passage of any labor legislation:

(1) Will the law contribute to the dignity of the individual workman?

(2) Do the requirements of the law place equal responsibility and equal privilege upon both parties being legislated for?

(3) Does the law preserve the constitutional guaranty and philosophy of our American type of government which includes proper checks and balance, proper trial before courts, proper separation of prosecuring and judicial functions, and adequate standards for rules of evidence to preserve the principle that a person is assumed innocent until proven guilty?

(4) Does the law protect the public, which includes the Government, against the infiltration and domination of communistic philosophies?

We present for your study the following material:

Appendix A—An article entitled "Crossroads," which outlines our views regarding your current consideration of labor legislation.

Appendix B—A copy of the letter sent by the Quincy Compressor Co. of Quincy indicating the manner in which unions coerce and dominate employees.

Appendix C—A copy of a letter addressed to the Honorable Cleveland M. Bailey, pointing out the need for proper legal protections.

Appendix D—A statement of some specific experiences in Quincy indicating the need for certain types of protection in legislation.

We urge you, in your serious consideration of this material, to recognize the principle: that unions as well as management are fundamentally responsible to the public, and that whereas management is now governed by many regulations assuring that responsibility, the proposed bill would place the public at the mercy of big unions. We urge you to preserve the principles of equal responsibility presently included in the Labor Management Relations Act of 1947, particularly those areas covered by the attached testimony and material.

APPENDIX A—CROSSROADS

The last dikes against the onrush of socialism may be removed and allow the tide of Statism to render us incapable of resistance to communism unless we impress upon our Senators and Congressmen the importance of the steps they are on the verge of taking in current proposed legislation.

During World War I, with some help from England and France, our production capacity of tools, equipment, and armaments defeated the enemy. Then in World War II, alone and without the productive capacity of England and France (rendered sterile of productive personal ambition by socialism), we won the war, not because we had more men but with more equipment, better fighting tools, and a personal dignity to protect. When World War III comes (God forbid), and our fight with foreign ideologies breaks into the open, we must have the ability to produce and the will to win.

Certain legislative proposals now under consideration would (1) eliminate the dignity of individual men; (2) reduce the national productive efficiency.

Every bit of legislation held up against these two guides will be accepted or rejected according to the amount of patriotism flowing in the red blood of American congressional and senatorial patriots.

Labor legislation has passed the stage where it can be looked upon as political hay. It is now national health. Consider, then, the following analysis:

There is a belief which is prevalent that the labor problem is a private fight between labor unions and managements. This is a misconception. There are actually three groups of people who are affected by agreements reached between labor union leaders and management representatives. They are the wage earner, the investor, and the consumer. The fact that any labor problem is a three-way struggle between these interests is most important to understand. Some members of our legislature look upon labor problems as an isolated part of the economy. The error of such a view was pointed out by President Truman on June 12, 1946, when he said, "We accomplish nothing by striking at labor here, at management there. There should be no emphasis placed upon whether a bill is antilabor or prolabor. Where excesses have developed on the part of labor leaders or management, such excesses should be corrected, not in order to injure either party but to bring about as great an equality as possible—neither should be permitted to become too powerful against the public interest as a whole. Equality for both and vigilance for the public welfare—should be the watchwords of future legislation."

LABOR LEGISLATION IS ONE PART OF THE TOTAL PATTERN OF LEGISLATION DESIGNED TO PREVENT INTERFERENCE WITH THE FUNCTION OF THE ECONOMY

We spoke before about the three parties—the consumer, the investor, the wage earner. Legislation has been passed affecting all three. For example, affecting the consumer: The Sherman Antitrust act, the Clayton act, and the Federal Trade Commission Act were passed to prevent individual sellers from conspiring with other sellers through price agreements to raise prices. (2) The Robinson-Patman Act was passed so that large buyers through abuses of their tremendous purchasing power were not permitted to obtain price concessions.

Then legislation was passed affecting investors: (1) The Securities Act protected individual investors against incorrect information. (2) The Public Utility Holding Company Act was passed to prevent large investors from abuses to minority stockholders.

And then finally the wage-earner had legislation passed affecting him: (1) The wage-earner was protected by being given a statutory right to bargain, to strike, and protection against discrimination. The Wagner Act which covers these was never designed as a full labor relations statute. Its limited purpose was to protect employees against employers' interference with their rights and to compel employers to bargain. (2) As in the case of the consumer and the investor, one law created abuses on which it was necessary to pass a second law. The same is true of the wage earner. Legislation designed to prevent further abuses by labor unions was established for the first time in the Labor-Management Relations Act of 1947 (Taft-Hartley). The changes it contains are only the other side of a normal legislative pattern. They are designed to prevent the abuses of the rights of the public, employees and employers by unions, which abuses eventually affect our economy without infringing upon the wage earner's basic rights under the Wagner Act.

President Truman, at the time of the railroad strike in 1946, asserted that the very existence of the Government was at stake due to abuses of powerful union leaders when he said, "My fellow countrymen, I come before the people tonight at a time of great crisis—the crisis tonight is caused by a group of men within our own country who place their private interests above the welfare of the Nation. It is inconceivable that in our democracy any two men should be placed in the position where they can completely stifle our economy and ultimately destroy our country. The Government is challenged as seldom before in our history. It must meet the challenge or confess its impotence."

(1) We must keep our national standard of living and productive efficiency high. It is a simple rule that a nation's standard of living depends upon its productivity per man-hour. The average American worker produces in 1 hour from 1½ to 2½ times as much wealth as the British worker, and, consequently, enjoys more leisure and better conditions. High productivity or high efficiency means a higher standard of living because there are more goods produced than can be consumed by the Nation, and a high standard of living is in the public interest. This principle was outlined by President Truman in his Labor Day speech in September 1948.

The American economy is the most productive in the world and with that the highest standard of living, and with only 6 percent of the world's population the United States produces over one-third of the world's goods. And still, current labor union philosophy rejects this conception and shies away from the idea that workers, by increasing their own productivity, will elevate their own standard of living. They prefer the doctrine of "less production and more pay." This is dangerous to the Nation's long-run well-being. It is in violation of the very principle that has made the economic status of the American worker the envy of his fellow wage earners the world around.

(*a*) Featherbed rules imposed upon business by labor unions interfere with industry efficiency. These make-work principles cover such things as limited daily output; controlled quality of work; imposing time-consuming methods; requiring that unnecessary work be done or that work be done more than once; requiring unnecessary men on a machine or in a crew; prohibiting the use of machines for more efficient production. It is estimated that the sum total of such restrictive practices in the construction industry adds at least 10 percent to the cost of every home or construction job. Such featherbedding is prohibited by law at the present time, and much of the present pressure to repeal current labor legislation is aimed at gouging the consumer more by this technique.

(*b*) Secondary boycotts are strikes to compel employers to cease dealing with other employers or to cease handling their products for union reasons. In 1947, Mr. Truman, in his message to Congress, stated there should be legislative restriction against unjustified secondary boycotts. That was included in the present labor bill which is in effect at this time and against which there is much pressure for repeal.

(*c*) Jurisdictional strikes are disputes between two unions as to who has the right to do certain work. The Taft-Hartley Act sets up a procedure with the unions themselves deciding who shall have the right to do certain work. That requires a logical solution and takes the test of economic warfare out of the dispute and prevents the employer and the public from being caught in the middle of a situation over which they can have no control. One of the most articulate spokesman for unions, Mr. Gerhard P. Van Arkel, said, "Union representatives will not defend jurisdictional strikes." That is another item which would be removed from the law if the present pressure to repeal the Taft-Hartley Act were successful.

(*d*) By devious means, the Wagner Act saddled onto management the responsibility of negotiating and dealing with its own foremen as though they were a stranger or outside group. The Taft-Hartley Act states that members of management who decide to organize need not be recognized by management since they are, in effect, management themselves.

(2) There has been much criticism that the present Labor-Managements Relations Act of 1947 (Taft-Hartley) has created a "government by injunction." Such statements are, of course, not true. Sections 301 and 303 of the act which authorizes injunctions if either employer or employee violate the law does not give the union or management the right to obtain injunctions. The Norris-LaGuardia Act remains in effect with respect to such actions and the Government remains the sole agency permitted to seek relief under the act. This procedure within the new law establishes the very principles of checks and balance inherent in the Constitution of the United States. The National Labor Relations Board which is the administrative and executive function of labor legislation under the Labor-Management Relations Act of 1947 has been supplemented by the appointment of a general counsel whose job it is to bring legal action through the Federal courts, thereby divorcing the prosecutor and jury and eliminating "kangaroo" court procedure.

(3) Labor legislation must be viewed in terms of what it does to contribute to the dignity of individual man as compared with the processes of regimentation so obvious in other places throughout the world. Measured against that guide and against the principle that Americans are free people and the protection of the rights of the individual is a basic American principle, and recognizing that, although this principle is expressed in the Bill of Rights, it has been frequently flouted by unions exercising vast control over the employment of millions of workers. Much of the obedience to the union dictates by individual workmen comes from fear of loss of employment through union fiat; and, therefore, labor legislation must include an analysis of the result to individual freedom and to the extent that legislation can prevent individual rights from being infringed upon.

(*a*) Forcing the loss of an individual's job as a penalty is guarded against in the present Taft-Hartley Act but would be denied them under the proposed repeal. Unions traditionally make "conduct unbecoming a union member" grounds for expulsion from the union; and, where a union shop or closed shop exists, this means loss of the employee's job. Through loose standards of union committees, gross injustices occur. Trial committees have caused members to lose their jobs because an employee testifies to the truth in a hearing, or because an employee handed out political literature in favor of a candidate not supported by the union leader, or because an employee criticized a union official; or because an employee refused to go on strike during war, claiming his first allegiance to his country—not to the union.

Under the present law, arbitrary discharges are prohibited except for nonpayment of initiation fees and regular dues.

(*b*) The improper uses for collection of funds by unions is a means of depriving a person of his individual freedom. It is not unusual for some unions to have initiation fees from $100 up to $1,500 for the privilege of membership. Under the present law, which would be repealed, it is an unfair labor practice for unions to require employees to pay exorbitant initiation fees, and the National Labor Relations Board determines what is exorbitant.

(*c*) The law further requires at the present time that unions file financial reports to show that they do not abuse the trust of the funds given them by members. This has long been a requirement on the employer, and Walter Reuther, UAW–CIO, says, "Any democratic organization that spends millions of dollars" (and he says his union does) "should provide machinery for a broad and practical check of expenditures. Such machinery is lacking in our union. * * *." He noted that funds had been misused, and said further, "Such endless waste of union funds is inexcusable." The present law requires that union officials advise their members of the manner in which their money is spent. The proposed repeal would eliminate that responsibility.

(*d*) Law and order need to be maintained as a means of protecting the rights of individuals. Numerous examples of union violence toward employees have been brought to light. Importing of pickets by the union is not uncommon, as is indicated by the recent wrecking of the Shakespeare plant in Kalamazoo. Employees have been beaten and their property destroyed in an effort to intimidate them, and local police are either unable or unwilling to enforce the law. There have been some National Labor Relations Board decisions recently inferring that mass picketing and violence are illegal. That is not a part of the present law. But, by the elimination of the right of the National Labor Relations Board to secure injunctions, there would be no protection against the further development of this philosophy. The right to work is probably more basic and fundamental than the right to strike, and the law should say so in unmistakably clear language. Justice Hughes of the Supreme Court once stated, "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of perfect freedom and opportunity that it was the purpose of the fourteenth amendment to secure." Labor violence cannot be justified on the grounds that employees who go through picket lines are scabs.

(4) An orderly procedure for collective bargaining must be protected. If free collective bargaining cannot be used, then disputes between labor and management will need to be settled by the Government and will eliminate the existence of a free economy. As the power of labor organizations increases, their bargaining techniques change and they find themselves in a position to present their demands to the employers on a take-it-or-leave-it basis. They have demanded that management violate the law and have struck to enforce those demands. This means that employers have no chance to influence the opinions by facts or by arguments.

Unions were encouraged to take unreasonable positions during the Wagner Act era because there were no penalties against the unions for refusing to bargain in good faith.

(*a*) Under the present law, both parties have a right to select their bargaining representatives. Prior to the Taft-Hartley Act, the union could select, but they could strike or refuse to bargain if they did not approve of management's representatives at the bargaining table.

(*b*) Labor contracts should be enforceable to the same extent as other contracts. If the collective-bargaining processes should be respected, unions should be subject to penalties if strikes are called in violation of a contract. The union is established for the purpose of collectively bargaining with the employer to gain concessions from the employer. The employer many times grants these concessions because the union, during the bargaining process, has the right to call a strike. This power often produces settlements; but once a deal or settlement has been reached, if the union goes on strike, there is little or no reason to reach a settlement in the first place. Labor contracts and the principle of labor legislation as laid down in the Wagner Act are supposed to bring labor peace, and a strike in violation of a contract is inconsistent with that objective.

The Taft-Hartley Act includes under section 301 the machinery for enforcing labor contracts. The repeal of that provision would bring chaos to collective bargaining.

President Truman, in his state-of-the-Union message to the Eighty-first Congress, said, "Contracts once made must be lived up to." The basic attitude of Union leaders has changed since this responsibility was placed upon them, and we have had 42 percent less strikes since the passage of the Taft-Hartley Act, partly because they are responsible for their illegal actions.

5. The Mediation and Conciliation Service should remain independent. The Taft-Hartley Act placed the Federal Mediation and Conciliation Service in a neutral position where it could be respected and used by both union and management as a means of bringing about understanding and labor peace. It has previously been a part of the Department of Labor, staffed by men who were appointed by labor and dominated by administrative officials appointed to pursue and develop the interests of labor. To place the department of Mediation and Conciliation Service in the Department of Labor would destroy its present effectiveness and would be no more practical than an employer's suggestion that it be placed in the Department of Commerce. The repeal of the present law would have this result of eliminating the impartial arbitrator or conciliator in matters of national concern.

(6) Unions should be required to bargain in good faith. There were no such restrictions or requirements under the Wagner Act. The Taft-Hartley merely stated that both employers' and employees' representatives must bargain in good faith. The repeal of the present law would eliminate the necessity for unions to bargain in good faith. Union leaders have no argument against this requirement of the law. There is no socially defensible argument that can be made that the obligation to bargain in good faith should be imposed upon the employer and not retained as a requirement on the part of the union.

(7) National strikes are considerably lessened by the present labor law which is part of the Taft-Hartley Act. President Truman has used this provision of the act six times since its passage—five times during 1948—in identical emergencies: Shipping, coal, meat packing, and telephones. The procedure set up provides for the President to determine when a strike affects the national safety and welfare, and prescribes a procedure for investigation and recommended settlement. The repeal of the present law would eliminate any control over arrogant and power-mad union leaders whom we have seen in action during recent years.

(8) The Taft-Hartley Act sets up a procedure whereby individuals pledged to destroy our economy must be removed from the positions of leadership in the unions. It withholds from unions dominated by Communists the right to certain legal procedures. Since its passage in 1947 the Taft-Hartley Act has been instrumental in removing many nationally known Communists who were dominating labor unions and undermining the productive efficiency of our entire industrial economy. Some of those leaders are now standing trial under decision by the Supreme Court of a few days ago. This "non-Communist affidavit" procedure as prescribed by the Taft-Hartley law cannot be justifiably criticised and must be applauded as one of the bulwarks of American patriotism.

(9) Political activities of special-interest groups, including unions, are matters of public concern. It is a matter of history that certain powerful business groups once exercised tremendous control over political parties. Laws were passed to prevent the use of corporations' income for exploiting political advantage. With national unions now collecting millions of dollars each year, the Taft-Hartley Act of 1947 stated that labor unions were subject to the same rules and procedures as those imposed upon corporations many years ago. It said that dues paid by union members should not be used for political purposes for exactly the same reasons that corporate funds should not be used for political purposes. During the heat of the railroad strike argument, the head of one of the national unions made the irresponsible statement that he would spend several million of dollars

to defeat the President. National unions are now spending millions of dollars to secure the repeal of the Taft-Hartley Act which will only give them a license to commit uncontrolled and irresponsible acts which are in violation of the interests of the public and the Nation at large.

CONCLUSION

Changes in labor legislation must be considered with great care. The welfare of our economy is at stake. We cannot afford to permit prior political promises, threats of political reprisal, or emotional prejudices to crowd the objective analysis. The truth is powerful, and one should not underrate its influence. The rapid growth of unions and rise to power has been accompanied by an abuse of this power. The national economy cannot stand by and hope that these abuses will of themselves stop.

Appendix B

Quincy Compressor Co.
Quincy, Ill., March 1, 1949.

Attached to this letter is a reproduction of a letter which has been mailed to a considerable number of employees of our company. We shall be glad to supply the names upon request but have deleted them from the photostatic copy because of the danger to the personal welfare of the individuals addressed. If the Congress is willing to provide proper protection to these men, we shall be glad to forward their names. Our company has had a contract with the union since 1942. Employees are free to join or to refrain from joining this union.

In the present Taft-Hartley Act, section 1 (b) reads: "It is the purpose and policy of this act * * * to protect the rights of individual employees in their relations with labor organizations * * * and proscribe practices on the part of labor and management * * * and to protect the rights of the public in connection with labor disputes affecting commerce."

Further, under title I, section 101, subsection 1, the first paragraph reads: "Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed."

And, further, title I, section 101, subsection 7, reads: "Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and shall also have the right to refrain from any or all such activities. * * *"

And, further, under subsection 8 (b): "It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in section 7."

We believe it will be evident from reading the attached letter that the provisions referred to above in the present Labor Management Relations Act are necessary to protect the rights of individual employees, employers and the public; and that, further, these provisions written into the law will protect the rights and privileges of responsible unions in the pursuit of collective bargaining carried on under the true principles of intelligent union leadership. We encourage you to use your influence and to vote for retaining the principles outlined above in the new labor legislation under consideration by the Eighty-first Congress.

Sincerely yours,

Quincy Compressor Co.
Mac Irwin, *President.*

International Association of Machinists, Local No. 822,
Quincy, Ill.

Mr. ———,
Quincy, Ill.

Dear Sir: We are very sorry to hear that you object becoming a member of the largest labor organization in the city of Quincy: namely, Lodge No. 822 of the International Association of Machinists.

We are enclosing several pamphlets which we hope you will read and then make up your mind to sign the enclosed application and return it to your shop committeeman, together with the required fee. Initiation fee is $5; reinstatement fee is $25. We are urging you to do this as soon as possible.

We are giving you the opportunity to join our organization and become a part of the greatest union in America today.

If your signed application is not received within the next few weeks, other action will be taken against you.

We do not like to take such action; but, when you force us to it, we will carry out the mandate.

Our forefathers fought hard to accomplish what benefits the worker has today, and we intend to preserve that accomplishment, if we have to revert back to their tactics.

We are very certain that you wouldn't want to be followed along the streets and called "scab."

So, we hope you will give this letter and its contents very serious consideration, and we will be looking for your signed application along with the required initiation or reinstatement fee.

We remain, organizing committee, Lodge No. 822, I. A. of M.

(By) EDW. H. HOFFMAN, *Chairman.*

APPENDIX C

INDUSTRIAL ASSOCIATION OF QUINCY, INC.,
Quincy, Ill., March 22, 1949.

Hon. CLEVELAND M. BAILEY,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN BAILEY: We were very pleased to have you take the time to answer our recent correspondence regarding some of the labor-management legislation before your committee. Certainly, we learn to understand each other better by seeing what the difference of opinion may be.

You indicate that your specific objections to the Taft-Hartley Act is its injunctive procedure, and feel that you would be opposed to any legislation which goes opposite to our constitutional guaranty of a right to trial by jury. You are to be praised for that position and we feel, therefore, that you will be willing to reflect that philosophy in terms of the following thoughts:

(1) The principle of the philosophy of trial by jury means that no person shall be considered guilty until so proven, and that the prosecution of such a suspect shall be separated from the judicial functions. Therefore, there should be little question in your mind about the importance of separating the prosecuting and judicial functions within the activities of the National Labor Relations Board so that those rights we both hold so dear can be protected.

(2) Any constitutional right for fair and unbiased judgment is, of course, based on presentation of factual evidence, not to be judged on hearsay or rumor. There is, therefore, no reason why the present provisions of the Labor-Management Relations Act of 1947 should not be retained as compared with the proposed administration's labor bill, which permits the National Labor Relations Board to be guided by any evidence which it chooses to use, rather than adhering to the rules of evidence as laid down in the present law. This, too, is part of the constitutional right of fair judgment and trial by court standards.

(3) If we are to be guided by the principles of proper court procedure (and I am one who feels that labor relations cannot be solved in the courts), then we must at least have written into our laws that both parties are equally responsible before the law for any contracts entered into. That requirement exists in the present law and is eliminated in the proposed law.

We appreciate your taking these viewpoints into consideration, and trust that the kind of law which you help to write will adhere to the principles indicated in your letter: "Our constitutional guaranty."

Sincerely yours,

(s) C. H. MERIDETH,
Executive Vice President.

APPENDIX D

[Copy of statement attached to letter sent to Senator Robert A. Taft, Washington, D. C.]

FEBRUARY 22, 1949.

STATEMENT OF SPECIFIC EXPERIENCES IN THE QUINCY, ILL., INDUSTRIAL AREA

(1) It is our contention that the Federal Mediation and Conciliation Service should be kept out of the Department of Labor and in independent agency because of the following case history:

During 1945 and 1946 there were several instances in which labor disputes over the settling of a contract appeared imminent. In these cases a Federal conciliator from the United States Department of Labor Conciliation Service was assigned to assist in the settling of these disputes. The conciliator assigned was one who, prior to his appointment in the United States Department of Labor Conciliation Service, had been an official in a labor union. This man, in his assignments, was so obviously prounion and antimanagement that it was nearly impossible to get management to agree to sit down at the table with him. His attitude and expressions proved his one-sided attitude, and in at least one instance in the course of his evening social activities he made it clear before a large group of people that the next day he would "get the union what they wanted and show these manufacturers." This threat was discussed with this conciliator, who did not deny the allegation. Subsequently, the Taft-Hartley Act was passed, and the man was again asked to serve as conciliator. His attitude had changed. After a few months he submitted his resignation because "he could not act in the interest of the unions" and resumed his position as an official of the Motion Picture Projector Operators' Union, and proceeded to blast the Taft-Hartley Act in a series of articles appearing in trade-union papers.

This isolated case, we know, does not prove the rule; but, if multiplied by the many times that the same experience has been on the record throughout the country, it indicates the need for impartial, independent Federal mediation and conciliation service.

(2) It is our contention that the closed shop serves as a deterrent to industrial development, prevents industrial employees from securing the type of employment which they choose, and, further, places the union in a position to become dictatorial in its attitudes and policies as indicated by the following experience during negotiations in December of 1948 and January of 1949:

During negotiations between the Stovemounters' International Union and the three local stove companies, a member of the negotiating committee very defiantly stated, "Wait until the Taft-Hartley Act is repealed. We will tell you who can hire and how much work they can do." This was in answer to a management proposal that the union lift its work restrictions on the piecework schedule in order that the companies might become more competitive in their cost analysis. This type of denying the company an opportunity to hire persons who are competent to do the work, and the work limits placed by the union, are intolerable if industries are to be kept vital and produce the standard expected of them. One might expect this kind of relationship to be in those companies where a union relationship had been of rather short duration. On the contrary, the parties to this negotiation have had a bargaining experience of over 40 years.

We trust these experiences of specific examples will justify our position in which we recommend that the Federal Mediation and Conciliation Service be kept out of the Department of Labor, and that closed-shop contracts be unlawful under the new labor legislation.

C. H. MERIDETH,
Executive Vice President, Industrial Association of Quincy (Ill.)

STATEMENT BY THOMAS BUTLER, SECRETARY AND GENERAL MANAGER OF THE ALTON DISTRICT MANUFACTURERS' ASSOCIATION, ALTON, ILL.

This is an association of 17 industrial plants situated along the Illinois shore of the Mississippi River, opposite the mouth of the Missouri River, in the communities of Alton, East Alton, Wood River, Hartford, and Roxana.

Their products include the following: Paper board, brick, lead, iron and steel castings, railroad transportation, steel and steel tubing, lime, sand and crushed stone, glass containers, machine-shop products, flour, electric power, steel forgings and tools, brass, ammunition and explosives, petroleum products, leather, tank-car repairs.

These plants employ, on the average, 20,000 persons, of whom 90 percent are represented in collective bargaining by nationally affiliated unions and 10 percent by independent unions.

Based on actual experience in this area, we submit a conviction that in the 18 months of operation under the Labor-Management Relations Act of 1947 there has been a greater benefit to the employees of the plants and to the public on whom they must rely to buy their products than under the previous experience of the Wagner Act.

1. *High employment.*—Production and employment have been maintained at high levels; there have been no work stoppages due to labor disputes.

2. *Wage increases.*—Wage increases varying from 18½ cents an hour to 39½ cents an hour have been established by collective bargaining, negotiated in an atmosphere of confidence and harmony on both sides. Both the amount of the wage increases and the frankness of dealing have been of higher degree than previously existed.

3. *Wage standards.*—This progress does not stem from a low point of beginning. Wage rates in these plants range from $1.14 to $1.51 an hour for common labor, and up to $2.03½ an hour for skilled labor.

4. *Weekly earnings*—Weekly earnings have increased from $51.25, as reported by the State department of labor in August 1947, to $58.41 for October 1948; and hours worked per week have diminished. Most plants now average 40 hours.

5. *Building trades.*—Building tradesmen, whose officers are extremely critical of the law because of the closed-shop prohibition, have, nevertheless, maintained their prestige, enjoyed their unprecedented high level of steady employment, and increased their wage scales 25 cents to 50 cents an hour. The rate here for building laborers is $1.75, and for the skilled crafts is $2.50 an hour—carpenters, pipefitters, boilermakers, etc. For bricklayers, $2.75 and $3 an hour. Their supremacy in their field and first call for work has had no challenge.

6. *Construction.*—Industrial and commercial construction programs have been extensive and have helped create this market for the services of building tradesmen. We believe much of this has been due to business confidence, resulting from stability in labor relations, which is a basic requirement for justification of expansion and rehabilitation of industrial plants.

7. *Jurisdiction; boycott.*—Jurisdictional disputes are one of the most costly and discouraging elements in any prospects for employment of building tradesmen. The provisions of the present law have, we are sure, minimized these occasions, and certainly without any detriment to the tradesmen themselves. This factor has contributed to the maintenance of a steady market for building labor. The same elements pertain to the provision regarding secondary boycotts.

8. *Featherbedding.*—Featherbedding practices have been harmful issues in the building-trades field. Local unions themselves have negotiated many of these conditions out of their requirements as they have bargained with contractors for wage increases. And this has been accomplished reasonably, peacefully, and constructively.

9. *Mediation.*—Status of the United States Mediation and Conciliation service as an independent agency has increased its usefulness and effectiveness in negotiations on contracts where Federal mediators have taken part. In every instance they have been called in by the union, which must indicate the unions' confidence in the service. On these occasions their service has been accepted by the employers in good faith as one of impartiality. The result has been that they were able to contribute to the process of agreement because their status of independence inspired the confidence of both sides, through the bargaining process.

10. *Union security.*—Responsibility of union leadership has been enhanced. The reaction to this has been one of confidence and agreement with union leaders on the part of management. Proof of this lies in the fact that nine union-shop agreements have been negotiated, and three maintenance-of-membership agreements have been continued, all in accordance with requirements of the present act and without great area of controversy.

These results we think have met the demand for union security, demonstrate that the employers have no desire to make unions insecure, and the elections rquired have been of no hardship whatever to the unions. In each instance votes on authorizing negotiation for this form of union security were so decisive as to discount completely the criticism that an absentee, or a failure to vote, counts against the proposition. Such a construction might be made of any issue on which a vote is taken, such as the establishment of a bargaining agent, and under the rules of the NLRB this factor has worked to the advantage of unions in gaining recognition and bargaining rights.

11. *Fringe benefits.*—In addition to wage increases heretofore listed, and in the atmosphere which he hold to be constructive and beneficial to the interest of employees as well as the business itself, nine plants employing almost two-thirds of the total employment, have negotiated payment for holidays not worked; and several other fringe benefits such as sick leave, group medical and hospital benefits, and pension programs have been agreed upon.

12. *Fourth round.*—In several of these plants the so-called fourth round of negotiations has not been completed. The result of this will add to the facts here listed.

Comment.—The attempt here has been not a technical analysis of the words or provisions of the act, but rather to offer a factual statement as to what has occurred in a period during which these employers and the bargaining agents of their employees have operated under a rule which has been denounced as one of slavery. The statement of facts is accurate to the best of our knowledge and the facts do not support this conclusion.

This next is entirely an opinion for whatever it may be worth.

Business and employment must have as a basis the investment of capital in plant and equipment with which employees may work. It will not develop and expand in our economy if the leaders of Government decide to abandon the rules under which both labor, owners, and the public have been benefited. The results of high production are manifesting themselves now in the leveling off and reduction in living costs. Summarily repealing rules which have contributed to this progress in the economy, and in the standards of living of the people, is the most decisive way to halt this progress.

Statement Submitted by the United Furniture Workers of America, CIO

Your committe has undoubtedly received a large number of communications and briefs respecting the Taft-Hartley law and its proposed repeal. It is our purpose here to present to you the high lights of our experience under the Taft-Hartley law. We are convinced on the basis of that experience that this law is so pervasively destructive of not only the rights of labor but of American civil liberties whose preservation is indispensable to the continuance of American democratic institutions that its immediate repeal is necessary on behalf of the Nation as a whole.

Our experience under the act and our analysis of the decision rendered since its passage make crystal clear to us that a proper approach to the problems raised by the act must be one which is not partisan in its perspective but which sees the act as functioning in so wide an area that, in contrast to the Wagner Act, which, by virtue of its protection of the rights to self-organization provided an administrative gyroscope for industrial relations, destroys and throws out of balance the measure of equilibrium which the Wagner Act was in part able to achieve. The Taft-Hartley law infects the entire anatomy of our economic, political and civil rights necessarily emerging in the pattern of labor management relations, and the infection in turn has done, and if unremedied, will continue to do, serious damage to the entirety of American economic and political life.

The critical question which centers around legislation seeking to fix, in some measure, labor-management rights is one which is connected with estimates of bargaining power on each side. Manifestly, the individual worker, standing alone, has little or no bargaining power, a fact which has long been recognized by American courts, and the right of the workers to form labor organizations has received judicial recognition since at least the case of *Commonwealth* v. *Hunt* (4 Metcalf 111 (Massachusetts, 1942)).

The protection of the rights of workers to associate and form labor organizations to the end that they may effectively exercise their bargaining power presents, from its point of view, the essential aspect of the question. On the other side, the growing accession and concentration of economic power in the hands of employers presents a problem of imposing upon such aggregations restraints which will to some extent equalize or help to equalize the bargaining powers, which face each other at the time collective agreements are formulated.

The statistics dramatically underscore the swollen development and growth of economic power on the employers' side as contrasted with the halting and still not completely matured growth of labor organizations on the other side.

Between 1909 and 1935 the assets of the 200 largest nonfinancial corporations increased from 33 to 55 percent of all the assets of nonfinancial corporations. The profits of the largest 5 percent of nonfinancial corporations reach 87 percent of the total profits of all nonfinancial corporations.

Astride of all of these monopolies stood eight multi-billion dollar financial empires controlling the decisive sectors of the economy. On the other side, in contrast to the growth of trade-unions in European countries, the efforts of American workers to organize were crushed during the first decades of the twentieth century.

By 1929 only 4,000,000 workers were organized. Between 1899 and 1929 the real income of workers increased by less than 30 percent. During the same interval the volume of production per wage earner increased 92 percent and the wage earner's share in the volume of his production dropped 32 percent from 1919 to 1933.

In this contest the role of the Government as a decisive factor in the bargaining struggle becomes manifestly of the highest and weightiest significance. Efforts of the employees to organize themselves into unions up to the commencement or the initiation of the Wagner Act were frustrated by court injunctions. This period came rightfully to be known as the era of "government by injunction." The right to self-organization, while verbalized by the United States Supreme Court in *American Steel Foundries* v. *Tri-State Central Trades Council* (257 U. S. 184), was nevertheless left unprotected by legislation. In the meantime the use of predatory devices by employers such as provocateurs, spies, goons, was implemented by injunctions issued by both the State and the Federal courts.

The Wagner Act was premised upon the firm underpinning of long investigations into the activities of employers which thwarted and destroyed the rights of self-organization, promoted strikes, and thus interrupted the free flow of commerce. It was palpably necessary that the Wagner Act should be passed to the end that the right to self-organization should be protected by affirmative sanctions against employer interference with those rights in the form of discriminatory discharges, the use of spies, and the formation of company unions.

The conditions which gave rise to the enactment of the Wagner Act have not changed. On the contrary, the safeguards afforded by the Wagner Act to labor to protect its right to self-organization are at least as essential today as they were in the past. To undo and destroy the beneficial gains of labor in the period of the Wagner Act as well as to check further progress by labor, the NAM and kindred organizations have deliberately conjured a myth that organized labor constitutes a national menace from which the employer class must be protected. The Taft-Hartley Act is the monstrous result of this myth. The American worker is the victim of this multi-million-dollar myth making.

The Wagner Act had two main purposes: first, to avert strikes by limiting employer interference with the rights of self-organization (strikes for recognition between 1919 and 1936 ranged from 17 to 49 percent; 39 Monthly Labor Review 75; 40 id. 1267; 42 id. 162); and, secondly, to encourage collective bargaining by protecting the right to self-organization.

The experience of the United Furniture Workers of America demonstrates sharply that the Taft-Hartley law has been used as a strike-breaking weapon against its members.

We can illustrate this fact by two outstanding cases in which we were directly involved; the *Smith Cabinet case* (No. 35-CB-3) and the *Colonial Hardwood case* (No. 5-CB-4).

The Smith Cabinet Co. is located in Salem, Ind. The company employed approximately 450 workers. The wages and working conditions of these workers affect a substantial portion of the population of the small town of Salem. The wages paid to the workers are unconscionably low.

The union won an NLRB election on August 19, 1947. Despite the clearly demonstrated choice of the workers, the company arbitrarily refused to recognize the union. A strike resulted and the Taft-Hartley Act and the Board administering this act were immediately brought into the picture on the side of the company. Hearings were held in the town of Salem while the strike was in progress and the weight and influence of the Government was psychologically and materially cast on the employer's side.

The shadow of governmental disapproval hung over the strike from the outset. On the other hand the Government was placed n the position of supporting and giving moral aid and encouragement to the strikebreakers.

With this aid furnished by the Government, the company was enabled to demoralize the strikers and to fill its plant with scabs. The protracted hearings before the Board necessarily diverted the energies of the union from the effective prosecution of the strike.

The acts charged against the union by the company several times amplified by it during the hearing were made the platform of an attack upon the union and a contest between strikers and strikebreakers with the Government pleading the cause of strikebreaking which in reality was the cause and sole objective of the company. Voluminous testimony was taken, thus magnifying matters mainly trivial into seemingly monstrous events—all of which served to seriously prejudice the union and critically advantaged an antiunion employer that was bent upon using the Taft-Hartley Act to break the strike. The decisions of the trial examiner and the Board issued many months after the strike had been broken are completely unrealistic and propound a dragnet theory of agency which makes every striking employee and every picket an agent of the union. It is safe to say that no strike can be insulated from the withering effects of the Taft-Hartley all-out attack. Thus the right to strike, apparently preserved, is in reality substantially curtailed.

Counterposed to the trial examiner's and the Board's pronunciamentos on this strike, the following testimony under oath will give some inkling of the much ado about nothing with serious consequences to the union and Salem workers which this case poignantly illustrates.

First. Was the Salem strike characterized by violence? You will agree that the person whose testimony on this issue would be most reliable is the chief of police of Salem, Ind., Clarence Little. We quote his sworn testimony:

"Question. Chief, you have been down there four or five times a day since the strike started?

"Answer. Yes.

"Question. Now in your opinion, based on what you have seen, based on your experience as a police officer, will you state your opinion as to whether or not the conduct of that strike or picket line has been violent or peaceful?

"Answer. It has been peaceful."

The record in the case is replete with admissions by nonstrikers that they walked in and out of the plant daily, unmolested.

As stated above, before the Salem strike was called, an election among the employees was held by the National Labor Relations Board on August 19, 1947. A very substantial majority of them—252 to 159—designated the United Furniture Workers of America, CIO, as their collective-bargaining representative. The company, however, refused to accept this democratic selection of a bargaining agent and instead used the Taft-Hartley Act as a protective coloration to hide its real motive to get rid of the union. The union, having had the door leading to negotiations shut in its face, had no alternative but to call the strike which began on September 4, 1947.

The president of Smith Cabinet Co., Chester M. Smith, testified under oath:

"Question. You are aware of the fact that this union represents the majority of your employees as a result of this election; isn't that correct?

"Answer. Yes.

"Question. And still you refuse to recognize the union?

"Answer. That is correct.

"Question. Will you tell the court why in your opinion this strike started; what the issue was?

"Answer. I suppose they were striking for recogniton.

"Question. I mean, actually you know that that is the issue in this strike?

"Answer. Yes, sir.

"Question. And being the issue, you know if this issue had not been there, there wouldn't have been a strike; isn't that correct?

"Answer. That is probably correct.

"Question. No strike, no picket line; isn't that true?

"Answer. Yes, sir."

Mr. Smith also testified that he refused to meet with the officials of the Indiana division of Labor Mediation and Conciliation Department and would continue to reject any of their efforts at settlement.

As aforesaid, in this context, the NLRB entered upon the scene at the behest of the company and threw its weight, prestige, and authority on the side of an unfair employer who was confessedly frustrating the majority will of its employees, as well as the efforts of the Indiana government to mediate the dispute.

A similar experience was suffered by our union in the Colonial Hardwood strike in Hagerstown, Md. Protracted hearings during the strike and the tenor of the hearings created an atmosphere that the strike was a conspiracy. Minute inquisition was made into the functioning of the local and international union, membership and executive board meetings, finances, relief payments—all on the assumption that these and many other internal union matters might have some bearing on the question of agency.

In this case, too, the Government sitting at the same table with the employer prosecuting the union, using scab labor and supervisory and executive employees as its witnesses, tipped the scales in favor of the employer and contributed affirmatively toward defeating the strike.

Once again minor and immaterial matters were blown up to major proportions and a strike generally peaceful and orderly was surrounded with an atmosphere and aroma of conspiracy and Government disapproval. This, too, was an important situation lost by our union largely through the constrictive operation of Taft-Hartley. In Colonial Hardwood the strike was against an employer who refused to negotiate a renewal agreement with a union that had represented its employees for several years and continued to so represent them.

In Colonial Hardwood, other sections of the Taft-Hartley Act were invoked to atomize the strike. During the strike a scab filed a petition for decertification of our union. A hearing on this petition was also held during the strike. During this hearing the employer raised the contention that a great many of the strikers were disqualified from voting in an election since many of them had been and others would be replaced by scabs. The Government went along with this theory.

Ironically, this decertification election which took place after the strike had been defeated and dissolved, resulted in an electoral victory for the union by a minority vote in favor of decertification, although many scabs voted and many strikers' votes were sealed under challenge and not counted. Despite this fact, the workers of this company are today without a union and are working under open-shop conditions.

In both these cases the most active union workers were barred from returning to work and in most instances had to seek employment in other towns at considerable distances from their homes.

The many devices placed at the disposal of employers which were designed to harass and debevil unions have encouraged employers so minded to beset the path of organization and collective bargaining with controversy and conflict.

The Taft-Hartley Act was used by many employers either as a barrier or a club, in the former case to stifle or disrupt unionization and in the latter case to whip unions and workers into a submissive state under the threat of invoking the aid of Taft-Hartley.

The results were twofold; on the one hand, Taft-Hartley prevented workers from receiving wage increases and other improvements to which they were justly entitled and, on the other hand, provoked and precipitated many strikes and industrial disputes that could otherwise have been avoided.

Thus, in place of the beneficial national policies enacted into law by the Norris-LaGuardia Act and the Wagner Act based upon the principles of "encouraging the practice and procedure of collective bargaining" and of "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and prtoection," was substituted the Taft-Hartley Act which completely reversed this process by interfering with, hampering, and restricting collective bargaining and by encouraging a competing system of individual bargaining and supplying devious and divers means of combating and defeating bona fide trade-unionism.

This legislative atavism completely upset the measure of balance and equality between corporate power and individual workers created by the Wagner Act. Greater inequality in favor of employer interests was established with Government sanction. For the underlying and pervasive philosophy of the Taft-Hartley Act is the "right not to join or assist" labor unions and the right to bargain individually rather than collectively, thus resurrecting in a sense the corps of "yellow-dog" relationships.

It also revives from the dark past the socially backward conception of the "sanctity" of individual contracts to work which asserted the right of children to work in sweatshops, women to work excessive hours and in any employment without restriction, and workers generally to agree to work at starvation wages and for abnormally long hours.

The Taft-Hartley Act is the embodiment of reaction against social and economic progress over the last decade or two and, as President Truman said in his vetoing message, "is a clear threat to the successful working of our democratic society."

Senator Taft, commenting on the Taft-Hartley bill let the cat out of the bag. He boasted that:

"The bill is not a milk-toast bill. It covers about three-quarters of the matters pressed upon us very strenuously by the employer."

We believe that the estimate of "three-quarters" is the only modest part of this tell-tale assertion.

All unions have had the debilitating experiences with the confusing network of Taft-Hartley restrictions such as the sweeping prohibition against secondary boycotts, destruction of union security, deprivation of the right to vote to economic strikers, the license called "free speech" given to employers to coercively influence and intimidate workers in their selection of a bargaining agent, the ineffectual but confusing 60-day and 30-day notice provisions, the provisions for injunctive relief against unions, the banning of political expenditures, and the amorphous theory of "agency" as applied to unions.

All of these are threads in a grand design to enmesh unions and make them inert and impotent. In this manner a vital organ of democracy is collapsed. Without sound labor relations, free from the inhibitions and restrictions of Taft-Hartley, democracy must suffer and the basic rights of workers will be forfeited.

To return our labor-relations to the path of democracy and social progress, we must release it from the strangling grip of Taft-Hartley.

The right of free organization and free collective bargaining must be returned to the people. This was their clear mandate in the 1948 elections.

The answer is clear. It is unequivocal. It is a compelling necessity. Taft-Hartley must be repealed in toto and the Wagner Act must be restored.

Statement by Robert E. Marshall, Counselor on Industrial Relations, Worthington Pump & Machinery Corp., Harrison, N. J., Relative to the Proposed National Labor Relations Act of 1949

We appreciate the privilege which you have granted us in making possible our conveying to you a brief expression of how our company feels about certain portions of the bill which you have proposed repealing the Labor-Management Relations Act of 1947, and reenacting the old Wagner Act with certain amendments.

I say "certain portions" because our purpose is to comment upon a few aspects of labor relations with which we have had direct experience and which are touched upon by your proposed bill and the Labor-Management Relations Act of 1947. To others we leave testimony upon the matters with which they have had particular concern.

The roots of our company stretch back more than a hundred years—in fact, to 1840. Its first shop was a small wooden building in Brooklyn, N. Y., staffed by two men, Henry R. Worthington and his partner. Now there are nearly 10,000 of us working in offices and plants in Harrison, Buffalo, Minneapolis, and other cities and towns, large and small, throughout the United States, where we make and sell pumps, engines, turbines, construction equipment, and other machinery. There are 9 works and we have 11 different collective-bargaining agreements. Probably 5,000 people are represented by labor organizations who are the other parties to our contracts.

The company has to be managed, of course. You could not ask the limited number of officers and the works managers to be everywhere in those plants and offices all the time, directing production, maintenance, and the activity of 5,000 people. So there are foremen who represent those men in the plants every day, managing the flow of material from purchased goods and services to finished product. But that is an oversimplification of their job. Their big job is leadership of those who work with them—leadership in the know-how of the work, leadership in the problems of the day, leadership and help in the problems which confront the people with whom they work. As such, they exercise without question the purest type of management function. I speak now of real foremen, real supervisors—the "hiring, firing, work-assigning, and directing foremen"—not the group leaders and the straw bosses. Are they again by your proposed bill, sir, to be caught in the maelstrom of conflicting loyalties, as they were under the old Wagner Act?

No one in America can look forward with pleasure to the creeping paralysis of a dying industrial system in these United States. Surely no more sensitive spot in the American industrial system could be found than the nexus and meeting place of top management and all the splendid men and women workers in our industrial system. That is where the foreman is, at the delicate crossroads, the outer and last phalanx of management.

That he occupies that position does not mean that he is not really management but, on the other hand, part of the rank and file of workers. Of course, those who would upset our economic system, or who—and this is most important—would like to grasp for power purposes the sensitive nerve of management and render it powerless to act, would be the first to becloud the status of foremen in order to envelop them.

How is an employer of any size to communicate with employees unless through foremen? Broadsides, page newspaper ads, and the like may serve as a media for the expression of thoughts in great issues, and for very large companies. But only through foremen can the average employer speak clearly. And who is there to say that an employer should not speak to his employees—or to anyone else, for that matter? Are we to return to the dark ages of give and take with those who mange the unions, and fervently hope that their self-interest may permit them to pass on to their members an employer's point of view on a given matter? To ask that question is to answer it.

We are undertaking throughout our works this year a program designed to integrate our foremen more closely into the management structure of the company through education and discussion with them on a series of subjects which will include a consideration of salaries and wages, profits, dividends, capital formation, labor relations, taxes, pending legislation, technical and production problems, and anything else of interest bearing upon the problems of our business. We are arranging for experts in the several fields—mostly university educators—to speak on and discuss these vital problems. We hope that you gentlemen will not make it inadvisable for us to realize this enterprising and worth-while objective by the legislation you are now considering.

Does not this bill, sir, bind and gag the voice of management and return the microphone and megaphone to unions alone? Are the great and powerful internationals to lay down policies on public and private matters to the State union organizations and local unions, against which employers will be powerless to speak because it is considered that they should be disinterested about common, everyady affairs which vitally affect their business and the very existence of our economic system?

An employer's right to speak and discuss matters with his employees under the Wagner Act was, of course, not specifically forbidden, nor—and this is most important—was it affirmed. Therefore, employers were subject to the uncertainty of the National Labor Relations Board's case-by-case administrative decisions involving their statements to their employees. No employer could be sure of the permissible area of speech. Such a vital activity as employer-employee communication should not be left as a sporting pastime, available only to those employers who would gamble that, months after they had spoken, the Board upon review would uphold their actions. No; statutory reassurance and a definitive statutory standard of conduct, as is now found in the Labor-Management Relations Act of 1947, provides the only fair and proper way to legislate upon the subject.

If part of our population—management, employers, and the millions of stockholders in this country—is to have its voice practically stilled through the legislative legerdemain of saying foremen are not management, and by returning to the negative treatment of freedom of expression, how can it be ever said thereafter that in the United States we arrive at all of our great decisions through free discussion everywhere at all times? We submit that all the people must be heard, all the points of view considered, if validity and dignity are to be accorded the results of our discussions.

One other matter concerns us: the proposed restoration of the so-called United States Conciliation Service in the Department of Labor.

Prior to the enactment of the Labor-Management Relations Act of 1947, the Conciliation Service was regarded rather generally by employers to be part and parcel of a Department set-up to watchdog the interests of labor and no employer would, I am sure, take any issue with the interest and help which that Department gives to labor. That is its high purpose and it should do so unstintingly. By the same token, businessmen look for aid and encouragement to the Department of Commerce and farmers to the Department of Agriculture—representing as they do the three great producing segments of our economic system. But for that very reason an agency of the Government which purports to be a peacemaking body, a go-between for two great parts of our economic system, should have its genesis, its nourishment, and surroundings somewhere besides the preserve of one of the parties to the dispute. Can someone effectually answer the question, Why does labor fervently press for the return of the Mediation Service to the Department of Labor from its now impartial position in the Government? To phrase the question differently, When before has it ever been seriously contended that independence was an improper atmosphere for impartiality?

In December 1947 and again in June of 1948 we were involved in labor disputes into which the National Mediation and Conciliation Service entered. Our negotiators uniformly felt in both instances that that Service performed a fine, impartial, and constructive bit of peacemaking. There was no hint of partiality in the mediators and conciliators, but only clear-cut devotion to their prime duty. Would we feel the same way if the old regime were resurrected and put on the Labor Department pay roll rather than remaining an independent agency in the executive branch of the Government? The answer is obvious. Impartiality may be subjective, but it is never effective unless it is obvious to those affected. The impartiality of the revived United States Conciliation Service would be seriously impaired if it moved in the aura and image of a Government department devoted to the cause of one of the parties to the dispute. It would cease to be effective as a peacemaker if its name were more properly the United States Conciliation Service for Labor.

While I have expressed our primary interest in only three aspects of the Labor-Management Relations Act of 1947, we feel it would be a mistake to repeal that act in its entirety without further proof and experience that show it has been injurious to this country's industrial relations.

In conclusion, I should point out that we have had no labor- or union-relations problems that have adversely affected any of the parties because of the Labor-Management Relations Act of 1947—no lawsuits, no refusals to bargain, even though some of the union officers had failed, for one reason or another, to file the non-Communist affidavits. We did, of course, have to have check-off authorizations furnished us. (But I am sure in that connection most union members must not feel like slave labor because they have an individual right to decide whether they will voluntarily submit to check-off.) However, we do feel from our own experience that to undermine what is the true functional and historical position of foremen, that to repeal the right of free speech (to say that seems shocking, does it not, in view of the Bill of Rights?), and that to make the resurrected Conciliation Service a partisan in appearance—that to do these things will adversely affect the industrial system of this country and stop, when it has just started, the industrial peace essential to American industrial democracy and world peace, dependent as world peace is on American production.

STATEMENT OF L. E. ROARK, EXECUTIVE VICE PRESIDENT, NATIONAL FOUNDRY ASSOCIATION, ON THE LABOR-MANAGEMENT RELATIONS ACT OF 1947 AND PROPOSED H. R. 2032

The National Foundry Association is a voluntary management organization, which has several hundred members, engaged in the production of metal castings in all parts of the country. Our interest in harmonious labor relations prompts us to submit our experience under the Wagner Act and under the Taft-Hartley Act.

Employment in our industry ranges from 5 men to 1,500 men. The crafts have been organized for many years, and, for a major part of the time, labor relations have been a very important phase of our industry, because of the unusually high direct labor burden per sales dollar. We normally figure the direct labor burden to be around 50 to 55 percent of our sales dollar. You will see from this that our interest in continuous and harmonious production performance is a primary one.

For 5 or 6 years prior to the passage of the Taft-Hartley Act our industry was torn asunder by work stoppages, union violence, unauthorized interference with production programs, and a generally unsatisfactory and uneconomic operation.

We know that the provisions of the Taft-Hartley Act have materially lessened industrial strife in our industry and have served to protect the interests of the public, the individual worker, and the employer.

For the past 2 years, we have had an almost uninterrupted period of constructive labor relations, with the result that our production has been the highest in the history of the industry; the wages paid have been the highest, both in rate and in volume; and our general economic structure has been better served, because of management's and labor's ability to recognize that, under the Taft-Hartley Act, specific performance was required from both parties.

To begin with, compulsory unionism, which was required under the Wagner Act, was a critical cause of dissension in our industry. The substitution of coercion and force instead of personal liberty caused many thousands of lost man-hours during the several years prior to the passage of the Taft-Hartley Act.

The clear-cut provisions of the Taft-Hartley Act, giving full protection to all parties concerned in labor relations and imposing full responsibility on all parties concerned, has enabled labor organizations to fulfill their joint obligations to each other to the definite economic advantage of the Nation.

The various divisions of the Government have issued charts showing man-hours lost by work stoppages and the improvement in this record is most imposing.

The income of the workers has been greatly increased due to uninterrupted operation. Industry has been able to utilize its tools and equipment to a more full and complete degree, and the general public has been served with better material and better products due to the harmony in manufacturing operations.

We know that the requirement for officers of labor unions to sign anticommunistic affidavits has contributed to peace and harmony, particularly in the automotive and implement industry.

Some of our great automotive and implement unions have, in the past 2 years, been able to purge their ranks of dangerous men and subversive influences which were fomenting costly work stoppages and promoting costly dissension. The passage of H. R. 2032 would again stimulate and activate contention and coercive measures. We know this, because we lived under the Wagner Act for a number of years, and the record of expensive and destructive labor losses reached an all time high due to the philosophy that was engendered and fostered by the provisions of the Wagner Act.

To repeal the present act would nullify the law guaranteeing an individual's right to act in his own best interests in his relation with his employer. It would put the American workingman again under the whim and caprice of irresponsible labor leaders. It can be accurately defined that this has been a destructive condition because, as before mentioned, we had it for a number of years.

The United State Department of Labor now reports that the number of no-strike clauses in successfully worked out labor contracts are increasing—and the provision of the present Taft-Hartley Act requiring a waiting period before strikes occur—has enabled well-intentioned parties to compose their differences before valuable time and costly production is interrupted.

The United State Department of Labor figures disclose that in the first year under the Taft-Hartley Act, strikes dropped 38 percent from the previous year's figure.

The provisions of the Taft-Hartley Act, which clearly define and dignify the rights of the individual worker has promoted responsibility on both sides and under such conditions labor unions have enlarged their membership beyond all previous figures.

The pasage of H. R. 2032 would set aside all of these beneficial and constructive factors.

The passage of H. R. 2032 can again bring into being the secondary boycott, which is a ruthless and costly penalty on people and institutions not involved in a labor dispute. Under the Taft-Hartley Act, both industry and labor is protected from the burden of secondary boycott.

On this point, we would like to call your particular attention to the experiences in the electrical field where the controversy between a CIO union manufacturing an item and the IBEW-AFL, installing the equipment, has caused this industry and its workers millions upon millions of dollars in waste and loss of time over a period of years.

During the past 2 years, the figures, showing the additional value of products produced in the electrical field and installed, are definite proof that the curbing of secondary boycott has been good for the industry, good for the worker, and good for the economic health of the country.

The protection of the individual worker against union coercion is giving a new dignity to trade and professional organizations.

The tremendous decrease in jurisdictional strikes, which would again be turned loose if H. R. 2032 is passed, have contributed greatly to the economic health of both workers and industry.

The numerous additional benefits, as well as the great increase in numerical strength that unions have experienced during the past 2 years are convincing reminders that if this condition is changed by the passage of H. R. 2032, economic loss, covering both sides of the labor problem, will again be the order of the day.

There is no known record under the Taft-Hartley Act where unions were either weakened or destroyed.

The many months of hearings which were held prior to the passage of the Taft-Hartley Act, and the multitude of instances which occurred, showing the need for some type of sensible control prove that a healthy and progressive improvement in the conduct between management and employees could be and has been achieved.

We submit that the merit of all these features definitely supports our position that H. R. 2032 would be detrimental to the interest of industry and labor and that any modification of the Taft-Hartley Act would be a disservice to our economic structure.

We repeat that during the 2 years of the Taft-Hartley Act operation, new highs in employee earnings and new progressive and constructive service to the public has been achieved. We have had experience with the Wagner Act and we know it is destructive in philosophy, coercive in operation, and useless as a device to promote harmony between management and employees.

With the prosperity of our country and the welfare of our people as our first consideration, we urge the defeat of H. R. 2032.

STATEMENT BY DAVID R. CLARKE, GENERAL COUNSEL, ON BEHALF OF THE NATIONAL METAL TRADES ASSOCIATION

The National Metal Trades Association is an organization of more than 1,000 manufacturers in the metal fabrication industries. It is devoted to employer-employee relations matters exclusively.

We submit that to replace the Taft-Hartley Act with bill H. R. 2032 would be contrary to the best interests of employers, employees, and labor unions alike.

The enactment of H. R. 2032 would mean the substitution of compulsion for freedom, the substitution of coercion and restraint in the place of individual liberty.

Under H. R. 2032—

Compulsory unionism would be legalized through the legalizng of the closed-shop contract, whereby unwilling employees are forced to belong to a labor union or be discharged from their jobs.

Compulsory collective bargaining through the Wagner Act majority rule would be reenacted, whereby unwilling employees are compelled by law to accept the majority labor union as their agent to bargain and sell their services and to handle their grievances with their employer.

Compulsory arbitration would probably be the result of the provisions of the bill, which provides that the public policy of the United States requires that every employer-labor union agreement shall provide for final and binding arbitration regarding disputes growing out of the interpretation and application of the agreement.

Under H. R. 2032—

The provisions of the present law guaranteeing freedom to speech would be repealed.

The provisions of the present law guaranteeing an individual's right to refrain from union membership and union activities would be repealed.

The provisions of the present law guaranteeing an individual's right to freedom from restraint and coercion by labor unions would be repealed.

The provisions of the present law guaranteeing the right of an individual or group to settle grievances directly with their employer would be repealed.

The provisions of the present law excluding foremen and supervisors from its coverage would be repealed. Foremen and supervisors are the representatives of management and should be made free from the requirements of this bill (H. R. 2032) which would treat them as though they are not part of management, but part of the group over whom they exercise management functions.

The provisions of the present law protecting employees, employers, and labor unions from jurisdictional strikes and secondary boycotts would be repealed.

The provisions of the present law to protect employees and labor unions and employers from Communist domination and misuse of labor unions would be repealed.

Under H. R. 2032—

The Federal Conciliation Service would again be placed under control and domination of the Department of Labor, a department which is created and operated as a champion of labor, one of the two sides in any conciliation case.

Under H. R. 2032—

The National Labor Relations Board would be set up as prosecutor, judge and jury, as a court with power to make decisions that for all practical purposes are above review, even by the Supreme Court of the United States, as a court with authority to disregard the established safeguards of rules of evidence that prevail in all the courts of law, as a court with authority to disregard the weight of the evidence in any case and to decide the case according to the least evidence and against the most evidence.

Under H. R. 2032—

Employers would be required to enter into contracts with labor unions binding upon the employer and the breach of which would subject the employer to suits for damages, but which the labor unions would be free to breach without any liability of suits for damages or any other responsibility.

Based upon our knowledge and experience, gained through close contact with more than 1,000 employers in the metal working industries, during the era of the Wagner Act, and, during the era of the Taft-Hartley Act, we respectfully submit—

The enactment of H. R. 2032 will bring unprecedented pressure upon employers by the unrestrained labor union monopolies, and, so, will bring unprecedented dislocation of our industrial economy through the economic struggles that will ensue—and, we respectfully submit—

It is possible to work out a labor-relations law that is fair to all and that is in the public interest, if irrelevant considerations that have nothing to do with good employer-employee relations in America, but only with political expediency of either political party, are sacrificed, in the public interest.

We represent to you that at this time, in the present state of our economy, the interests of employers, employees, and the public, all require that Congress work out a labor relations law that is fair to all.

H. R. 2032 is not such a law.

STATEMENT OF HARRY B. PURCELL, INDUSTRIAL RELATIONS MANAGER, THE TORRINGTON CO., TORRINGTON, CONN.

This statement is submitted for the record at the invitation of Mr. John Lesinski, chairman of the Committee on Education and Labor.

At the outset I wish to enter a strong plea that whatever bill the committee reports out as a substitute for the Taft-Hartley Act that that bill embody principles that will be primarily in the interest of the public, not in that of labor leaders or misguided employers. Because how perfectly that or any other labor law operates, will depend upon how generally we accept the idea that the law must respect the individual rights and liberties of every man; and that all men must stand equal before the law.

If the Committee on Education and Labor in its actions, does give primary consideration to the welfare of the general public, I know of no employer or management representative who would not be completely satisfied; and the overwhelming majority of American people will ever applaud the Eighty-first Congress for having met the test, squarely and successfully, of whether Government is to function, or whether selfish minority pressure groups are to dictate the type of legislation we are to have.

The Committee on Education and Labor must be concerned with the impact its bill will have on the union-management power equation, the effect of Government policy upon the relative strength of these two parties. At the same time, I believe the committee should recognize the fact that in the development of our country's labor policy, we have, by public command, entered the stage of public interest and union responsibility. We should not go backward to the days of the public-be-damned, and union irresponsibility. We should maintain the rules that have been established for both sides.

The Labor-Management Relations Act of 1947 imposes on management every duty which was previously imposed by the Wagner Act, and, without taking away any rights from the workers, it gives them new and additional rights and protection.

I further submit that the core of whatever bill is reported out by the Committee on Education and Labor should be in such principles as:

(1) That unions give advance notice before striking:

(2) That Communists as agents of a foreign power, should not control American unions;

(3) That unions honor their contracts;

(4) That union members are entitled to a report on their organization's financial standing;

(5) That enforced membership in a union as a condition of employment is repugnant to free Americans;

(6) That the jurisdictional strike and the secondary boycott are inexcusable wastages and unfair; and,

(7) That work stoppages in industries vital to the public health and welfare are unjust and should be prohibited, or at least delayed until all efforts at peaceful settlements have been exhausted.

From my more than 10 years of active participation in labor relations work, I would say very definitely that these principles are accepted by the public, including most union members.

The hysterical screams of certain labor leaders against the Labor-Management Relations Act of 1947 are not prompted by any sincere concern those leaders have for the rank-and-file workers, or the general public. And anyone who is familiar with the labor movement knows that the screams of the labor leaders are as empty as they are frenzied. For the labor spokesmen never proved their case against the Taft-Hartley Act. The gap between the charges and the palpable facts was just too great.

My confidence in the essential fairness, good sense, and good will of the American people is great. I sincerely hope that the Committee on Education and Labor believes, as I do, that the American public will oppose any attempt to force a retreat on the principles which I have enumerated above, and which, in my opinion, are the historic core of the Labor-Management Relations Act of 1947.

STATEMENT OF FRANK C. HUNT, DIRECTOR, INDUSTRIAL RELATIONS DIVISION, BRIDGEPORT-STRATFORD PLANTS, MANNING, MAXWELL & MOORE, INC., BRIDGEPORT, CONN.

My name is Frank C. Hunt; my business address is 11 Elias Street, Bridgeport, Conn.; and I am in charge of the industrial relations activities for a division of Manning, Maxwell & Moore, Inc. This division includes two plants, one at Bridgeport, Conn., and the other at Stratford, Conn. The total work force in both these plants amounts to approximately 1,200 people.

We have always felt that our employees are the company's most important asset and that our personnel policies and practices must give the fullest opportunity for enjoying the self-respect, dignity, and importance to which all of us are entitled, wherever we work. We have long felt that our employees should be free to choose the kind of relationship they wished to enjoy with their fellow workers and with the company.

Approximately 5½ years ago the majority of our employees chose to join a union, and we have negotiated collective-bargaining agreements with local 210 of the United Electrical and Radio Workers Union since that time.

RECORD OF HARMONIOUS RELATIONSHIPS WITH EMPLOYEES

I am glad to state that we have had the good fortune to enjoy friendly and cooperative relationships with our employees, many of whom are skilled craftsmen. During this period of time we have continued to strive toward the goal of an ever better understanding with them. I am glad to say that there has been no strike or any serious interruption of production in that period of time.

I should like to make it clear at this point that we have extended the full hand of cooperation to our union and they in turn have worked with us. It is this mutual willness, the common desire of both labor and management to work together, which I believe is at the core of our present relationship.

As a result of our earnest effort toward fair dealing, we have so far been successful in settling our own problems, and have not found it necessary to appear before the NLRB either under the Wagner Act or more recently under the Labor Relations Act, or have we ever appealed to the courts.

All of this is good. It serves the best interests of our employees, of the company, of our stockholders and, equally important, has made it possible for us to put more and better goods at lower prices into the hands of more and more people.

Of course, gentlemen, you realize that I do not speak for any local union, nor would I presume to speak for any union of any kind, but I believe the facts bear out my statement. In every State in the Nation there are hundreds, if not thousands, of medium-sized and small plants.

In the Bridgeport area, and the Detroit area, and around Wheeling, W. Va., and Kansas City, Mo., there are thousands of these small plants, and it is from these modest beginnings that come the fine, strong companies that make American industry what it is, and give to this Nation an unsurpassed standard of living.

Also, we must remember that in every industrial locality new companies come to life every year. Some fail, it is true, but others go on to be fine, stable organizations. In the Bridgeport area in 1948, 38 new corporations started business. Now, it is true some of these corporations employed only two or three people, but if we look back through our industrial history we will probably find that Mr. Edison or Mr. Ford first employed only two or three people. In all the other areas there are other new companies being formed and, gentlemen, all of them, employer and employee alike, are asking for only one thing—a fair and just Labor-Management Relations Act impartially administered.

Many of these plants have local unions, and in the great majority of cases industrial relations are excellent. The union and the management both try to be just and fair in their dealings with the employees and with each other.

The millions of people that work in the thousands of small and medium-sized plants are a great segment of the public. This great group want steady employment and fair pay, and I believe their best protection is a fair and just Labor-Management Relations Act. The basic principle of industrial peace is most important.

There are millions of people in these plants. These people believe in the fundamental rights of the individual. They believe that a bargain is a bargain and must be lived up to. They believe that a contract is a contract and the terms of the contract should be enforced. They believe that the foreman in the shop is really the boss and they hope some day to be the boss themselves and, perhaps, even own a shop of their own.

Let it be understood that I represent no group of any kind, either manufacturing, chamber of commerce, or any other organization, I speak here of my own beliefs, and I believe this belief is founded on fact.

The country has before it a very vital question of the civil-rights measure that has been proposed by President Truman. It would appear to the average layman that a civil-rights program would be designed to insure freedom in education, in religion, in politics, and many other ways; all of this regardless of race, creed, or color. Also, it has no doubt occurred to many laymen why any civil-rights program should not also include the freedom to work at your trade and earn a living, regardless of any restrictions. How can we preach civil rights for all on one hand and then insist the man must join any type of an organization to earn a living; isn't his right to earn a living a civil right?

There is no need for any type of compulsion in labor unions. There is a far better way. The unions of today are strong financially; far stronger in every way than many of the medium-sized or small plants throughout the country, or any combination of them. Let the union leadership in the locals be of that caliber that would make the employee glad to join, and the employer glad to have able men to deal with, and the union needs no compulsory membership of any kind. People will flock to join the union. That is the better way.

BARGAINING

To reach an agreement we suppose that there was some kind of a bargain, therefore, we can take it for granted that when Mr. Edison hired his first helper there was an agreement as to wages and, therefore, a bargain, and both Mr. Edison and his helper acted in good faith and so carried on their work.

Now, in all the small and medium-sized plants throughout the country, whether there be unions in them or not, I believe it is the intent of the employer to bargain with his men in good faith, and I believe the local unions, in the vast majority of cases, want to bargain in good faith. Sure, we all know the companies get tough or the unions get tough. Sometimes they feel they have to, and sometimes they might really have to. The point I believe is important is that these smaller groups sit down and really and truly believe in the principles of bargaining in good faith on both sides of the table. It is my belief that the issue before the law in this matter of requiring both sides to bargain in good faith is essential. All the world over a contract is a contract and should be enforcable before the law. This is a cornerstone of proper relationship between any two parties.

I would like to quote here from a statement that President Truman made in opening the Labor-Management Conference in 1945:

"We shall have to find methods not only of peaceful negotiations of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out."

It is my very earnest belief that here is another basic principle that will go a long way toward keeping that industrial peace that never makes the headlines.

The United States Mediation Service can only best serve all the people all the time by having the absolute confidence of the public and of labor and management. This administrative body should be independent from any suggestion or persuasion. We should take a long range view of this service and look ahead to the time when through the justice and ability displayed by this agency we will have reached the status, in the eyes of our people, comparable to the integrity of the Supreme Court of the United States.

It has always been one of my firm beliefs that the first obligation of management to its employees is to so manage a business that it will make a profit. It is obvious that only a profitable company can pay good wages, have good working conditions, and attract the type of employee that the union is glad to have for a member, and the employer is glad to have in his plant.

You gentlemen can probably find, each in your own district, a situation that looked hopeful, but through mismanagement something went wrong so there simply was no jobs. This is wrong; it hurts the public, it hurts labor, and it hurts the managers who put their money into the enterprise.

To manage an operation and make the profit necessary, management must be allowed to manage, and in the management setup of today the foreman is perhaps the most important of all.

Any type of unionization of supervision would appear to be disastrous for the small and medium-sized companies. In the large companies there may be thousands of foremen, but in the type of companies I am talking about there may be 2 or perhaps 40 or 50. They are management's men. They must see to it that the departments they operate are operated at a profit. These management men must be fair, they must be just, they must know their business, but they must help the company in its endeavor to be a good, strong company that can afford to improve working conditions, can afford to expand and make more jobs, and can continue to give the public a good or a better article at the same or a lower price. In the medium-sized companies these men know almost from day to day many of the over-all problems; they are really and truly management.

Gentlemen, the basic principles that I have enumerated to you, I believe, are absolutely necessary for the peaceful industrial life of the hundreds and thousands of small and medium-sized companies throughout the land, and once more I believe that these principles are, as of today, practiced in the day to day dealings between labor and management which is the reason that we have industrial peace in the hundreds of thousands of these plants.

OAKLAND, CALIF., *February 4, 1949.*

Hon. JOHN LESINSKI,
Chairman, House Committee on Education and Labor,
House Office Building, Washington, D. C.

Request this be read to full committee and made of record. Passage of the Taft-Hartley Act was demanded by the general public to correct the abuses of irresponsible labor elements. It has accomplished that objective. Your committee should hold unlimited hearing if necessary and demand proof of necessity from any proponents of changes. Failure to do so would constitute a grave offense against the public welfare and unwarranted favoritism toward a minority.

L. W. WATSON,
2900 Glascock Street, Oakland, Calif.

AIRLITE LAUNDRY, INC.,
Philadelphia, Pa., April 5, 1949.

The Honorable JOHN LESINSKI, M. C.,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D. C.

Reference: Your letter of March 17, 1949.

DEAR CONGRESSMAN LESINSKI: I wish to express my appreciation to the Committee on Education and Labor of the House of Representatives and to you for the priviledge extended me in permitting me to express my views on bills H. R. 2032 and H. R. 2033. While I do believe it would have been easier to present my views in person in a round-table discussion, I can readily appreciate the heavy demands upon the committee's time due to the tremendous impact this contemplated legislation will have on business people, both large and small, upon invested capital, upon labor, and through its accumulative effect, upon the national economy as a whole.

As I read your letter I can't help but be forcibly struck by the meaning of your sentences "* * * the subcommittee requests you file a written statetment which will be placed on record. Consideration will be given your views by members of the subcommittee." Under what system of government other than ours could a little person be heard by his duly elected legislative body with the patience and respect implied in your letter?

Certainly this is a shining example of a government recognizing the rights and dignity of its individuals. Whether my views are helpful or not in assisting the subcommittee in formulating wise and just legislation in the field of labor-management relations, remains to be seen, but I value most highly my right to be heard.

At this point, I wish to emphasize that the views I shall present herein are entirely my own and are not those of any group of laundries, local, State, or national trade associations. They are based solely upon my personal background, training, and education, and upon my present problem of bringing a business which had been badly mismanaged and milked from one of a very precarious financial position to one of financial health.

The two phases of my discussion will cover: (1) Labor-management relations and (2) a legislated minimum wage.

1. Labor-management relations: For the past 16 years, our country has been undergoing a very important phase of growth of our labor-management relationship. Labor, fighting an uphill battle for many decades has finally won its rightful recognition on the same plane with invested capital and management. Slowly—even to many die-hard reactionaries—but surely has come the universal recognition that we all play on the same team—invested capital, the line; management, the quarterback; and labor, the ball carriers. Teamwork, and teamwork alone will give us a winning combination—not continual bickering and strife.

In any social evolution for betterment, frequently the pendulum has a tendency to swing from one extreme to another, and it takes a while before it strikes a happy medium. Formerly it was too far on the side of capital and management; now it has swung slightly too far toward labor. Ultimately, whether it be now or in the future, it will hit a state of equilibrium, at which time our economy will reach a better state of stabilization, which is the basic goal of government, labor, business, and Mr. Average Citizen.

Unfortunately the divergent views built up over many years between management and labor, failing to accept their universal partnership under our present economic order, has now been extended into our national political life. For example, an article covering hearings similar to yours which were held before the Senate Labor Committee, reported the Honorable James A. Murray, United States Senator accused Mr. Gerald D. Reilly of double-crossing labor by assisting in formulating the Taft-Hartley Act. (Philadelphia Inquirer of February 5, 1949)

Only too frequently now do we read or hear of a similar implied indebtedness due labor or management for its campaign endorsement of a dully elected legislator. Certainly this is an unfortunate assumption—though commonly held by many—as I sincerely believe any man who is of the caliber to be seated as a Member of our Congress or Senate, certainly creates, sponsors, and supports legislation according to the dictates of his conscience, to the best of his ability, and for the best interests of the country as a whole—not for any group or special interests.

Because labor in its first real entry into the political arena largely backed the successful party, and because of the magnificent fight waged by our President, labor has been somewhat prone to identify the Democratic Party as its own. If this thought becomes more universally accepted, it is conceivable that it could become more nearly an actuality, in which event, as the success of each of our two major political parties ebbs and flows, so will legislation affecting labor-management relations. Therefore, I recommend a bipartisan policy be adopted in this field, similar to that being followed in the field of foreign affairs to create permanent and just legislation which will lead to industrial peace.

The basis for any such peace must be fair play and a code of ethics recognizing everyone's rights. The very essence of a contractual relationship is one of dual responsibility—not that of a unilateral position. Therefore, I propose that union organizations be subjected to the same rules of existence that any other nonprofit organization is. With their growth and gains in public acceptance, comes their obligation to accept responsibility. This means corporate organization, financial responsibility, and accounting of income and disbursements to the Government, their entire membership, and the general public.

Finally, I believe that this subject is so vital to the future economic welfare of our country, that legislation in this field should not be recommended to the Congress to meet any given time schedule, or satisfy any executive directive. This is entirely a function of the legislative branch of our Government. It should be developed slowly, carefully, deliberately—with the thought in mind that it will be practical, positive, and workable; that it will stand the test of time; and that regardless on whose toes it may tread, it shall be for the best interests of the industrial peace of our country.

2. A national minimum wage: As our economic life is composed of so many thousands of types of businesses, and as living and working conditions vary so widely throughout the country, no one can fully appreciate the effect of a national minimum wage on each type of business and on each geographical section. This is a matter requiring a great deal of study, research, and thorough investigation by sections, by industries, and by sections within industries. However there are certain generalizations which I shall set forth, and then I shall show its inevitable effect upon the AirLite Laundry, Inc., which company I operate.

The laws governing our present economic system, that known as the individual, cooperative exchange system—and certainly no one in his right mind would trade it for any other existing in the world today—are as true as any law of physics or chemistry. Any attempt to manipulate them artificially can only produce distorted and undesired results.

Despite the fact we are enjoying the highest prosperity in our history, for many of us, the depression of the 1930's is still a vivid nightmare. Our Government is constantly on the alert and doing everything in its power to smooth out the hills and valleys of the business cycle. Yet we can't close our eyes to the fact that the business cycle has been and always will be a part of our economic life. The beginning of each phase has its inception in the preceding stage, and it is such a logical and natural phenomenon, that everyone is powerless to prevent it. In enacting a national minimum-wage law during a high point in the cycle, we may feel we are helping to level it out; yet we are only deceiving ourselves. While in many industries, wage rates are higher than this proposed minimum, at least during these boom times, still they are not as high in many others, particularly in the service industries where labor constitutes such a high percentage of the selling price. The fact that so many may be adversely effected, may have a reverse effect from what was intended, and thus precipitate an earlier turn in the business cycle by the creation of unemployment due to pricing a commodity or service out of the market.

Furthermore, assuming for the sake of an argument, it should have no effect upon wages or any business today, what assurance is there of industry being able to provide 40 hours of work at this or any other wage rate? How will a national minimum wage prevent a continued operation of the business cycle? When we are in the lower phase of a business cycle such as the early 1930's, how will business be able to start up? Will a national minimum wage of 75 cents or any other amount facilitate or impede recovery at this time?

Labor is and always will be a commodity, subject to the laws of supply and demand, despite how much we may not like to recognize this fact. Before universal unionization, it was more at the mercy of the buyer, but with the general acceptance of the principal of collective bargaining, this position has improved immensely. Certainly today our responsible labor leaders are unquestionably highly skilled negotiators, and invariably are able to obtain the highest possible rates of pay the traffic will bear without pricing their particular industry out of the market. This fact in itself suggests the solution to the whole problem of wage rates. With widely divergent circumstances existing in each industry and in each locality, and due to the fact that labor contracts are generally of a limited duration so that they will be negotiated in all phases of a business cycle, certainly there is far more flexibility inherent in arriving at a wage rate over a bargaining table than through a fixed national legislative rate.

Approaching it from another angle, supposing in a given industry, there was an average raise of $10 per employee. Two and one-half dollars of this $10 raise would immediately go into Federal income tax, so that exclusive of OAB, unemployment, city or State wage tax, etc., his greatest increased take-home pay would be $7.50. However, $10 per employee would have to be injected into costs which will either (1) reduce profits, (2) create or increase a loss, (3) result in an increased price structure, or (4) which may result in an unfortunate loss of volume. If this increase were general in all industries, or at least in many, most costs would increase progressively, so that percentagewise, the real buying power of labor would tend to be reduced, thereby sowing the seed for the next phase of the business cycle.

The pay structure of Airlite Laundry, Inc., is as follows:

Type of personnel	Hourly rate	Average hours worked per week, last 6 months
Entire plant	$1.13	37
Shirt girls [1] (inside)	.95	37
Other inside plant	.75	37
5 key employees (inside)	1.57	48
Office personnel	.93	40
Driver-salesmen [2]	1.34	40

[1] Piece-work basis.

[2] Salary and commission basis.

Our Union Contract has a 61-cent base rate. Should the 75-cent minimum wage be enacted, we shall be obliged to have a general increase of at least 14 cents per hour across the board because (1) individual differences in ability, skill, and length of service must be recognized, and (2) the union will of necessity and fairness require that if raises are accorded one group of employees, it shall be given to all. Actually, however, it is almost a certainty that this 75 cents would be used as a floor from which the union would be forced to up its minimum base, because it must have something more to sell its membership than that which the Government was able to obtain for them through the proposed national minimum-wage law.

Assuming no raises were given our drivers, key employees, or office personnel, I calculate the wage raise caused by this legislation would amount to 10 percent of our pay roll—namely about $12,000 per annum, which is nearly 6 percent of our gross sales. With an operating profit of $4,500 in 1947 and an operating loss of over $8,000 in 1948, to absorb this $12,000 without an upward revision of our price structure is, of course, an arithmetical impossibility. Mind you, this increase in pay roll has excluded many classes of employees, but practically whether this can be done or not without destroying the morale of our organization, is highly speculative and probably impractical.

This leaves no alternative but to raise our retail selling price. In a service business such as laundry, this is not quite as simple as it sounds. Since November 1946 when OPA was removed, we have been forced to effect five price increases. Without exception each time our poundage dropped in greater proportion than our increased price was able to hold up our dollar volume, so we have shown a steady decline in receipts as well as tonnage. Therefore, despite increasing wage rates, the total hours worked per week have been reduced from an average of 44 hours to 37. Thus the dollar take-home pay of our employees has remained relatively constant.

Of every $1 our customer pays for her laundry service, 63 cents is paid for labor of our organization. With this high percentage of labor costs, obviously any marked increase in wages will cause a rapidly higher increase in price, and coming at this time will create dangerous customer resistance. While I calculated only 10-percent increase for our minimum personnel so affected, practically we would have to extend this coverage to all. As our supply costs would also reflect this legislation, in my opinion, it would require at least a 15-percent general raise in our prices to safely carry Airlite through.

In our former price raises for a few weeks, the average sales price of our bundles would rise, but within 6 to 8 weeks, it would return to its original average, indicating again that a woman has just so much to spend for laundry service and come what may, she can not and will not spend more.

While I am violently opposed to any sweat-shop labor, and despite the fact that the pay rate of Airlite's employees are in the lower brackets, still we offer stable employment to all our people—52 weeks out of the year, which is something mighty few other businesses can do. In the long run the annual pay of our employees is quite comparable to and in many cases better than industries which pay a higher hourly wage rate.

As I indicated before, I am seriously concerned about pricing Airlite out of a very substantial percentage of our market—so much so that at this time when our volume is off 8 percent over the last 4 months, I believe we would fall far below our "break even" point, sufficiently to jeopardize our already critically weak cash position. Frankly, I am seriously afraid that the impact of this legislation would drive Airlite out of business.

In the final analysis, laundry is a luxuary item which people can do without by doing it in their home. Pecularily enough, Airlite laundry's competition are its own customers. It's a basic economic principal that if a business doesn't have sufficient economic utility to sell its product at a fair price, it will die and the moneys it would have received will be diverted to more efficient industries and to those which contribute more to the economic well being of the community. However our business is the exception which proves this rule. For example we might expect a large portion of our $200,000 income to buy washing machines, thereby stimulating sales and employment in that field—but almost every customer we serve either has a washer or has access to one. As they are truly marginal workers, many of our employees, if we fail, would gravitate toward domestic work or laundresses.

In this case our employee would then pay no unemployment tax, social-security tax, income tax, or city wage tax; each would work for wages for the housewife depending on how badly she needed the work, and for just what the traffic would bear; and who, in the case of similar laundry failures to our, would find herself in heavy competition for domestic work, thereby driving the wage rate of this class of worker down. In short, inasmuch as our real competitor, the housewife, is exempt from the national minimum-wage rate and from the attendant costs of hiring labor, I believe that the laundry business should also be exempt, at least until such time as the housewife is brought under this coverage.

Airlite's taxes collected by city, State, and Federal governments, both hidden and direct, were in excess of $10,000 in 1947 and $7,500 in 1948. This is exclusive of the personal income taxes paid by the employees of the corporation. Should Airlite be forced from business, this would represent a rather substantial tax loss to our governments.

While I am speaking only for Airlite Laundry, Inc., I am certain nearly every other laundry will be in a comparable position. Therefore I sincerely believe that by multiplying Airlite out several thousands of times, it is highly imperative that the laundry business be completely exempted from any national minimum wage, should such a law be enacted.

Most respectfully yours,

ARTHUR J. THORNER, Jr.

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